HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs

November 2013

U.S. Department of Housing and Urban Development

Special Attention of:

Regional Directors
Multifamily Hub Directors
Multifamily Program Center Directors
Supervisory Project Managers
Project Managers
Contract Administrators, and
Owners and Management Agents of projects covered by this Handbook

Revised Transmittal for Handbook No: 4350.3 REV-1,CHG-4

Issued: November 27, 2013

1. This Transmits

Change 4 to Handbook 4350.3 REV-1 "Occupancy Requirements of Subsidized Multifamily Housing Programs" is updated to include information on use of the Enterprise Income Verification (EIV) system; Violence Against Women Act (VAWA) requirements; Supplemental Information to Application for Federally Assisted Housing; and Rent Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs; Final Rule and requirements relating to admission of individuals subject to State lifetime sex offender registration requirements.

In addition to the revised implementation below, this revised transmittal removes all appendices associated with Chapter 9 of HUD Handbook 4350.3 REV-1, Change 3. Specifically the following appendices found in Change 3 have been removed: Appendix 7-A, Appendix 7-B, Appendix 9, Appendix 10 A, Appendix 10 B, Appendix 10 C, Appendix 10 D, Appendix 11, Appendix 12, and Appendix 13. Finally, a small clarification to verification techniques was made in paragraphs 5-13.B.2 and 9-10.A.

2. Implementation:

The changes are effective August 7, 2013. In response to Multifamily Housing's business partner requests, owners/management agents have until December 15, 2013, to implement the changes found in this publication. Additionally, owners/management agents have until March 1, 2014, to implement those changes requiring modifications to their TRACS software. If requested, HUD may permit an exception to the March 1, 2014, date if there are modifications that cannot be made by this date due to incompatibility with HUD's TRACS software.

3. Explanation of materials transmitted:

A. Changes are designated by an asterisk (*) at the beginning and ending of the change and the date 8/13 is reflected at the bottom of the affected page.

B. Chapter 1. Introduction

Additional clarification on existing text:

Paragraph 1-2.D – Added HUD-Veterans Affairs Supportive Housing and Mainstream Vouchers
Paragraph 1-3.B – Removed the time reference to the Section 202 program
Paragraph 1-7.B.1-14 – Added relevant links for HUD Websites
Paragraph 1-7.B – Removed paragraph referencing TRACS Information Packet (Yellow Book)
Paragraph 1-7.B.4 – Clarified paragraph
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Paragraph 1-7.B.11 – Clarified the EIV system is to be used to verify a tenant's employment and income and to assist in the reduction of administrative and subsidy errors

Paragraph 1-7.B.12 – Added new paragraph for EIV& You brochure and description
Paragraph 1-7.B.13 – Revised paragraph
Paragraph 1-7.B.14 – Revised paragraph
Paragraph 1-7.C – Provided instructions for ordering publications online
Figure 1-2 – Added "Authorities" to title
Figure 1-2 – Added 1) Nondiscrimination and Equal Opportunity in Housing, 2) Collection of Data, 3) Economic Opportunities for Low and Very Low Income Persons, and 4) Section 202/811 Mixed Finance

C. Chapter 3. Eligibility for Assistance and Occupancy

Corrected erroneous references or typos:

3-6.B.2, 3-12.H.2, 3-12.L.1.b,

Additional clarification on existing text:

Figure 3-1 – Added Enterprise Income Verification (EIV)
Paragraph 3-3.F – Added 24 CFR 5.233 Mandated Use of HUD's Enterprise Income Verification (EIV) System
Paragraph 3-4 – Added example for determining eligibility at initial certification
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Paragraph 3-12.I.2 – Clarified the statement is in addition to declaring citizenship status on the Citizenship Declaration form
Figure 3-4 – Updated the Figure to represent currently accepted DHS documents
Paragraph 3-12.L.1.b – Added link and EIV System
Paragraph 3-13.A.2 – Added "and" after each condition
Paragraph 3-13.A.2.h – Changed "and" to "or" to match regulation and added Note to supplement the paragraph
Paragraph 3-21 – Added paragraph about use of Existing Tenant Search and Multiple Subsidy Search
Paragraph 3-21.B and C – Included reference to the Housing Choice Voucher regulations
Paragraph 3-24 – Added 24 CFR 5.233 Mandated Use of HUD's Enterprise Income Verification (EIV) System
Paragraph 3-26.B – Revised the order of priority for acceptable verification methods and added reference to Paragraph 5-13
Paragraph 3-26.C – Included income verification
Paragraph 3-28.B.1 – revised third party verification sources for verification of disability
Paragraph 3-28.B.2 – Clarified in the Note that the varying accuracy of Disability Status in EIV and how to verify
Paragraph 3-30 – Added the EIV System for up front verification of employment and income information
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Exhibit 3-5 – Revised exhibit to update currently accepted DHS documents

D. Chapter 4. Waiting List and Tenant Selection Plan

Additional clarification on existing text:

Figure 4-1 – Added Enterprise Income Verification (EIV) and Violence Against Women Act (VAWA)
Paragraph 4-3 – Added Social Security Number (SSN) Requirements and penalties; 24 CFR 5.216 and 24 CFR 5.218 and Mandatory Use of Enterprise Income Verification (EIV) 24 CFR 5.233
Figure 4-2 – Added State lifetime sex offender registration check, EIV Existing Tenant Search, and VAWA
Paragraph 4-4.C.1.c – Removed language for when an individual has no SSN
Paragraph 4-4.C.3.d – Added use of EIV Existing Tenant Search
Paragraph 4-4.C – Added paragraph on VAWA
Paragraph 4-6.C.1.b – Updated requirements for residency preference to be in accordance with 24 CFR 5.105(a)
Paragraph 4-6.C.4 – Extended paragraph to include dating violence and stalking
Paragraph 4-7.B – Added paragraph establishing procedures for using EIV Existing Tenant Search
Paragraph 4-7.B.6 – Added State lifetime registration as a sex offender
Paragraph 4-7.D – Added new paragraph on screening using the EIV Existing Tenant Search
Paragraph 4-7.E – Added sex offender screening criteria
Paragraph 4-9.A – Added paragraph on prohibition of denying assistance to victims protected under VAWA
Paragraph 4-9.B – Revised SSN requirements to conform with 24 CFR 5.216 published in the Federal Register on December 29, 2010
Paragraph 4-10 – Updated Affirmative Fair Housing citations
Paragraph 4-13 – Added Social Security Number (SSN) Requirements and penalties; 24 CFR 5.216 and 24 CFR 5.218
Paragraph 4-14 – Added paragraph for Supplement to Application for Federally Assisted Housing
Paragraph 4-14.A.4 – Changed “should” to “may”
Paragraph 4-14.B – Added two paragraphs requesting information regarding sex offender registration, SSNs, and Supplement to Application for Federally Assisted Housing
Paragraph 4-14.D – Added paragraph and subparagraphs describing the Supplement to Application for Federally Assisted Housing
Paragraph 4-16.C – Added paragraph regarding SSN disclosure and verification requirements
Paragraph 4-20 – Added provision for applicant failing to provide SSNs for all household members
Paragraph 4-22.B and C – Added form HUD-92006 completed by the applicant
Paragraph 4-22.E – Added statement indicating additional disclosure requirements are in place for EIV Income data in tenant files
Paragraph 4-23.B – Added disclosure and verification of SSN(s)
Paragraph 4-24.B.2 – Added use of information contained in the EIV system
Paragraph 4-24.B.7 – Added use of the Existing Tenant Search in EIV
Paragraph 4-24.B.9 – Revised the SSN disclosure and verification requirements
Paragraph 4-24.B.10 – Clarified employment and income information from SSA’s and HHS’ NDNH database are included
Paragraph 4-24.B.12 – Changed “tenant” to “applicant”
Paragraph 2-24.13 – Added EIV & You and Resident Rights and Responsibilities brochures
Paragraph 4-27.E.4.a – Added State lifetime sex offender registration
Paragraph 4-27.E.5 and 4-27.E.5.a-g – Added State sex offender registration record(s)
Paragraph 4-27.E.6 – Added State lifetime sex offender registration
Paragraph 4-27.E.7.b – Added State lifetime sex offender registration
Exhibit 4-1 – Removed Note at the beginning for Exhibit, added SSA Benefit Letter and Proof of Income Letter

E. Chapter 5. Determining Income and Calculating Tenant Rent

Additional clarification on existing text:

Figure 5-1 – Added Enterprise Income Verification (EIV)
Paragraph 5-3 – Added 24 CFR5.233 Mandated Use of HUD’s Enterprise Income Verification (EIV) System
Paragraph 5-5.A – Removed “two”
Paragraph 5-5.A.2 – Removed example text

Paragraph 5-5.A.3 – Added new paragraph and subparagraphs on Using EIV
Paragraph 5-6.A.3.d – Clarified the paragraph to relate to earned income and this income exceeding $480 annually
Paragraph 5-6.I – Provided reference to Sections J and O along with an Example
Paragraph 5-6.Q.3 – Added paragraph excluding deferred Department of Veterans Affairs disability payments received in a lump sum or in prospective monthly payments for Section 8 tenants
Paragraph 5-7.G.4.b – clarified IRA, Keogh, and similar retirement savings accounts are counted as assets, even though withdrawal would result in a penalty, unless benefits are being received through periodic payments.
Paragraph 5-7.G.4.d – revised to read "Include in annual income any retirement benefits received through periodic payments. Do not count any remaining amounts in the account as an asset.
Paragraph 5-10.A.1 – Clarified the deduction does not apply to foster children and foster adults; added statement for not needing legal custody of dependent to receive deduction
Paragraph 5-10.A.2 – included foster adult
Paragraph 5-11 – Added 24 CFR 5.233 Mandated use of HUD's Enterprise Income Verification (EIV) System
Paragraph 5-12.A.2 – Added paragraph for use of EIV system for third party verification of a tenant's employment and income at time of recertification and to assist in reducing administrative and subsidy payment errors
Paragraph 5-12.A.4 – Updated paragraph to conform with SSN requirements found in 24 CFR 5.216
Figure 5-4 – Updated figure to conform with SSN requirements found in 24 CFR 5.216
Paragraph 5-13.A – Updated the order of acceptable methods of verification
Paragraph 5-13.B – Added detail for the types of third party verification in the order of their acceptability
Paragraph 5-13 – Removed two paragraphs titled Review of Documents and Family Certification
Paragraph 5-15.A – Removed medical professionals and the reference to the HUD Fact Sheet and the Resident Rights and Responsibilities brochure
Paragraph 5-15.B.1 – Added IRS, SSA, and SWICAs abbreviations and the Department of Health and Human Services National Directory of New Hires
Paragraph 5-15.B.2 – Clarified the 9887 must be signed by head of household, spouse, co-head regardless of age
Paragraph 5-15.C – Added the EIV & You brochure
Paragraph 5-15.C.1 – Clarified HUD-9887-A form and Fact Sheet
Paragraph 5-15.C.2 – Removed reference to HUD National Multifamily Clearinghouse and provided reference to Chapter 1
Paragraph 5-15.C.3 – Added new paragraph for EIV & You brochure
Paragraph 5-16 – Removed paragraph
Paragraph 5-16 (new) – Removed repetitive language to clarify paragraph
Paragraph 5-16.A – Added HUD-9887-A
Paragraph 5-16.A.3 – Added new paragraph for NDNH
Paragraph 5-16.A.3.c – Added NDNH reference
Paragraph 5-16.B.1 and 2 – Clarified valid verification dates
Paragraph 5-16.B.4 – Removed paragraph
Paragraph 5-17 – Rearranged wording to make the paragraph read clearly
Paragraph 5-18.B – Revised to include EIV and EIV documentation
Paragraph 5-18.D – Added original tenant provided documents must be returned to tenant and removed the Note
Paragraph 5-20 – New paragraph Added explaining Security of EIV data
Paragraph 5-21.A – Added HUD-9887-A
Paragraph 5-21.B – added any member of the tenant's family, indicated the household's assistance is terminated
Paragraph 5-21.C Example – Added HUD-9887-A
Paragraph 5-23.A.3 – Added paragraph for EIV Income Report
Paragraph 5-23.A.4 – Clarified third party verifications received from third-party sources
Paragraph 5-23.C – Added Note on the Federal Privacy Act
Paragraph 5-23.D – Added HUD-9887-A
Paragraph 5-25.B.1 – Clarified operating rent by inserting "gross rent"
Exhibit 5-3 – Added language to clarify transportation to/from treatment and lodging
Exhibit 5-3 – Removed language allowing certain maintenance or personal care services provided for qualified long-term care as medical expenses

F. Chapter 6. Lease Requirements and Leasing Activities

Additional clarification on existing text:

Updated references throughout Chapter.

Paragraph 6-1.B – Section 1: added lease addendums as a required attachment to the lease, when applicable. Section 4: added the "EIV & You" brochure as a required handout that must be provided to tenants
Figure 6-1 – Added Violence Against Women Act (VAWA) as a key term
Paragraph 6-3 – Added Subsection E: Violence Against Women Act (VAWA) Protection, and cites the governing authority
Paragraph 6-4, 6-4.A, 6-4.C, 6-4.D – Added lease amendments to the heading; identifies lease addendums as a regulatory requirement, and clarified the availability of model leases in English and other languages; added subparagraph C on VAWA Lease Addendum; clarified in 6-4D that changes to model lease by owners may only be for documented state and local law, and, lease changes are made using a lease addendum
Figure 6-2 – Clarified required leases for Section 202/8 or Section 202 PACs, and the programs that use the lease.
Figure 6-3 – New Figure for HUD Issued Lease Addendum; includes VAWA addendum
Paragraph 6-5.A, B, C, D and E – added owner's, VAWA lease addendum and clarified the requirements of HUD issued lease addenda
Paragraph 6-5.G – Added paragraph for Requirements of HUD issued lease addendums
Paragraph 6-12. B, C and D – Clarified that lease changes must be incorporated into the lease as a lease addendum, and no HUD/CA approval required; clarified that owner modification must be in form of lease addendum and requires HUD/CA approval
Paragraph 6-24.C – Updated definition of Assistance Animals
Paragraph 6-27. B – Updated list to include VAWA addenda and EIV & You as topics to be covered in tenant briefing
Paragraph 6-27.C.2 – Added language to ensure owners have appropriate means to communicate with hearing and/or speech impaired individuals and HUD's LEP website link
Figure 6-9 – Included Police/Security Addendum, VAWA Addendum, EIV & You Brochure, and How Your Rent is Determined Fact Sheet
Exhibit 6-6 – Added EIV and VAWA

G. Chapter 7. Recertification, Unit Transfers, and Gross Rent Changes

Additional clarification on existing text:

Figure 7-1 – added Enterprise Income Verification (EIV) as a key term.
Paragraph 7-3 – added 24. CFR 5.233 Mandated Use of HUD's EIV System
Paragraph 7-4 – clarified when owners must use EIV Income Report as third-party verification; that owners must provide tenant with copy of EIV & You brochure, and that owner's policy on criminal background checks may include lifetime sex offender registration checks
Paragraph 7-6 – clarified that HUD will terminate a certification if a new recertification is not submitted within 15 months from the anniversary date
Figure 7-3 – clarified the owner's responsibility for obtaining and reviewing EIV reports and for documenting social security numbers for all household members in the recertification steps
Paragraph 7-8.C – clarified that owners must use EIV Income Report as third party verification unless tenant disputes the EIV information or the owner cannot provide acceptable documentation to use for rent calculation
Paragraph 7-8.D.3 – added and clarified tenant eviction as a condition for non-recertification
Paragraph 7-10.A and C – clarified State sex offender registration check as a required screening criteria and requires tenant to disclose and provide verification of SSN; clarified Subparagraph C that an owner must not use the EIV report for a tenant that turned 18 unless the tenant signs the consent form HUD-9887
Paragraph 7-11.A.3 – added Note

Paragraph 7-11.C - clarified State sex offender registration check as a required screening criteria and requires tenant to disclose and provide verification of SSN
Paragraph 7-12.A – clarified EIV's usage when tenant reports a change in employment or income
Paragraph 7-12.B.1 added use of the EIV New Hires Report
Paragraph 7-13.C.2 – added example
Paragraph 7-18.C – Removed 75 day implementation of utility allowance and clarified effective dates
Paragraph 7-18.D – Removed Note at the end of paragraph
Exhibit 7-3 – Added "at least" to the date requirement in the notice
Exhibit 7-5 – Added verifications not available in the EIV System

H. Chapter 8. Termination

Corrected erroneous references or typos:

8-4

Additional clarification on existing text:

Figure 8-1 – Added Enterprise Income Verification (EIV)
Paragraph 8-5.A – Changed "family" to "household" members
Paragraph 8-5.B – Separated to two paragraphs and added Department of Health and Human Services (HHS') National Directory of New Hires (NDNH)
Paragraph 8-5.D Note – Added wording to clarify rent paid when a tenant with more than one form of subsidy has their subsidy terminated
Paragraph 8-11.A – Added 24 CFR 5.218 Penalties for failing to disclose and verify Social Security and Employer Identification Numbers
Figure 8-2 – Added failure to disclose and provide verification of SSN(s) and failure to sign and submit consent forms
Paragraph 8-13.A.6 – Added new paragraph and subparagraphs for failure to disclose and provide verification of SSNs
Paragraph 8-14.A.5 – Added sex offender language to match Housing Notice 2012-11
Paragraph 8-14.C.1, 3, 4, 5, 7, 9, 11, 13, and 14 – Added State lifetime sex offender registration records
Paragraph 8-14.C.3 – Added members of the applicant's household
Paragraph 8-14.C.5.a and b – Removed Section 8 reference
Paragraph 8-14.C.7 – Added Note for lifetime sex offender registration
Paragraph 8-14.C.9 – Added Note on Dru Sjodin National Sex Offender Database
Paragraph 8-14.C.13 – Added language requiring owners to maintain criminal records and sex offender registration check
Paragraph 8-17 – Added 24 CFR 5.233 Mandated Use of HUD's Enterprise Income Verification (EIV) System
Paragraph 8-18.A – Added use of EIV system
Paragraph 8-18.C.1.c – Added Note indicating for when owners may not suspend, terminate, reduce or make a final denial of any benefits of a tenant
Paragraph 8-18.E.2 – Added a reference to paragraph 8-23
Paragraph 8-20 – Added paragraph and subparagraphs dealing with Discrepancies Reported in EIV
Paragraph 8-21.A.1.c – Added fails to report income received
Paragraph 8-21.A.3 – Reworded repayment plan to repayment agreement
Paragraph 8-21.A.5 – Revised paragraph to expound on five year limitation for overpayments
Paragraph 8-21.A.6 – Revised paragraph for having 50059 on hand for overpayment of assistance
Paragraph 8-21.B.2 – Added paragraph regarding owner retaining portion of repayments actually collected from the tenant
Paragraph 8-22 – Added a revision paragraph on tenant repayment options
Paragraph 8-23 – Added a revision paragraph on repayment agreements
Paragraph 8-24 – Added paragraph regarding Income Discrepancy Report
Paragraph 8-24.B – Removed wording on finding errors through Management and Occupancy Reviews and added language on how to handle income discrepancies
Paragraph 8-25 – Added paragraph for Reimbursement for Errors Discovered During a Monitoring Review

I. Existing Chapter 9 from Change 3

This chapter has been removed due to the information already existing in the MAT Guide.

J. New Chapter 9. Enterprise Income Verification (EIV)

Entire chapter has been created providing guidance for HUD's Enterprise Income Verification System

Exhibit 9-1 – Failed EIV Pre-screening Report Error Messages
Exhibit 9-2 – Failed Verification Report (Failed the SSA Identity Test) Error Messages
Exhibit 9-3 – EIV Income Report Information
Exhibit 9-4 – Sample Tenant Consent to Disclose EIV Income Information
Exhibit 9-5 – Use of EIV Reports
Exhibit 9-6 – National Directory of New Hires (NDNH) Data Elements
Exhibit 9-7 – How EIV Calculates Income Discrepancies

K. Appendices

Additional clarification on existing text:

Appendix 3 – Included new column "Provided by Applicant" under Third Party Verification
Appendix 3 – Included Note "e" referencing the examples and requirements found in paragraph 5-13.B.1
Appendix 3 – Updated Appendix to align with new verification techniques found in paragraph 5-13 including self-declaration of income related items
Appendix 3 – Added chapter references to all factors to be verified
Appendix 3 – Assets disposed of for less than fair market value – clarified self-declaration certification can be signed by applicant and/or tenant; reworded verification tips for clarification
Appendix 3 – Employment income including tips, gratuities, overtime – Added EIV Income Report under verification tips; changed most recent pay stubs to 4-6
Appendix 3 – Added new factor and acceptable sources – Immigration Status (SSN) Individuals who do not contend eligible immigration status under the Section 221(d)(30 BMIR, Section 202 PAC, Section 202 PRAC, Section 811 PRAC programs
Appendix 3 – Income maintenance payments, benefits, income other than wages – Added EIV for written third party and verification tips
Appendix 3 – Social Security number – Revised documents to be provided by applicant and removed self-declaration
Appendix 3 – Added new factor and acceptable sources – Student Status (Section 8 only)
Appendix 3 – Added new factor and acceptable sources – Student Status (Section 221(d)(3) BMIR, Section 202 PAC, Section 202 PRAC and Section 811 PRAC)
Appendix 3 – Unemployment compensation – Added EIV for written third party and verification tips
Appendix 3 – Notes – Added HUD9887-A, EIV, and reworded for third party source
Appendix 6-C – Updated C.1 for EIV, Social Security and SSI income; added Proof of Income Letter
Appendix 6-C – Updated C.2 for EIV
Appendix 7-A: Removed
Appendix 7-B – Removed
Appendix 9: Removed
Appendix 10-A: Removed
Appendix 10-B: Removed
Appendix 10-C: Removed
Appendix 10-D: Removed
Appendix 11: Removed
Appendix 12: Removed
Appendix 13: Removed
Appendix 14 A-F: Now Appendix 7 A-F

L. Glossary

Defined or revised the definition of the following terms:

Accessible (FH Act)
Accessible Route (FH Act)
As-Paid Locality
Assistance Animals
Bifurcate
Dating Violence
Domestic Violence
Enterprise Income Verification (EIV)
Immediate Family Member
Improper Payment
Independent Public Auditor
Operating Rent (PRAC)
Security Personnel
Stalking
VAWA

I approve the above changes to HUD Handbook 4350.3, REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs.*

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Carol J. Galante, Assistant Secretary for Housing –
Federal Housing Commissioner

U.S. Department of Housing and Urban Development

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Regional Directors
Multifamily Hub Directors
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Supervisory Project Managers
Project Managers
Contract Administrators, and
Owners and Management Agents of projects covered by this Handbook

Transmittal for Handbook No: 4350.3 REV-1,CHG-4
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Paragraph 4-6.C.4 – Extended paragraph to include dating violence and stalking
Paragraph 4-7.B – Added paragraph establishing procedures for using EIV Existing Tenant Search
Paragraph 4-7.B.6 – Added State lifetime registration as a sex offender
Paragraph 4-7.D – Added new paragraph on screening using the EIV Existing Tenant Search
Paragraph 4-7.E – Added sex offender screening criteria
Paragraph 4-9.A – Added paragraph on prohibition of denying assistance to victims protected under VAWA
Paragraph 4-9.B – Revised SSN requirements to conform with 24 CFR 5.216 published in the Federal Register on December 29, 2010
Paragraph 4-10 – Updated Affirmative Fair Housing citations
Paragraph 4-13 – Added Social Security Number (SSN) Requirements and penalties; 24 CFR 5.216 and 24 CFR 5.218
Paragraph 4-14 – Added paragraph for Supplement to Application for Federally Assisted Housing
Paragraph 4-14.A.4 – Changed "should" to "may"
Paragraph 4-14.B – Added two paragraphs requesting information regarding sex offender registration, SSNs, and Supplement to Application for Federally Assisted Housing
Paragraph 4-14.D – Added paragraph and subparagraphs describing the Supplement to Application for Federally Assisted Housing
Paragraph 4-16.C – Added paragraph regarding SSN disclosure and verification requirements
Paragraph 4-20 – Added provision for applicant failing to provide SSNs for all household members
Paragraph 4-22.B and C – Added form HUD-92006 completed by the applicant
Paragraph 4-22.E – Added statement indicating additional disclosure requirements are in place for EIV Income data in tenant files
Paragraph 4-23.B – Added disclosure and verification of SSN(s)
Paragraph 4-24.B.2 – Added use of information contained in the EIV system
Paragraph 4-24.B.7 – Added use of the Existing Tenant Search in EIV
Paragraph 4-24.B.9 – Revised the SSN disclosure and verification requirements
Paragraph 4-24.B.10 – Clarified employment and income information from SSA's and HHS' NDNH database are included
Paragraph 4-24.B.12 – Changed "tenant" to "applicant"
Paragraph 2-24.13 – Added EIV & You and Resident Rights and Responsibilities brochures
Paragraph 4-27.E.4.a – Added State lifetime sex offender registration
Paragraph 4-27.E.5 and 4-27.E.5.a-g – Added State sex offender registration record(s)
Paragraph 4-27.E.6 – Added State lifetime sex offender registration
Paragraph 4-27.E.7.b – Added State lifetime sex offender registration
Exhibit 4-1 – Removed Note at the beginning for Exhibit, added SSA Benefit Letter and Proof of Income Letter

E. Chapter 5. Determining Income and Calculating Tenant Rent

Additional clarification on existing text:

Figure 5-1 – Added Enterprise Income Verification (EIV)
Paragraph 5-3 – Added 24 CFR5.233 Mandated Use of HUD's Enterprise Income Verification (EIV) System
Paragraph 5-5.A – Removed "two"
Paragraph 5-5.A.2 – Removed example text
Paragraph 5-5.A.3 – Added new paragraph and subparagraphs on Using EIV
Paragraph 5-6.A.3.d – Clarified the paragraph to relate to earned income and this income exceeding $480 annually
Paragraph 5-6.I – Provided reference to Sections J and O along with an Example
Paragraph 5-6.Q.3 – Added paragraph excluding deferred Department of Veterans Affairs disability payments received in a lump sum or in prospective monthly payments for Section 8 tenants
Paragraph 5-7.G.4.b – clarified IRA, Keogh, and similar retirement savings accounts are counted as assets, even though withdrawal would result in a penalty, unless benefits are being received through periodic payments.

Paragraph 5-7.G.4.d – revised to read "Include in annual income any retirement benefits received through periodic payments. Do not count any remaining amounts in the account as an asset.
Paragraph 5-10.A.1 – Clarified the deduction does not apply to foster children and foster adults; added statement for not needing legal custody of dependent to receive deduction
Paragraph 5-10.A.2 – included foster adult
Paragraph 5-11 – Added 24 CFR 5.233 Mandated use of HUD's Enterprise Income Verification (EIV) System
Paragraph 5-12.A.2 – Added paragraph for use of EIV system for third party verification of a tenant's employment and income at time of recertification and to assist in reducing administrative and subsidy payment errors
Paragraph 5-12.A.4 – Updated paragraph to conform with SSN requirements found in 24 CFR 5.216
Figure 5-4 – Updated figure to conform with SSN requirements found in 24 CFR 5.216
Paragraph 5-13.A – Updated the order of acceptable methods of verification
Paragraph 5-13.B – Added detail for the types of third party verification in the order of their acceptability
Paragraph 5-13 – Removed two paragraphs titled Review of Documents and Family Certification
Paragraph 5-15.A – Removed medical professionals and the reference to the HUD Fact Sheet and the Resident Rights and Responsibilities brochure
Paragraph 5-15.B.1 – Added IRS, SSA, and SWICAs abbreviations and the Department of Health and Human Services National Directory of New Hires
Paragraph 5-15.B.2 – Clarified the 9887 must be signed by head of household, spouse, co-head regardless of age
Paragraph 5-15.C – Added the EIV & You brochure
Paragraph 5-15.C.1 – Clarified HUD-9887-A form and Fact Sheet
Paragraph 5-15.C.2 – Removed reference to HUD National Multifamily Clearinghouse and provided reference to Chapter 1
Paragraph 5-15.C.3 – Added new paragraph for EIV & You brochure
Paragraph 5-16 – Removed paragraph
Paragraph 5-16 (new) – Removed repetitive language to clarify paragraph
Paragraph 5-16.A – Added HUD-9887-A
Paragraph 5-16.A.3 – Added new paragraph for NDNH
Paragraph 5-16.A.3.c – Added NDNH reference
Paragraph 5-16.B.1 and 2 – Clarified valid verification dates
Paragraph 5-16.B.4 – Removed paragraph
Paragraph 5-17 – Rearranged wording to make the paragraph read clearly
Paragraph 5-18.B – Revised to include EIV and EIV documentation
Paragraph 5-18.D – Added original tenant provided documents must be returned to tenant and removed the Note
Paragraph 5-20 – New paragraph Added explaining Security of EIV data
Paragraph 5-21.A – Added HUD-9887-A
Paragraph 5-21.B – added any member of the tenant's family, indicated the household's assistance is terminated
Paragraph 5-21.C Example – Added HUD-9887-A
Paragraph 5-23.A.3 – Added paragraph for EIV Income Report
Paragraph 5-23.A.4 – Clarified third party verifications received from third-party sources
Paragraph 5-23.C – Added Note on the Federal Privacy Act
Paragraph 5-23.D – Added HUD-9887-A
Paragraph 5-25.B.1 – Clarified operating rent by inserting "gross rent"
Exhibit 5-3 – Added language to clarify transportation to/from treatment and lodging
Exhibit 5-3 – Removed language allowing certain maintenance or personal care services provided for qualified long-term care as medical expenses

F. Chapter 6. Lease Requirements and Leasing Activities

Additional clarification on existing text:

Updated references throughout Chapter.

Paragraph 6-1.B – Section 1: added lease addendums as a required attachment to the lease, when applicable. Section 4: added the "EIV & You" brochure as a required handout that must be provided to tenants
Figure 6-1 – Added Violence Against Women Act (VAWA) as a key term
Paragraph 6-3 – Added Subsection E: Violence Against Women Act (VAWA) Protection, and cites the governing authority
Paragraph 6-4, 6-4.A, 6-4.C, 6-4.D – Added lease amendments to the heading; identifies lease addendums as a regulatory requirement, and clarified the availability of model leases in English and other languages; added subparagraph C on VAWA Lease Addendum; clarified in 6-4D that changes to model lease by owners may only be for documented state and local law, and, lease changes are made using a lease addendum
Figure 6-2 – Clarified required leases for Section 202/8 or Section 202 PACs, and the programs that use the lease.
Figure 6-3 – New Figure for HUD Issued Lease Addendum; includes VAWA addendum
Paragraph 6-5.A, B, C, D and E – added owner's, VAWA lease addendum and clarified the requirements of HUD issued lease addenda
Paragraph 6-5.G – Added paragraph for Requirements of HUD issued lease addendums
Paragraph 6-12. B, C and D – Clarified that lease changes must be incorporated into the lease as a lease addendum, and no HUD/CA approval required; clarified that owner modification must be in form of lease addendum and requires HUD/CA approval
Paragraph 6-24.C – Updated definition of Assistance Animals
Paragraph 6-27. B – Updated list to include VAWA addenda and EIV & You as topics to be covered in tenant briefing
Paragraph 6-27.C.2 – Added language to ensure owners have appropriate means to communicate with hearing and/or speech impaired individuals and HUD's LEP website link
Figure 6-9 – Included Police/Security Addendum, VAWA Addendum, EIV & You Brochure, and How Your Rent is Determined Fact Sheet
Exhibit 6-6 – Added EIV and VAWA

G. Chapter 7. Recertification, Unit Transfers, and Gross Rent Changes

Additional clarification on existing text:

Figure 7-1 – added Enterprise Income Verification (EIV) as a key term.
Paragraph 7-3 – added 24. CFR 5.233 Mandated Use of HUD's EIV System
Paragraph 7-4 – clarified when owners must use EIV Income Report as third-party verification; that owners must provide tenant with copy of EIV & You brochure, and that owner's policy on criminal background checks may include lifetime sex offender registration checks
Paragraph 7-6 – clarified that HUD will terminate a certification if a new recertification is not submitted within 15 months from the anniversary date
Figure 7-3 – clarified the owner's responsibility for obtaining and reviewing EIV reports and for documenting social security numbers for all household members in the recertification steps
Paragraph 7-8.C – clarified that owners must use EIV Income Report as third party verification unless tenant disputes the EIV information or the owner cannot provide acceptable documentation to use for rent calculation
Paragraph 7-8.D.3 – added and clarified tenant eviction as a condition for non-recertification
Paragraph 7-10.A and C – clarified State sex offender registration check as a required screening criteria and requires tenant to disclose and provide verification of SSN; clarified Subparagraph C that an owner must not use the EIV report for a tenant that turned 18 unless the tenant signs the consent form HUD-9887
Paragraph 7-11.A.3 – added Note
Paragraph 7-11.C - clarified State sex offender registration check as a required screening criteria and requires tenant to disclose and provide verification of SSN

Paragraph 7-12.A – clarified EIV's usage when tenant reports a change in employment or income
Paragraph 7-12.B.1 added use of the EIV New Hires Report
Paragraph 7-13.C.2 – added example
Paragraph 7-18.C – Removed 75 day implementation of utility allowance and clarified effective dates
Paragraph 7-18.D – Removed Note at the end of paragraph
Exhibit 7-3 – Added "at least" to the date requirement in the notice
Exhibit 7-5 – Added verifications not available in the EIV System

H. Chapter 8. Termination

Corrected erroneous references or typos:

8-4

Additional clarification on existing text:

Figure 8-1 – Added Enterprise Income Verification (EIV)
Paragraph 8-5.A – Changed "family" to "household" members
Paragraph 8-5.B – Separated to two paragraphs and added Department of Health and Human Services (HHS') National Directory of New Hires (NDNH)
Paragraph 8-5.D Note – Added wording to clarify rent paid when a tenant with more than one form of subsidy has their subsidy terminated
Paragraph 8-11.A – Added 24 CFR 5.218 Penalties for failing to disclose and verify Social Security and Employer Identification Numbers
Figure 8-2 – Added failure to disclose and provide verification of SSN(s) and failure to sign and submit consent forms
Paragraph 8-13.A.6 – Added new paragraph and subparagraphs for failure to disclose and provide verification of SSNs
Paragraph 8-14.A.5 – Added sex offender language to match Housing Notice 2012-11
Paragraph 8-14.C.1, 3, 4, 5, 7, 9, 11, 13, and 14 – Added State lifetime sex offender registration records
Paragraph 8-14.C.3 – Added members of the applicant's household
Paragraph 8-14.C.5.a and b – Removed Section 8 reference
Paragraph 8-14.C.7 – Added Note for lifetime sex offender registration
Paragraph 8-14.C.9 – Added Note on Dru Sjodin National Sex Offender Database
Paragraph 8-14.C.13 – Added language requiring owners to maintain criminal records and sex offender registration check
Paragraph 8-17 – Added 24 CFR 5.233 Mandated Use of HUD's Enterprise Income Verification (EIV) System
Paragraph 8-18.A – Added use of EIV system
Paragraph 8-18.C.1.c – Added Note indicating for when owners may not suspend, terminate, reduce or make a final denial of any benefits of a tenant
Paragraph 8-18.E.2 – Added a reference to paragraph 8-23
Paragraph 8-20 – Added paragraph and subparagraphs dealing with Discrepancies Reported in EIV
Paragraph 8-21.A.1.c – Added fails to report income received
Paragraph 8-21.A.3 – Reworded repayment plan to repayment agreement
Paragraph 8-21.A.5 – Revised paragraph to expound on five year limitation for overpayments
Paragraph 8-21.A.6 – Revised paragraph for having 50059 on hand for overpayment of assistance
Paragraph 8-21.B.2 – Added paragraph regarding owner retaining portion of repayments actually collected from the tenant
Paragraph 8-22 – Added a revision paragraph on tenant repayment options
Paragraph 8-23 – Added a revision paragraph on repayment agreements
Paragraph 8-24 – Added paragraph regarding Income Discrepancy Report
Paragraph 8-24.B – Removed wording on finding errors through Management and Occupancy Reviews and added language on how to handle income discrepancies
Paragraph 8-25 – Added paragraph for Reimbursement for Errors Discovered During a Monitoring Review

I. Existing Chapter 9 from Change 3

This chapter has been removed due to the information already existing in the MAT Guide.

J. New Chapter 9. Enterprise Income Verification (EIV)

Entire chapter has been created providing guidance for HUD's Enterprise Income Verification System

Exhibit 9-1 – Failed EIV Pre-screening Report Error Messages
Exhibit 9-2 – Failed Verification Report (Failed the SSA Identity Test) Error Messages
Exhibit 9-3 – EIV Income Report Information
Exhibit 9-4 – Sample Tenant Consent to Disclose EIV Income Information
Exhibit 9-5 – Use of EIV Reports
Exhibit 9-6 – National Directory of New Hires (NDNH) Data Elements
Exhibit 9-7 – How EIV Calculates Income Discrepancies

K. Appendices

Additional clarification on existing text:

Appendix 3 – Added chapter references to all factors to be verified
Appendix 3 – Assets disposed of for less than fair market value – clarified self-declaration certification can be signed by applicant and/or tenant; reworded verification tips for clarification
Appendix 3 – Employment income including tips, gratuities, overtime – Added EIV Income Report under verification tips; changed most recent pay stubs to 4-6
Appendix 3 – Added new factor and acceptable sources – Immigration Status (SSN) Individuals who do not contend eligible immigration status under the Section 221(d)(30 BMIR, Section 202 PAC, Section 202 PRAC, Section 811 PRAC programs
Appendix 3 – Income maintenance payments, benefits, income other than wages – Added EIV for written third party and verification tips
Appendix 3 – Social Security number – Revised documents to be provided by applicant and removed self-declaration
Appendix 3 – Added new factor and acceptable sources – Student Status (Section 8 only)
Appendix 3 – Added new factor and acceptable sources – Student Status (Section 221(d)(3) BMIR, Section 202 PAC, Section 202 PRAC and Section 811 PRAC)
Appendix 3 – Unemployment compensation – Added EIV for written third party and verification tips
Appendix 3 – Notes – Added HUD9887-A, EIV, and reworded for third party source
Appendix 6-C – Updated C.1 for EIV, Social Security and SSI income; added Proof of Income Letter
Appendix 6-C – Updated C.2 for EIV
Appendix 7-B – Updated Item 45 to remove under 6 SSN language

L. Glossary

Defined or revised the definition of the following terms:
Accessible (FH Act)
Accessible Route (FH Act)
As-Paid Locality
Assistance Animals
Bifurcate
Dating Violence
Domestic Violence
Enterprise Income Verification (EIV)
Immediate Family Member
Improper Payment
Independent Public Auditor
Operating Rent (PRAC)

Security Personnel
Stalking
VAWA

I approve the above changes to HUD Handbook 4350.3, REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs.*

_____
Carol J. Galante, Assistant Secretary for Housing –
Federal Housing Commissioner

Special Attention of:
Regional Directors
Multifamily Hub Directors
Multifamily Program Center Directors
Supervisory Project Managers
Project Managers
Contract Administrators, and
Owners and Management Agents of projects covered by this Handbook

Transmittal for Handbook No.: 4350.3 REV-1,CHG-3

Issued: June 23,2009

1. This Transmits

Change 3 to Handbook 4350.3 REV-1 "Occupancy Requirements of Subsidized Multifamily Housing Programs"

2. Implementation:

Change 3 is effective August 1, 2009.

3. Explanation of Materials Transmitted

A. Changes are designated by an asterisk (*) at the beginning and ending of the change, Chg-3 in the header and the date 06/09 is reflected at the bottom of each affected page. Chapter 9 is re-issued in its entirety. Changes in the chapter are designated by an asterisk (*) at the beginning and ending of the change, Change 3 in the header and the date 06/09 is reflected at the bottom of each page for the entire chapter.

B. Corrected formatting:
Paragraph 1-3.C.4 and 5.
Paragraphs 1-4.B.2 and 1-5.
Exhibit 3-9 Option Sheet.
Paragraph 6-25.E.2.

C. Chapter 1, Introduction
Paragraph 1-7.B.3 - Corrected the web address for HUD Office of Fair Housing Intranet Website for Civil Rights Front-end Reviews and paragraph 1-7.B.5 - Corrected web address for the TRACS website.

D. Chapter 2, Civil Rights and Nondiscrimination Requirements
Paragraph 2-5.D.1.a - To be consistent with the language in paragraph 4-12.B.5, added "or the plan is required by a housing assistance contract."
Paragraph 2-26.E - Corrected web address for the Listing of ADA Regulations and Technical Assistance Materials, Department of Justice.

E. Chapter 3, Eligibility for Assistance and Occupancy
Paragraph 3-4 - Removed "college" from the title of the referenced paragraph 3-13 to be consistent with the title of paragraph 3-13.
Paragraph 3-6.E.3 - Revised the requirements for a live-in aide.
Paragraph 3-12.H - Updated the instructions for obtaining access and use of the SAVE system for verifying citizenship/immigration status.
Paragraph 3-12.L.1.b - Updated information on access to the SAVE system.
Paragraph 3-13.A.2.f - Corrected the date to read "November 30, 2005."
Paragraph 3-13.B - Clarified that the paragraph applies to eligibility of students for assistance programs other than Section 8. Also clarified that financial assistance is a mandatory exclusion from income.
Exhibit 3-12 - Clarified that the TTP used in A.2 is the TTP the family would pay without prorations.
Exhibit 3-14 - Clarified that the Section 236 basic rent is to be used in the calculations.

F. Chapter 4, Waiting List and Tenant Selection

Figure 4-2 - Removed "to receive Section 8 assistance" in A.8 and corrected the numbering in section B.

Paragraph 4-4.C.8 - Changed to read "Eligbility of students. The plan must include the requirements for determining eligibility of students enrolled at an institution of higher education."

Paragraph 4-5.A Note - Added that income targeting does not apply to RAP, Rent Supplement, Section 221(d)(3) BMIR and Section 236 programs.

Paragraph 4-14 A.3 - corrected the Race and Ethnic Data Reporting Form number to read HUD-27061-H.

G. Chapter 5, Determining Income and Calculating Rent

Figure 5-2 - To be in compliance with the regulations at 24 CFR 5.609, corrected the income requirements for a foster child and foster adult.

Paragraph 5-6 C - Added information on treatment of deployment of military personnel to active duty (Housing Notice H 03-07). Renumbered remaining sub-paragraphs of paragraph 5-6.

Paragraph 5-6.K.4 (now 5-6.L) - Added that the same requirements for determining annual income when Federal Government pension funds are paid directly to an applicant's/tenant's former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation also apply to Uniformed Services pensions.

Paragraph 5-6.K.5 (now 5-6.L) - New paragraph added for determining annual income when other state, local government, social security or private pension funds are paid directly to an applicant's/tenant's former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation.

Paragraph 5-7.G.5 - Added that the same requirements applicable to Federal Government employee pensions apply to Uniformed Services employee pensions.

Paragraph 5-7.G.6 - New paragraph added with the requirements applicable to other state, local government, social security or private pensions.

Paragraph 5-7.G.8.c - Added to text "However, if the owner elects to only include the income for a partial remaining year as shown in the example below, an interim recertification should not be conducted."

Paragraph 5-15.B.1 - Corrected to read "Each family member who is at least 18 years of age and the head, spouse or co-head, regardless of age…."

Paragraph 5-26.D Note: Added that Section 8 Minimum Rent does not apply to the Rent Supplement, RAP, Section 221(d)(3) BMIR or Section 236 programs.

Exhibit 5-1, Income Inclusions, 9 - Added a note that paragraph 9 does not apply to a student who is living with his/her parents who are applying for or receiving Section 8 assistance.

H. Chapter 6, Lease Requirement and Leasing Activities

Paragraph 6-5.A.4 - Added the HUD-50059-A as an attachment to the lease when required.

Paragraph 6-9.B - Added new paragraph that owners may develop rules covering tenants conducting incidental business, such as computer work or limited babysitting, etc., in their units and who receive incidental business income. Renumbered remaining sub-paragraphs.

Paragraph 6-11.B.2 NOTE - Added the HUD-50059-A serves as an addendum to the lease identifying the change in rent.

Paragraph 6-11.B.4 - Added that a copy of the HUD-50059-A, when applicable, must be provided to the tenant and placed in the tenant file.

Paragraph 6-27.B.1.f - Added that the HUD-50059-A, when required, is an attachment to the lease.

Figure 6-8 - Added the HUD-50059-A.

Exhibit 6-6 -Added the HUD-50059-A.

I. Chapter 7, Recertification, Unit Transfers, and Gross Rent Increases

Paragraph 7-6.A - Clarified that when HUD or the Contract Administrator terminates assistance payments when a new recertification is not submitted within 15 months of the previous year's recertification anniversary, the owner must repay the assistance collected for the 3-month period from the date the annual recertification should have been effective through the end of the 15th month when assistance was terminated.

Paragraph 7-11.A.2 - Changed to read "…$200 or more a month" to be in compliance with the language in the lease.

Paragraph 7-17.D and E - Changed HUD-50059 to reflect the new HUD-50059-A for gross rent changes.

Paragraph 7-17.F - Changed to clarify that the HUD-50059-A needs to be signed when there is a change in the amount of rent the tenant is required to pay or in the utility reimbursement the tenant will receive.

J. Chapter 8, Termination

Paragraph 8-5.F - Removed "Section 8."
Paragraph 8-10 - Removed "as outlined in paragraph 8-9 B above."
Paragraph 8-14.C.13 and 14 - Clarified the requirements for retention of criminal records obtained by the PHA and owner.

K. Chapter 9, Required HUD-50059 and Subsidy Data Reporting
Chapter 9 reissued in its entirety to incorporate inclusion of TRACS 202C requirements.
Paragraph 9-8.C - Note added that gives owners 60 days from the date a gross rent increase is implemented to obtain needed signatures when there is a change in the amount of rent the household must pay or a change in the utility reimbursement.
Paragraph 9-12.D.2 added requirements for deposits to the residual receipts account and returning subsidy to HUD for PRAC projects.

L. Glossary
Corrected the definition for Operating Rent (PRAC).
Corrected Exhibit reference in the definition for Total Tenant Payment

M. Appendices
Appendix 4 - Separated appendix contents for ease in printing the leases and instructions for completing the leases.
Appendices 4-E, 4-F, 4-G - Changed the lease term instructions in Paragraph 2 of Appendix 4-E and Paragraph 1 of appendices 4-F and 4-G.

N. Exhibits
Added links to Exhibits in Chapters 2, 3, 4, 5 and 7

4. Filing Instructions
Due to repagination of pages when new text is added and differences in printers when printing out handbook pages, caution should be taken to ensure that all text not changed or removed is retained when replacing handbook pages. To avoid the potential removal of text by removing and replacing pages, it is recommended that if a hard copy of the handbook is need, it is printed in its entirety.

Remove:	Replace with:
Pages 1-7, 1-8, 1-12	Pages 1-7, 1-8, 1-12
Pages 2-7, 2-21	Pages 2-7, 2-21
Pages 3-3, 3-9, 3-23, 3-27, 3-35, 3-37	Pages 3-3, 3-8, 3-9, 3-10, 3-24, 3-29, 3-37, 3-39
Pages 4-4, 4-7, 4-8, 4-30	Pages 4-4, 4-77, 4-8, 4-30
Pages 5-7, 5-8, 5-9, 5-13, 5-14, 5-34, 5-35, 5-54, 5-65	Pages 5-7, 5-8, 5-9, 5-13, 5-15, 5-35, 5-36, 5-56, 5-67
Pages 6-7 6-17, 6-24, 6-25, 6-41, 6-45, 6-55	Pages 6-7, 6-20, 6-25, 6-26, 6-41, 6-45, 6-55
Pages 7-8, 7-23, 7-30	Pages 7-8, 7-23, 7-30
Pages 8-4, 8-9, 8-20	Pages 8-4, 8-9, 8-20
Chapter 9	Chapter 9
Glossary pages 22, 23	Glossary pages 22, 23
Exhibits 3-9, 3-12, 3-14, 5-1, 6-6	Exhibits 3-9, 3-12, 3-14, 5-1, 6-6
Appendices 4-E, 4-F, 4-G	Appendices 4-E, 4-F, 4-G

Add the following forms to the referenced appendices. The forms are located at:
http://www.hud.gov/offices/adm/hudclips/
Appendix 7 - 7-C, HUD-50059-A, Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures - Partial Certification.
Appendix 10 - HUD-52670-A Part 3, Adjustments to Schedule of Tenant Assistance Payments Due; HUD-52670-A Part 4, Misc. Accounting Request for Schedule of Tenant Assistance Payments Due and HUD-52670-A, Part 5, Approved Special Claims for Schedule of Tenant Assistance Payments Due.

Special Attention of:
Regional Directors
Multifamily Hub Directors
Multifamily Program Center Directors
Supervisory Project Managers
Project Managers
Contract Administrators, and
Owners and Management Agents of projects covered by this Handbook.

Transmittal for Handbook No.: 4350.3 REV-1,CHG-2

Issued: June 29, 2007

1. This Transmits

Handbook 4350.3 REV-1, Change-2, "Occupancy Requirements of Subsidized Multifamily Housing Programs".

A. Revised Table of Contents
B. Revised Exhibit Table of Contents
C. Revised Appendices Table of Contents
D. Revised Chapter 1
E. Revised Chapter 2
F. Revised Chapter 3
G. Revised Chapter 4
H. Revised Chapter 5
I. Revised Chapter 6
J. Revised Chapter 7
K. Revised Chapter 8
L. Revised Chapter 9
M. Revised Appendices
N. Revised Glossary

2. Implementation

These changes are effective June 29, 2007. Unlike previous changes, and in response to Multifamily Housings business partner requests, owners/management agents have 90 calendar days from the effective date, or September 24, 2007, to implement those changes requiring modifications to their TRACS software. The only exception to this would be if there are modifications that cannot be made at this time due to incompatibility with HUD's TRACS system. If this occurs, further guidance will be forthcoming.

3. Explanation of Materials Transmitted

A. Changes are designated by a double asterisk (**) at the beginning and end of the change.

B. With the reinstatement of form HUD-50059, all references throughout the Handbook to 50059 data requirements or 50059 facsimiles have been changed to HUD-50059.

C. Chapter 1, Introduction

Additional clarification or information to existing text:

Paragraphs 1-1.C and 1-4.B - Changed "Non-performance Based Contract Administrators" to "Traditional Contract Administrators" for consistency with other publications.

Paragraph 1-1.D - Clarified that Contract Administrators will only perform tasks required under the provisions of their Annual Contributions Contract (ACC).

Paragraph 1-7.B.9, 10, 11and 12 - Added the web addresses for the "Inventory of Units for the Elderly and Persons with Disabilities", "HUD User Policy Development and Research Information Service", "Multifamily Rental Housing Integrity Improvement Project (RHIIP)" and "Enterprise Income Verification (EIV) System for Multifamily Housing Program Users".

D. Chapter 2, Civil Rights and Nondiscrimination Requirements

Corrected reference:
Paragraph 2-10.A, 2-31.F.3, 2-32.C.2.a, 2-42 Example

Additional clarification on existing text:
Figure 2-1 - Added "Limited English Proficiency (LEP)" as a Key Term.
Paragraph 2-5.D.1.b - Corrected form number and name to form HUD-935A, Affirmative Fair Housing Marketing AFHM Plan - Multifamily Housing.
Paragraph 2-9.C - Added information on "Improving Access to Services for Persons with LEP".
Paragraph 2-31.F.1.a - Added paragraph references for determining project and program eligibility.
Paragraph 2-33.C - Added "If a tenant household is being moved to a different unit as a reasonable accommodation to a household member's disability, then the owner must pay for the move unless doing so would constitute an undue financial and administrative burden."

E. Chapter 3, Eligibility for Assistance and Occupancy

Corrected references or typos:
Paragraph 3-6.F.5, 3-10.C.2, 3-11.A.3, 3-12.B.3 and 4, 3-12.E, 3-12.L.1.c, 3-16 B.3, 3-17, Exhibit 3-1 Situation 6.B.5

Additional clarification on existing text:
Paragraph 3-3.E - Added as a key regulation the CFR reference on restrictions on eligibility of students for Section 8 assistance.
Paragraph 3-4 - Added reference to paragraphs 3-13 on Determining Eligbility of Students for Assistance and 3-16 on Determining the Eligibility of a Remaining Family Member.
Paragraph 3-6.D.3 - Added Section 202 projects without assistance use the Section 236 low income limits.
Figure 3-3 - Clarified income limits to use for pre-1981 and post-1981 Section 202/8 projects.
Paragraph 3-9.C.2 - Removed paragraph relative to disclosure of social security numbers for individuals who have applied for legalization under the Immigration and Reform Control Act of 1986 as it no longer applies and renumbered remaining paragraphs.
Paragraph 3-12.H.4 - Paragraph removed, the DHS SAVE system manual was removed from Appendix 2 as it is no longer current.
Paragraph 3-12.K.1 - Clarified that the family member determined eligible and family members who have turned in their required documentation in a timely manner are eligible for assistance until final eligibility is determined. If there are family members who did not turn in the required documentation in a timely manner they are not eligible for assistance and assistance must be prorated.
Paragraph 3-12.K Example - Clarified that one family member was eligible at admission. Expanded the example to include what happens after DHS verification is received and there is a change in the immigration status of family members.
Paragraph 3-12.L.2.a - Added instructions for completing and mailing the DHS Form G 845S are found in Appendix 2-B of the handbook. This information is taken from DHS' current Systematic Alien Verification for Entitlements (SAVE) Program Instruction Manual and should be used until such time as the instruction manual is updated by DHS and included in its entirety in Appendix 2-A.
Paragraph 3-12.Q and Exhibits 3-8 and 3-10 - Clarified if the family receiving assistance on June 19,1995 includes a refugee under section 207 of the Immigration and Nationality Act, or an individual seeking asylum under section 208 of that Act, a deferral can be given to the family and there is no limitation on the deferral period. The 18 month deferral limitation does not apply.
Paragraph 3-13 - Added the requirements for determining eligibility of college students for assistance.
Figure 3-6 - For clarification purposes, removed the family definition.
Paragraph 3-18.A.1 - Added clarification that Section 651 of Title VI, Subtitle D of the Community Development Act of 1992 applies to both insured and non-insured projects that are eligible to implement the elderly preference.
Paragraph 3-18.A.12 - Added that age waivers cannot be issued for Section 515/8 elderly projects. If owners of these projects are experiencing vacancy problems and want to admit underage applicants, they must request RHS re-classify their project from elderly to family.
Paragraph 3-18.B.1.a - Added clarification that Section 658 of Title VI of Subtitle D of the Community Development Act of 1992 applies to both insured and non-insured Section 236 projects.
Paragraph 3-20.H.5 - Revised paragraph to read: There are sufficient subsidized units available in the area to house current project tenants who are willing to move, as well as to house individuals who no longer qualify for the housing because of the changed category.

Paragraph 3-23.B.2 - Clarified that owners must have written occupancy standards. Also, removed the word "some" in the second sentence. Changed to read "Owners have discretion..."
Paragraph 3-23.E.6.c Note - Added that owners should not count children who are away at school who have established residency at another address as evidenced by a lease agreement.
Paragraph 3-23.G.1 - Added "(see exception for assigning a larger unit to a single person in G.2 below.)"
Paragraph 3-27.C - Added that owners may accept a signed affidavit from the remaining head of household when reasonable efforts to obtain verification have been exhausted.
Paragraph 3-32 - Added a new B to include text on access to services for persons with LEP.
Paragraph 3-33 - Added the requirements for verifying the eligibility of a student for assistance.
Exhibits 3-3 through 3-11 - Changed title of documents to reflect they are sample letters and forms and corrected text in letters and forms and chapter to reflect that all of the documents in the exhibits are samples.
Exhibit 3-5 - Changed the name of the exhibit to "Sample Citizenship Declaration".
Exhibits 3-12, 3-13, 3-14 - Removed MAT field number references.

F. Chapter 4, Waiting List and Tenant Selection

Corrected references or typos:
Paragraph 4-7.C.1, 4-11.A, 4-12.C.3,4-14.B.5, 4-24.B.6

Additional clarification on existing text:
Figure 4-2 - Added eligibility of college students to receive Section 8 assistance as a required topic for the Tenant Selection Plan.
Paragraph 4-4.C.1.b - Removed temporary deferral of termination of assistance as a requirement for the Tenant Selection Plan.
Paragraph 4-4.C.6 - Corrected title of paragraph to include "Title VI of The Civil Rights Act of 1964."
Paragraph 4-4.C.8 - Added that the Tenant Selection Plan must include the requirements for determining eligibility of students enrolled at an institution of higher education to receive Section 8 assistance.
.Paragraph 4-5 - Added a note that income targeting does not apply to Section 202 PAC, Section 202 PRAC and Section 811 PRAC.
Paragraph 4-7.B.5 - Added the same criteria established for other applicants when screening for drug abuse and other criminal activity must be applied when screening live-in attendents and new additions to the household.
Paragraphs 4-7.E.6 and 4-28.B - Added If the applicant is a person with disabilities, the owner must consider extenuating circumstances in the screening process where this would be required as a matter of reasonable accommodation.
Paragraph 4-9.C.2.c - Added that the applicant rejection notice must state that persons with disabilities have the right to request reasonable accommodations to participate in the informal hearing process.
Paragraph 4-11.A and Paragraph 4-12 - Corrected form number for the Affirmative Fair Housing Marketing Plan to HUD-935.2A.
Paragraph 4-12.D.4 - Added that the owner's responsibility to market projects to those least likely to apply includes marketing to the LEP population in the community.
Paragraph 4-12.F - Added guidance on updating the Affirmative Fair Housing Marketing Plan.
Paragraph 4-14.A.1 - Added in addition to providing applicants the opportunity to complete applications at the project site, owners may also send out and receive applications by mail or make reasonable accommodations for persons with disabilities, if requested.
Paragraph 4-14.A.3 - Added when applicants do not complete the race and ethnicity form owners should place a notation in the tenant file that the applicant chose not to provide the race and ethnicity certification.
Paragraph 4-16.A.1 - Added upon receipt of an application the owner must indicate the date and time received by either using a date and time stamp or writing and initialing the date and time on the application.
Paragraph 4-21 - Added as an example the applicant did not respond to information or updates because of a disability.
Paragraph 4-22.E - Added new paragraph stating the applicant's or tenant's file should be available for review by the applicant or tenant upon request or by a third party who provides signed authorization for access from the applicant or tenant.
Paragraph 4-22.F - Added new paragraph stating the owner must dispose of applicant and tenant files and records in a manner that will prevent any unauthorized access to personal information, e.g., burn, pulverize, shred, etc.
Paragraph 4-25.C - Added for example, an initial certification processed to move a tenant from Section 236 assistance to Section 8 assistance is counted for income targeting.
Paragraph 4-27.C.2.f - Added "for lease violations" after previous evictions.
Paragraph 4-27.D - Added unless the owner has established a geographic radius within which home vists are made (see paragraph 4-7 E.5).

Paragraph 4-27.E.6 - Added new paragraph stating the notification requirements if an applicant is denied admission because the criminal background check reveals he/she provided false information.

Paragraph 4-28.B.1 - Added if the applicant is a person with disabilities, the owner must consider extenuating circumstances where this would be required as a matter of reasonable accommodation (see Chapter 2, Subsection 4 for information on Reasonable Accommodation.)

Paragraph 4-31.A.5 - Added noncitizen requirements do not apply to Section 202 projects with units not receiving assistance under the Rent Supplement or Section 8 programs to be consistent with paragraph 3-12.F.

Paragraph 4-31.B.2 - Clarified that prorated assistance would be provided for the family members who submitted their immigration documentation in a timely manner.

G. Chapter 5, Determining Income and Calculating Rent

Corrrected erroneous references or typos:

Paragraph 5-6.A.3.d, 5-6.K.1, 5-6.K.3, 5-10.A.4, 5-12.A.3, 5-15.D.1, 5-25, Figure 5-5

Additional clarification on existing text:

Paragraph 5-5.A.2 - Removed "and divide by 12" in two places in the paragraph.

Figure 5-2 - changed Note to read the earned income of a full-time student 18 years old or older who is a dependent is excluded to the extent that it exceeds $480.

Paragraph 5-6.C - Added text to correctly reflect the treatment of income and deductions for a permanently confined family member. Also added the owner should consider extenuating circumstances for obtaining the signature of the permanently confined member on the HUD-50059.

Paragraph 5-6.D - Included text stating when student financial is included in annual income for students applying for or receiving Section 8 assistance.

Paragraph 5-6.H - Added new paragraph providing guidance on the inclusion of periodic social security payments in annual income.

Paragraph 5-6.K .4 - Added information on the treatment of Federal government pension funds paid to a former spouse.

Paragraph 5-6.O - Removed periodic payment from an asset is not income until the amount invested is recouped. Removed the examples "Documenting That Amounts Withdrawn Are Reimbursement of Amounts Invested." Clarified when to count withdrawals as assets and when to count as income.

Paragraph 5-6.Q.3 Example - Removed the last bullet in the example relating to student financial assistance.

Paragraph 5-7.G.2.b(2) - Removed the amount the holder invested in the annuity will not be counted as income along with the example.

Paragraph 5-7.G.2.c(1) - Deleted "If total net assets exceed $5,000" as the cash value of an annuity must be calculated regardless of the total of the net assets.

Paragraph 5-7.G.5 - Added a new paragraph on treatment of Federal Government Pensions and renumbered the remaining subparagraphs in this section.

Paragraph 5-7.G.6.b - Changed to read the cash value of the asset for mortgage or deed of trust is the unpaid principal as of the effective date of the certification.

Paragraph 5-10.C.1.- Removed the phrase (including the member who is a person with disabilities) as this was a duplicative statement within the sentence.

Paragraph 5-10.D.6 - Added past one-time nonrecurring medical expenses that have been paid in full are not applicable when calculating anticipated medical expenses at move-in.

Paragraph 5-10.D.8.k - Added see Sample Certification for Qualified Long-Term Care Insurance Expenses in Exhibit 5-4.

Paragraph 5-13.C.1.a - Added when third party verification is not possible refer to paragraph 5-19.E for documenting the file.

Paragraph 5-13.C.1.b - Removed the sentence the owner may resort to a review of documents before the two week date if the owner determines and documents that third party verification cannot or will not be obtained.

Paragraph 5-13.C.3.b - Changed to read four to six pay stubs.

Paragraph 5-13.D - Added "or signed affidavit".

Paragraph 5-15.A, B.1 and B.2 - Added that the forms must be signed at move-in and at each annual recertification.

Paragraph 5-16 - Removed the reference to Exhibit 5-8 as the exhibit has been removed. The EIV System User Manual for Multifamily Housing Program Users should be referred to for information relative to using EIV for verification of social security benefits. A future Handbook 4350.3 REV-1 update will include necessary references related to use of the EIV system.

Paragraph 5-17.B.1 - Changed to reflect that verifications are valid for 120 days.

Paragraph 5-17.B.2 - Paragraph removed regarding updating verification requests orally with a 3rd party source and renumbered the remaining paragraphs.

Paragraph 5-23.C - Added new paragraph stating a tenant's file should be available for review by the tenant upon request or by a third party who provides signed authorization for access from the tenant.
Paragraph 5-23.E - Added new paragraph stating owners must dispose of applicant and tenant files and records in a manner that will prevent any unauthorized access to personal information, e.g., burn, pulverize, shred, etc.
Paragraph 5-24 Added Key Regulation 24 CFR 5.661 Section 8 project-based assistance programs: Approval for police or other security personnel to live in project.
Paragraph 5-26.C - Added reference to paragraph 9-13 for information on utility reimbursements.
Paragraph 5-26.D - Added note that minimum rent does not apply to Section 202 PAC, Section 202 PRAC or Section 811 PRAC projects.
Paragraph 5-28 - Clarified calculating rent and assistance payments for Section 811 double occupancy units, corrected calculations in examples and added new examples.
Paragraph 5-31.C - Added that the certification statements are provided on the form HUD-50059 in Appendix 7-B and removed Figure 5-8.
Paragraph 5-31.F - Added required signatures must be obtained on the HUD-50059 prior to submitting the information to CA or HUD. Also added that the owner may consider extenuating circumstances when an adult family member is not available to sign the HUD-50059.
Exhibit 5-1 - Income Inclusions (4) - Corrected language to clarify the examples are types of periodic payments included in annual income and are not income exclusions. Also included new provision (9) for inclusion in annual income of financial assistance in excess of tuition for persons enrolled as students at an institution of higher education and added under Income Exclusion (6) "see income inclusions 9), above, for students receiving Section 8 assistance.
Exhibit 5-2.A.10.d - Changed to calculate the imputed income using the cash value of the asset as of the effective date of the certification. Changed the example to agree with the text.
Exhibit 5-3 - Changed title to read "Examples of Medical Expenses That Are Deductible and Nondeductible".
Exhibit 5-3 - Cosmetic surgery - Added "However, if medical complications, e.g., infections, etc., occur as a result of the proceudre that requires medical treatment, the medical treatment expenses would be treated as a medical expense deduction."
Exhibit 5-3 - Nutritional supplements and Non-prescription medicines - Changed to read in order to be eligible as a medical expense, it must be recommended in writing by a licensed health care provider that the drug is treatment for a specific condition diagnosed by a physician or health care provider.
Exhibit 5-3 - Personal use items section - Added incontinence supplies as an example.
Exhibit 5-4 - Changed title to reflect it is a sample certification form for qualified long-term care insurance expenses.
Exhibit 5-8 - exhibit removed and replaced with Exhibit 5-9.

H. Chapter 6, Lease Requirements and Leasing Activities

Corrected erroneous references or typos:
6-3.A.4, 6-5 E.1 and 2, 6-25.F.2.b,

Additional clarification on existing text:
Paragraph 6-4.A - Note added advising that leases may need to be conveyed in languages other than English for LEP persons.
Paragraphs 6-4.B.2 and 6-5.A.3 - Added paragraphs covering recertification, termination of assistance and fraud penalties found in the model lease for subsidized programs must be added to the occupancy agreements for coops.
Figure 6-2 - Added Rent Supplement and Rental Assistance Payment (RAP) to the programs that use the Model Lease for Subsidized Programs.
Paragraph 6-4.D, 6-5.C.2, 6-12.B.2, 6-12.C.1,2 and 3 - Added contract administrators can approve lease modifications. (See paragraph 1-1 regarding CAs responsibilities.)
Paragraph 6-5.C.1 - Added Rental Assistance Payment (RAP) and Rent Supplement.
Paragraph 6-5.F.2 - Added RHS Section 515/8 projects must use the HUD Model Lease for Subsidized Programs. Also added that the owner must prepare and have approved a lease addendum containing the additional requirements required by RHS.
Paragraph 6-9.A.2 - Clarified that contract administrators review or approval of house rules is not required.
Paragraph 6-9.B.5 - Added contract administrators may address issues related to House Rules and revised to read "that house rules circumvent or conflict with HUD requirements (including civil rights and Fair Housing)."
Paragraph 6-10.A.4 - Added "to see Glossary" for definition of assistance animals.
Paragraph 6-11.B.4 - Added the HUD-50059 must be filed in the tenant file to reflect the correct gross rent and assistance payment.
Paragraph 6-12.B.1 - Clarified lease changes provided by HUD Headquarters must be incorporated into the lease

and do not require approval by the HUD Field Office or Contract Administrator.
Paragraph 6-14.B.2 - Added Contract Administrator.
Paragraph 6-15.H - Removed the reminder regarding the security deposit and special claims as it no longer applies.
Paragraph 6-19 - Added as a Key Regulation, 24 CFR 2.278 Mandatory Meals in Multifamily Rental or Cooperative Projects for the Elderly or Handicapped.
Paragraph 6-23.B - Added new paragraph stating owners cannot charge tenants for late payment of rent in Section 202/8, Section 202 PAC, Section 202 PRAC and Section 811 PRAC projects. Renumbered the remaining paragraphs.
Paragraph 6-25 - Rearranged the order of this paragraph.
Paragraph 6-25.A - Changed to read "an owner may charge tenants for allowable charges identified under subparagraphs B, C, D and E below."
Paragraph 6-25.B.3 - Added a Note stating owners cannot charge tenants for returned checks for insufficient funds at Section 202/8, Section 202 PAC, Section 202 PRAC and Section 811 PRAC projects.
Paragraph 6-27.B.2 - Added Exhibit 6-6 provides "examples of" more detailed information that may be provided to the tenant during the briefing.
Paragraph 6-27.C.2 - Added when conducting the briefing of new tenants, the information may also have to be conveyed in languages other than English for LEP persons, in accordance with HUD guidance.
Paragraph 6-29.C.3 - Added the inspection form must include the statement "The unit is in decent, safe and sanitary condition."
Exhibit 6-2 - Removed the addendum to RHS lease requirements and added the Required RHS 515 Section 8 Lease Provisions - RHS 515/8 projects must now use the HUD Model Lease for Subsidized Programs.
Exhibit 6-6 - Changed the name of the exhibit to reflect that the exhibit is examples of tenant briefing topics. Added under Annual/Interim Recertification "Failure to recertify for Section 202 PRAC and Section 811 PRAC may result in termination of tenancy"; under General Rules added "No" installation of washers; and added in the introductory language this information may have to be conveyed in languages other than English for LEP persons, in accordance with HUD guidance.

I. Chapter 7, Recertification, Unit Transfers, and Gross Rent Changes

Corrected erroneous references or typos:
7-6.B, 7-6.D, 7-7.B, 7-7.B.2.b(7), 7-8.B.1, 7-8.D.3.c, 7-11-A.2, 7-11.A.4, 7-16.A.1, 7-16.A.2 Note, Figure 7-2 Recertification Steps changed to Figure 7-3, Figure 7-3 Recertification Notice Due Dates changed to Figure 7-4

Additional clarification on existing text:
Paragraph 7-4.A.3 - Added tenants must sign consent forms and asset declaration forms.
Paragraph 7-4.A.4 - HUD fact sheets for determining rent are to be provided to the tenant at annual recertification.
Paragraph 7-4.A.5 - Added information on conducting criminal background checks on current tenants.
Paragraph 7-4.A.6 - Removed "including those tenants not receiving rental assistance."
Paragraph 7-4.D and 7-4.E - Separated paragraph 7-4.D into two paragraphs in order to clarify the restriction of occupancy of adult children after initial occupancy in Section 202/8, Section 202 PRAC and Section 811 PRAC projects.
Figure 7-2 - New comparison chart for Live-in Aide and Adult Child in 202/8 and 202 PRAC projects.
Paragraph 7-6.A - Added when assistance payments are terminated after 15 months for past due recertifications, the owner must follow the guidance in paragraph 7-8 for determining the effective date for changes in the TTP, tenant rent and assistance payment when the recertification is delayed.
Paragraph 7-7.B - Added new sentence to the Reminder Notices must also be conveyed in languages other than English for LEP persons in accordance with HUD guidance.
Paragraph 7-8.B.2 Example - Added Owner sends tenant Second Reminder Notice on 6/1.
Paragraph 7-8.D.3.b - Added a note stating Section 236 tenants must pay the Section 236 market rent and in a BMIR project the tenant must pay the BMIR market rent when the tenant responds for recertification after the recertification anniversary date.
Paragraph 7-8.D.4 - Added If the applicant is a person with disabilities, the owner must consider extenuating circumstances where this would be required as a matter of reasonable accommodation.
Paragraph 7-10.A.2 Note - Changed paragraph to reference paragraphs 7-4.D and E for eligibility of adult children after initial occupancy in Section 202/8, Section 202 PRAC and Section 811 PRAC projects.
Paragraph 7-11.B - Added a new paragraph and examples addressing processing interim recertifications when a tenant reports an increase in income that does not increase the household's cumulative income by $200 or more a month.
Paragraph 7-15.C - Added a new paragraph addressing in the case of a unit transfer, both the change in rent and assistance payment are effective on the day that the tenant actually occupies the new unit.

Paragraph 7-15.D - Changed to owners must develop policies.
Paragraph 7-15.E - Changed to owners are obligated to transfer tenants as a reasonable accommodation.
Paragraph 7-16.B - Added that owners must pay the costs of a unit transfer if the tenant is being transferred as a reasonable accommodation unless doing so would be an undue financial and administrative burden for the owner.
Paragraph 7-16.C - Added owners are required to describe the unit transfer policies in their Tenant Selection Plan and added references to chapter 4 regarding these requirements.
Paragraph 7-17.B - changed the reference for comment and posting to 24 CFR 245.
Paragraph 7-17.E. - Added a copy of the HUD-50059 that reflects any change to the tenant rent, utility reimbursement, total tenant payment or assistance payment must be placed in the tenant file.
Paragraph 7-17.F - Added change in utility reimbursement requires the tenant's signature.
Exhibits 7-1, 7-2, 7-3 and 7-4 - Changed the title of the exhibits to reflect they are sample Notices and the language in the exhibits to meet the requirements in the text of Chapter 7.
Exhibits 7-5, 7-6, 7-7 and 7-8 - Changed the title of the exhibits to reflect they are sample documents

J. Chapter 8, Termination

Corrected erroneous references or typos:
Paragraph 8-5.E, 8-13.A.3.c

Additional clarification on existing text:
Paragraph 8-5.E Note - Added citizenship requirements do not apply to Section 202 PAC and Section 221(d)(3) BMIR.
Paragraph 8-5.F - Added assistance must be terminated if a student enrolled at an institution of higher education does not meet the eligibility requirements for Section 8 assistance.
Paragraph 8-6.A.3.e - To be in compliance with the lease, added the notification sent to the tenant when terminating assistance should include the tenant has a right to request, within 10 calendar days from the date of the notice, a meeting with the owner to discuss the proposed termination of assistance.
Paragraph 8-6.A.4 - Changed the word "must" to "should".
Paragraph 8-13.B.2.c.(5) Added new paragraph stating the termination notice must advise that persons with disabilities have the right to request reasonable accommodations to participate in the hearing process.
Paragraph 8-14.B - Added NOTE: Owners should be careful to implement consistently all criminal background checks and decision-making procedures. Owners are required to have their procedures included as part of their Tenant Selection Plan (see Chapter 4, Figure 4-2).
Paragraph 8-14.C - Incorporated guidance on the procedures for accessing criminal records from Notice H 02-22.
Paragraph 8-17 - Paragraph 8-17 was separated into two paragraphs. Paragraph 8-17 now addresses the procedures to follow for discrepancies and errors and a new paragraph 8-18 was added addressing the procedures to follow when fraud is detected.

K. Chapter 9, Required HUD-50059 and Subsidy Data Reporting

Corrected erroneous references or typos:
9-6.E, 9-7.C, 9-7.D, Figure 9-3, 9-9.C.6, 9-12.A, 9-12.C, 9-12.E.4.a, e and f

Additional clarification on existing text:
Figure 9-1 Note - Removed note relating to HUD-50059 being eliminated as it has been reinstated.
Paragraph 9-5.A.1 - Removed "The Contract Administrator is the entity who issues subsidy payments for the assistance contract."
Paragraph 9-5.A.3.a and b. - Removed references to Appendices and added a reference to the MAT User's Guide.
Paragraph 9-5.A.4.b - Added extenuating circumstances for signing HUD-50059 and added copies of the HUD-52670-A Parts 1 and 2 and related and supported forms must be retained.
Paragraph 9-5.A.5.b - Revised the section on services that may be provided by a Service Bureau.
Figure 9-2 - Added special claims must be submitted for payment within 90 calendar days of the approval date and that HUD-50059 data should be submitted throughout the month as the completed data is available. Also removed the sentence addressing failure to submit data within 60 days. Clarified that the time frames are calendar days.
Paragraph 9-5.B - Removed text discussing specific TRACS internet applications.
Paragraph 9-6.B - Added the HUD-52670-A part 1 and 2 must have original signatures.
Paragraph 9-7.C - Consolidated text and removed all MAT references and Figures 9-3, 9-4, 9-5- and 9-6.
Paragraph 9-7.D - Moved text regarding resources for correcting TRACS errors into a new 9-7.D from 9-8. Removed other information regarding the MAT. Figure 9-7 was changed to Figure 9-3. Changed references from TRACS Hotline to Multifamily Help Desk Hotline

Paragraph 9-7.E.1 - Added upon request, the files must be made available for review by HUD or the Contract Administrator.
Paragraph 9-7.E.3 - Added new paragraph stating owners must dispose of all files and records in a manner that will prevent any unauthorized access to personal information, e.g., burn, pulverize, shred, etc.
Paragraph 9-8 - New paragraph "The HUD-50059". Moved text on MAT information from Appendix 6 that is not available from other sources. Referenced user to consult the MAT User's Guide for additional information.
Paragraph 9-9 - Changed TRACS Help Desk hotline to Multifamily Help Desk hotline.
Paragraph 9-12.B.2 - Added owners must keep a copy of the signed HUD-52670 and supporting documents.
Paragraph 9-12.B.3 - Added copies of signed HUD-50059 consistent with the HUD-52670-A must be kept in the tenant file. Signed HUD-52670 and supporting documents must also be kept.
Paragraph 9-12.B.5 - Added note if an owner elects to grant rent concessions they cannot bill HUD for either the rental assistance or the tenant's portion of the rent for the month or months the concession is given."
Paragraph 9-12. C.2 - Added prior to submitting requests for assistance payments or special claims all of the supporting tenant data must be in TRACS.
Paragraph 9-12.C.3 - Removed 9-12 C.3 a-e listing the information to be submitted on the HUD-52670.
Paragraph 9-12.E.4.g - Replaced subparagraph g with instructions on calculating an adjustment involving two partial months.
Paragraph 9-12.F.1 and .4 - Deleted statements that are not part of the certification on the HUD-52670.
Paragraph 9-13.B.1 - Added the requirement to return undisbursed utility reimbursements to HUD.
Paragraph 9-14 - Paragraph updated to reflect current requirements for processing special claims.
Paragraph 9-15.A - Removed "unassisted" before basic rent and "or the new authorized rent under the Section 8 mark-up-to-market program."

L. Appendices:
Appendix 1 - form HUD-935.2 replaced with form HUD-935-2A.
Appendix 2 - Appendix removed - will be replaced when new Systematic Alien Verification for Entitlements (SAVE) manual is updated by DHS. Space holder in place as Appendix 2-A. New Appendix 2-B added to include the instructions for completing and mailing DHS Form G 845S and corrected telephone number for persons to call for questions on the SAVE program.
Appendix 4-A, 4-B and 4-C - Added alphabetical references corresponding to guidance in appendices 4-E, 4-F and 4-G
Appendix 4-A - Revised language in paragraph 20, Access by Landlord.
Appendix 4-A - Revised language in Paragraph 23 as language currently in lease is not supported by statute.
Appendix 4-B - Corrected paragraph references in Paragraph 25 to 10 or 24 and corrected the spelling of the word waiver in Paragraph 26.
Appendices 4-E, 4-F and 4-G New appendices added to provide guidance on filling in the blank spaces in the model leases. Corresponding alphabetical references added to Appendices 4-A, 4-B, 4-C and 4-D.
Appendix 5 - Added "the unit is in decent, safe and sanitary condition" and "this unit to be in decent, safe and sanitary condition. Any deficiencies are noted above."
Appendix 6 - Appendix removed and relevant text moved to Chapter 9, Paragraph 9-8. The former Appendix 15 is now Appendix 6, 6-A, 6-B, 6-C. Corrected social security references in new 6-A and 6-B. Also added in paragraph 4 of Appendix 6-B "that the person has no other disability which meets the above definition" for clarification purposes. Also added a Note "This information may have to be conveyed in languages other than English for LEP persons in accordance with HUD guidance.
Appendix 7-A - Removed in field Police or Security Tenant that the TTP must be 50% of contract rent and in the field "date that head of household signed" added "and all adult family members" and the date for TRACS is the date the head of household signed. Changed all of the 59 Field number references to the MAT field number references from the MAT User's Guide. Added the form HUD-50059 as Appendix 7-B.
Appendix 8 - Corrected the rounding procedures in 2. Examples of Rounding to agree with Paragraph 5-5 B.1.
Appendix 13 - Inserted form HUD-93104 with updated OMB expiration date of 5/31/2010.
Appendix 14 - Changed the date on all fact sheets from January 2002 to June 2007 and revised to add changes in regulations relating to student restrictions for section 8 assistance.
Appendix 15, 15 A, 15 B, 15 C - now Appendix 6, 6 A, 6 B, 6 C.

M. Glossary:
Removed definition for 50059 Data Requirements
Added definition for Public Housing Agency and definitions relating to student restrictions for Section 8 assistance.

4. Filing Instructions

Because changes to the text in Chapters 2 through 9 affect page numbering, it is necessary to reissue the entire chapters.

Handbook 4350.3 REV-1 CHG-1	Handbook 4350.3 Rev-1 CHG-2
Remove :	Insert :
Table of Contents	Table of Contents
Exhibit Table of Contents	Exhibit Table of Contents
Appendices Table of Contents	AppendicesTable of Contents
Chapter 1 Pages 1-1, 1-8, 1-13	Chapter 1, Pages 1-1, 1-8, 1-13
Chapter 2 (whole chapter including exhibits)	Chapter 2, (whole chapter including exhibits)
Chapter 3 (whole chapter including exhibits)	Chapter 3 (whole chapter including exhibits)
Chapter 4 (whole chapter including exhibits)	Chapter 4 (whole chapter including exhibits)
Chapter 5 (whole chapter including exhibits)	Chapter 5 (whole chapter including exhibits)
Chapter 6 (whole chapter including exhibits)	Chapter 6 (whole chapter including exhibits)
Chapter 7 (whole chapter including exhibits)	Chapter 7 (whole chapter including exhibits)
Chapter 8 (whole chapter including exhibits)	Chapter 8 (whole chapter including exhibits)
Chapter 9 (whole chapter including exhibits)	Chapter 9 (whole chapter including exhibits)
Glossary	Glossary
Appendices 1, 4-A, 4-B pages 8 and 9, 5 page 4, 6, 7, 8 page 1, 13, 14, 15	Appendices 1, 4-A, 4-B pages 8 and 9, 5 page 4, 6 (formerly Appendix 15), 7, 8 page 1, 13, 14

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Public reporting burden for the collection of information is estimated to average 2,587,023 hours. The information will be used to ensure compliance with Multifamily Housing Subsidy programs requirements, including tenant eligibility, applicant priority, tenant income and rent determinations, prohibition of discrimination and others. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to provide this information unless a currently valid OMB control number is displayed.

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CHAPTER 1. INTRODUCTION

1-1 Purpose of This Handbook

A. HUD-subsidized multifamily properties represent an important and valuable resource in addressing the nation's affordable housing needs. The successful delivery of this housing resource to the people who need it depends on effective occupancy policies and procedures. HUD's occupancy requirements and procedures ensure that eligible applicants are selected for occupancy, that tenants receive the proper level of assistance, and that tenants are treated fairly and consistently.

B. This handbook describes the occupancy requirements and procedures governing the HUD-subsidized multifamily housing programs identified in paragraph 1-2. The handbook also addresses the procedures by which households apply for housing and the rights and responsibilities of in-place tenants and property owners.

C. This handbook is addressed to tenants, owners, managers, HUD Field Office Staff, Performance-Based Contract Administrators and Traditional Contract Administrators. The first points of contact regarding information in this handbook are Office of Multifamily Housing staff in the corresponding local HUD Field Office for an area.

D. This handbook does <u>not</u> supersede any Contract Administrator's or owner's rights, obligations, or requirements. Where the Handbook references HUD or Contract Administrator, the Contract Administrator will only perform those tasks required under the provisions of their Annual Contributions Contract (ACC).

1-2 Programs Subject to This Handbook

A. **Applicable Programs**

The requirements and procedures described in this handbook apply to each HUD-subsidized multifamily housing program listed in Figure 1-1.

B. **State Agency Financed Properties**

For HUD-subsidized properties financed by state agencies, this handbook covers only the applicable HUD requirements. Owners of these properties are subject to additional requirements established by states and their designated housing finance or other agencies.

1. State agencies may enforce state requirements, as long as they do not conflict with this handbook or HUD regulations.

2. State agencies must obtain written HUD approval before changing any of the HUD forms required by this handbook.

Figure 1-1: Programs Subject to This Handbook

- Section 221(d)(3) Below-Market Interest Rate (Section 221(d)(3) BMIR)
- Section 236
- Rental Assistance Payment (RAP)
- Rent Supplement
- Section 8 Project-Based Assistance

  New Construction

  State Agency Financed (generally are New Construction or Substantial Rehabilitation projects)

  Substantial Rehabilitation

  Section 202 Projects with Section 8 Assistance (Section 202/8)

  Rural Housing Section 515 Projects with Section 8 Assistance (RHS Section 515/8)

  Loan Management Set-Aside (LMSA)

  Property Disposition Set-Aside (PDSA)
- Section 202 with 162 Assistance Project Assistance Contracts (Section 202 PACs)
- Section 202 with Project Rental Assistance Contracts (Section 202 PRACs)
- Section 202 without Assistance (Income Limits Only)
- Section 811 with Project Rental Assistance Contracts (Section 811 PRACs)

C. How Applicability Varies

Not all requirements apply to all properties or tenants. Furthermore, some properties are assisted under multiple programs and are subject to multiple sets of requirements.

1. Applicability can vary by:

   a. Type of program (e.g., Section 236 versus Section 8);

   b. Type of Section 8 assistance (e.g., Loan Management Set-Aside versus New Construction);

   c. Date that subsidy contracts took effect or were executed;

   d. Date a tenant moved in or first received subsidy; and

   e. Date a tenant was converted to Section 8 assistance.

2. When applicability does vary, a paragraph or subparagraph in this handbook entitled Applicability will be included to indicate which projects, units, or tenants are subject to or exempt from the requirement. The variation will be described in subsequent paragraphs.

D. **Programs and Properties Not Subject to This Handbook**

This handbook does not apply to:

1. HUD-owned properties;

2. Section 8 Moderate Rehabilitation Program;

3. Public housing;

4. Housing Choice Voucher Program;

5. Enhanced Voucher Program; and

6. Unassisted market rate properties and health care facilities.

7. *HUD-Veterans Affairs Supportive Housing*

8. *Mainstream Vouchers*

E. **Compliance**

The failure of owners to perform required functions as prescribed in this handbook may result in civil money penalties as detailed in 24 CFR part 30. Such action does not preclude the application of administrative, as well as criminal remedies where warranted. Further information concerning program enforcement can be found in HUD Handbook 4350.1, *Multifamily Asset Management and Project Servicing*.

1-3 Background – Key Multifamily Subsidized Housing Programs

A. **Financing Subsidies: Mortgage Insurance and Mortgage Interest Rate Subsidies**

1. Section 221(d)(3) BMIR. This program insured and subsidized mortgage loans to facilitate the new construction or substantial rehabilitation of multifamily rental or cooperative housing for low- and moderate-income families. The reduced mortgage interest rate, usually from 1% to 3%, resulted in lower operating costs for these projects and therefore reduced rents. This program no longer provides subsidies for new mortgage loans, but existing Section 221(d)(3) BMIR properties continue to operate under the program. Families living in Section 221(d)(3) BMIR projects are considered subsidized because the reduced rents for these properties are made possible by subsidized mortgage interest rates.

Some BMIR projects have experienced escalating operating costs that have caused the BMIR rents to increase beyond levels that are readily affordable to lower and moderate-income tenants. In these cases, HUD may have allocated project-based rental assistance through Section 8 Loan Management Set-Aside (LMSA) to these properties to decrease vacancies and improve the project's financial position (see subparagraph C below).

2. Section 236. The Section 236 program, established by the Housing and Urban Development Act of 1968, combined federal mortgage insurance with interest reduction payments to the mortgagee for the production of low-cost rental housing. Under this program, HUD provided interest subsidies to lower a project's mortgage interest rate to as low as 1 percent. This program no longer provides insurance or subsidies for new mortgage loans, but existing Section 236 properties continue to operate under the program. The interest reduction payment results in lower operating costs and subsequently a reduced rent structure.

   The Section 236 basic rent is the rent that the owner must collect to cover the property's operating costs given the mortgage interest reduction payments made to the property. The Section 236 market rent represents the rents needed to cover operating costs if the mortgage interest were not subsidized. All tenants pay at least the Section 236 basic rent for their property and, depending on their income level, may pay a rent up to the Section 236 market rent. Tenants paying less than the Section 236 market rent are considered assisted tenants.

   Some Section 236 properties have experienced escalating operating costs, causing the basic rents to increase beyond levels readily affordable to many low-income tenants. To help maintain the financial health of the property, HUD may have allocated project-based rental assistance through Section 8 LMSA to a Section 236 property (see subparagraph C below). Some Section 236 properties have other forms of project-based rental assistance, such as Rent Supplement or RAP (see subparagraph C below).

3. Section 231. The Section 231 program insures mortgage loans to facilitate the construction and substantial rehabilitation of multifamily rental housing for elderly persons and/or persons with physical disabilities. In Section 231 properties, elderly persons or elderly families must occupy no less than 50 percent of the units. In units designated as elderly units, owners must restrict occupancy to an elderly person or an elderly family. Owners may admit nonelderly physically disabled families to the nonelderly units up to the percentage allowed in the Regulatory Agreement. The property may serve a greater percentage of nonelderly persons with physical disabilities than the percentage allowed in the regulatory agreement only after the owner has received written approval from HUD. This program no longer provides subsidies for new mortgage loans, but existing Section 231 properties with subsidy continue to operate under the program.

Some Section 231 properties have experienced escalating operating costs, causing the rents to increase beyond levels readily affordable to many low-income tenants. To help maintain the financial health of the property, HUD may have allocated project-based rental assistance through Section 8 LMSA to a Section 231 property (see subparagraph C below). Some Section 231 properties have other forms of project-based rental assistance, such as Rent Supplement (see subparagraph C below).

B. **Direct Loans and Capital Advances**

The Section 202 program has historically developed housing for the elderly and persons with disabilities. Project sponsors apply directly to HUD for development loans or capital advances. The program began in the 1960s. *Since then*, it has evolved from a loan program to a capital advance program and has been combined with other forms of assistance to make the rents affordable. Although the Section 202 program originally developed housing to serve the elderly and persons with disabilities, properties developed through the current Section 202 Capital Advance program serve only elderly families/persons. The Section 811 Capital Advance program now serves persons with disabilities. The descriptions below summarize the Section 202 program over the years and the addition of the Section 811 program.

1. Section 202 Direct, Low-Interest Loans. This program provided Section 202 low-interest, direct loans to develop housing for the elderly or disabled. Some of these Section 202 properties received tenant subsidies in the form of Rent Supplement or Section 8 Loan Management Set-Aside contracts (see subparagraph C below). The program was discontinued after 1976; however, many of these properties are still in service.

2. Section 202 Direct, Formula Interest Rate Loans. This program replaced the Section 202 direct, low-interest loan program. It also provided long-term, direct loans to finance housing for the elderly or persons with disabilities. However, these loans carried an interest rate based on the average yield on 30 year marketable obligations of the United States and properties were developed with 100% Section 8 assistance to help keep units affordable to low-income families. The program, commonly referred to as Section 202/8, stopped making loans in 1991, but there are many Section 202/8 properties in service. The Section 162 program was created in 1988 as a program for persons with disabilities. (See Project Assistance Contracts (PACs) in subparagraph C below).

3. Section 202 and Section 811 Capital Advances. Since October 1991, HUD has provided capital advances, rather than loans, to finance the

   development of rental housing for the elderly and persons with disabilities. The Section 202 Capital Advance Program provides housing for the elderly, and the Section 811 Capital Advance Program does the same for persons with disabilities. These programs replaced the Section 202 direct, formula interest rate loan program. In both the Section 202

and Section 811 programs, the development of rental housing with supportive services is subsidized with an interest-free capital advance, and repayment is not required as long as the housing remains available to very low-income elderly or very low-income persons with disabilities. The capital advances are provided together with tenant rental subsidies in the form of Project Rental Assistance Contracts (PRACS) (see subparagraph C below).

C. **Project Rental Subsidies**

The housing subsidies described below are paid to owners on behalf of tenants to keep the amount that tenants pay for rent affordable. This assistance is tied to the property and differs in that respect from tenant-based rental assistance programs (e.g., Housing Choice Vouchers) where the subsidy follows the tenant when a tenant moves to another property.

1. Rental Assistance Payment (RAP) Contracts. The RAP program was established by the Housing and Community Development Act of 1974 to provide additional rental assistance subsidy to property owners on behalf of very low-income tenants. RAP was available only to Section 236 properties and was the predecessor of the project-based Section 8 program.

2. Rent Supplement Contracts. The Rent Supplement Program was established by the Housing and Urban Development Act of 1965 and was the first project-based assistance program for mortgages insured by the Office of Housing. These contracts were available to Section 221(d)(3) BMIR, Section 231, Section 236 (insured and noninsured), and Section 202 properties for the life of the mortgage. The program was suspended under the housing subsidy moratorium of January 5, 1973. Owners of properties with Rent Supplement contracts were allowed to convert to project-based Section 8 assistance.

3. Section 8 Housing Assistance Payments (HAP) Contracts.

   a. New Construction and Substantial Rehabilitation Contracts. Under this program, repealed by Congress in 1983, HUD provided (upon application) Section 8 project-based assistance to public housing authorities (PHAs) or private owners for up to 20 or 40 years after completion of the construction or substantial rehabilitation of rental housing. The Section 8 financial assistance provided a subsidy that helped bridge the gap between the rents needed to make a project feasible and the rents affordable to the tenants. Financing was provided by commercial lending

      institutions and often insured by HUD through the Federal Housing Administration (FHA) or a State Housing Finance Agency. HUD has not approved any new projects since 1983, but projects approved prior to that time may still receive subsidy.

b. Rural Housing Section 515 Properties with Section 8 Contracts (RHS Section 515/8). The USDA Rural Housing Service Section 515 Rural Rental Housing program provides direct, below-market interest rate loans for the construction or acquisition and rehabilitation of rental housing for low- and moderate-income families (including the elderly and disabled) in rural areas. Some properties developed through this program received Section 8 rental assistance contracts to make the rental units more affordable to eligible families. New Section 515 properties are still being developed, however these new projects are no longer combined with Section 8 contracts.

c. Loan Management Set-Aside (LMSA) Contracts. This Section 8 program was developed to provide assistance to insured projects experiencing immediate or potentially serious financial difficulties. The assistance helped minimize defaults and reduce insurance fund claims by providing rental assistance to tenants and thereby making the project affordable to low-income families. The contracts were available for projects insured under the Section 236, Section 221(d)(4), and Section 221(d)(3) and 221 (d) (3) BMIR programs, as well as Section 202 projects.

d. Property Disposition Set-Aside (PDSA) Contracts. This Section 8 program was used in connection with the sale of HUD-owned properties and/or foreclosure of HUD-held mortgages for properties formerly insured under the Section 236 and Section 221(d)(3) BMIR programs or other low-income housing programs. Like LMSA contracts, this program helped ensure that the units in these properties would remain affordable to low-and moderate-income households and minimize displacement.

4. Project Assistance Contracts (PACs). Created for Section 202 properties for persons with disabilities, Section 162 provided subsidies in the form of Project Assistance Contracts to nonprofit sponsors to help make rents affordable in Section 202 projects developed for persons with disabilities. The PAC covered the difference between the HUD approved operating costs of the property and the tenant's contributions toward rent plus the debt service on the loan. HUD awarded PACs to Section 202 projects for persons with disabilities funded in fiscal years 1989 and 1990.

Project Rental Assistance Contracts (PRACs). Beginning in 1991, HUD replaced the Section 202/8 and Section 202 PAC programs with assistance through PRACs for projects developed with Section 202 or Section 811 Capital Advances. The PRAC provides a rental subsidy on behalf of tenants in these properties that covers the difference between the HUD approved operating costs of the project and the tenant's contribution toward the rent.

1-4 Contract Administrators

A. Subsidy contract administration involves a broad range of responsibilities, including program compliance functions to ensure that HUD-subsidized properties are serving eligible families at the correct level of assistance, and asset management functions to ensure the physical and financial health of HUD properties.

B. HUD has primary responsibility for contract administration but has assigned portions of these responsibilities to other organizations that act as Contract Administrators for HUD. These Contract Administrators are generally housing agencies, such as State Housing Finance Agencies or local housing authorities. There are two types of Contract Administrators that assist HUD in performing contract administration functions.

1. Traditional Contract Administrators. These Contract Administrators have been used for over 20 years and have Annual Contributions Contracts (ACCs) with HUD. Under their ACCs, Traditional Contract Administrators are responsible for asset management functions and HAP contract compliance and monitoring functions. They are paid a fee by HUD for their services.

2. Performance-Based Contract Administrators (PBCAs). The use of PBCAs began as an initiative in 2000. Under a performance-based ACC, the scope of responsibilities of a Contract Administrator is more limited than that of a Traditional Contact Administrator. A PBCA's responsibilities focus on the day-to-day monitoring and servicing of Section 8 HAP contracts. PBCAs are generally required to administer contracts on a statewide basis and have strict performance and reporting requirements as outlined in their ACC.

1-5 Principles for Addressing Overlapping Federal, State, and Local Requirements

A. General

In addition to complying with this handbook, owners must comply with other federal, state, and local laws applicable to the occupancy of multifamily housing properties. If other federal, state, or local laws conflict with HUD's requirements, owners must contact the HUD Field Office or Contract Administrator for guidance. Also, when addressing complex overlapping requirements, it is always prudent for owners to seek proper counsel.

B. Statutory Program Eligibility Requirements

Federal statutory program eligibility requirements cannot be overruled by state or local law.

C. Multiple Federal Laws

If more than one federal law applies to a situation, the laws should be read and applied together. Where one law imposes a more restrictive requirement or standard on the owner than another, the more restrictive requirement or standard is controlling as to federal law.

D. Overlap Between Federal and State/Local Nondiscrimination Laws

If state or local laws impose different nondiscrimination requirements than federal law, the more rigorous standard, the one that promotes the higher level of protection for the tenant, is controlling regardless of whether the more rigorous standard is that of the state, local, or federal law.

1-6 Handbook Organization

A. Organization of Chapters

To help show the similarities across programs, this handbook is structured topically (e.g., eligibility, determining income, and calculating tenant rents) rather than by program. After introducing the key civil rights and nondiscrimination requirements applicable to these properties, the handbook describes the relevant procedures and requirements organized by the major types of occupancy functions (e.g., eligibility determination, waiting list management). It covers the requirements at key steps in admitting tenants and also the occupancy responsibilities for owners and tenants after initial occupancy (e.g., recertifications, unit transfers).

B. Format

Each chapter describes the key requirements and procedures relevant to that topic. The handbook also uses several types of helpful aids to assist the reader in understanding program requirements. These include:

1. Examples. These are brief descriptions of situations that help explain the occupancy topic being covered.

2. Figures. These are reference charts, tables, or technical information.

3. Exhibits. Exhibits are similar to figures but are usually more detailed charts with technical information or samples of documents. Exhibits are identified in the text of a chapter, but they appear at the end of a chapter to avoid interrupting the narrative flow.

4. Glossary. The glossary contains definitions of key technical terms used in the handbook.

5. Appendices. Appendices contain more extensive technical information, sample formats, forms, and instructions for preparing forms. Appendices appear at the end of the handbook.

6. Index. The index provides key paragraph and page references for important terms and technical concepts covered in this handbook.

C. **Key Terms**

1. There are a number of key technical terms used in this handbook, which are defined in the Glossary because they have very specific definitions established by federal statute, regulations, or program requirements. At the beginning of each chapter, a figure provides a list of the key terms used in that chapter, which are defined in the Glossary. It is important that readers familiarize themselves with the definitions of these terms presented in the Glossary, as well as with the content of the chapter.

2. Uses of Disability and Persons with Disabilities . In this handbook, the terms disability and persons with disabilities have more than one definition.

   a. One set of definitions for these terms are used when determining a family's eligibility under multifamily subsidized housing programs that assist persons with disabilities. See Figure 3-6 and the Glossary for the definitions used when determining eligibility.

   b. Separate and distinct definitions of these terms apply to requirements and procedures addressing civil rights protections. See the Glossary for these definitions.

   c. See paragraph 2-23 for more information about the use of these terms in the handbook.

1-7 Additional Program Resources

A. **Relevant HUD Handbooks**

The following additional HUD handbooks are useful references when performing occupancy functions.

1. HUD Handbook 4350.1, *Multifamily Asset Management and Project Servicing*.

2. HUD Handbook 4350.2, *Section 8 Loan Management Set-Aside for Projects with HUD-Insured and HUD-Held Mortgages*.

3. HUD Handbook 4350.5, *Subsidy Contract Administration and Field Office Monitoring*.

4. HUD Handbook 4381.5, *HUD Management Agent Handbook*.

5. HUD Handbook 4571.1, *Section 202 Direct Loan Program for Housing for the Elderly or Handicapped*.

6. HUD Handbook 4571.2, *Section 811 Supportive Housing for Persons with Disabilities*.

7. HUD Handbook 4571.3, *Section 202 Supportive Housing for the Elderly*.

8. HUD Handbook 8025.1, *Implementing Affirmative Fair Housing Marketing Requirements for Multifamily Housing.*

B. **Other HUD Publications and Information**

HUD provides public access to departmental policies, procedures, and notices and other important program information through the Internet. HUD encourages clients to utilize its websites as the most efficient means for obtaining the most recent and up-to-date information on HUD programs. The following websites and documents contain valuable information on issues affecting multifamily housing:

1. HUD Website. http://portal.hud.gov/portal/page/portal/HUD. Users can obtain updates on new HUD priorities, plans, and initiatives and read housing-related newsclips. A site map lists key subject areas included in the website; a search mechanism allows users to find information contained in the website or to retrieve HUD forms. The website also connects users to local HUD Field Office websites.

2. HUD Office of Multifamily Housing Website. http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh. This website provides current information and resources from the Office of Multifamily Housing. It includes up-to-date policy information, information about Contract Administrators, and information about the Tenant Rental Assistance Certification System (TRACS). The following is one of the relevant links found on this website: http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/hsgrent.
This website contains links to HUD fact sheets about determining rents for the following programs:

   - Below-Market Interest Rate (BMIR);
   - Project-Based Section 8;
   - Section 202/162 PAC and Section 202/811 PRAC;
   - Section 236;
   - Rent Supplement; and
   - Rental Assistance Payment.

3. HUD Office of Fair Housing Intranet Website for Civil Rights Front-End Reviews. http://hudatwork.hud.gov/po/e/FEReview/cr-review.cfm. This website provides guidance on responsibility for civil rights front-end monitoring reviews. This reference is an internal Departmental site that is available only to HUD staff. It contains the following materials:

   - Final Rule for Compliance Procedures for Affirmative Fair Housing Marketing Nomenclature Change;

- Statements by the Deputy Secretary, each Assistant Secretary, and the Assistant Deputy Secretary for Field Policy and Management establishing the Department's endorsement of program staff conducting Civil Rights Front-End and Limited Monitoring Reviews;
- General operational procedures for conducting Civil Rights Front-End and Limited Monitoring Reviews;
- Frequently asked questions for all programs about the rationale for processes to be followed; and
- Procedures, checklists and data for each program to be used for the Civil Rights Front-End and Limited Monitoring Reviews.

4. HUD Office of Fair Housing and Equal Opportunity Persons with Disabilities. http://portal.hud.gov/portal/page/portal/HUD/topics/information_for_disabled_persons. This website contains information on the rights of persons with disabilities *who are beneficiaries of or participants in HUD-subsidized multifamily housing programs*, and *includes* the accessibility requirements of the Fair Housing Act, *Section 504, and the Americans with Disabilities Act*.

5. TRACS Website. http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/trx/trxsum. This website updates readers on developments in TRACS. TRACS documents, announcements, and frequently asked questions and responses are posted on the website. Users can also participate in the TRACS discussion forum or email TRACS with questions, comments, and concerns.

6. Resident's Rights and Responsibilities Brochure. This brochure was developed by HUD and describes the rights and responsibilities of tenants living in HUD-subsidized properties. It also highlights property-related activities where tenants have a right to participate and lists sources of additional assistance. The brochure is available *in English as well as several other languages at http://www.hud.gov/offices/fheo/lep.xml* or it can be ordered as noted below under subparagraph C Ordering Publications.

   HUDCLIPS Website. http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips. HUDCLIPS is HUD's Client Information and Policy System, which provides clients with fast, easy access to HUD's official repository of policies, procedures, announcements, and other materials. The HUDCLIPS website contains full text searchable databases of HUD handbooks, notices, forms, letters, *Code of Federal Regulations* Title 24 and *U.S. Code* Titles 12-42. HUDCLIPS conveniently lists documents recently added to the HUD repository.

7. Inventory of Units for the Elderly and Persons with Disabilities Website: http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/ht

o/inventorysurvey. This inventory is designed to assist prospective applicants with locating units in HUD insured and HUD subsidized multifamily properties that serve the elderly and/or persons with disabilities.

8. HUD User Policy Development and Research Information Service Website http://www.huduser.org/portal/index.html. Income limits for eligibility are located at this website under the Data Sets drop down menu.

9. Multifamily Rental Housing Integrity Improvement Project (RHIIP) Website http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/rhiip/mfhrhiip. This website contains brochures, newsletters, training materials, RHIIP Tips and other information related to reducing errors in rent and income determinations.

11. Enterprise Income Verification (EIV) System for Multifamily Housing Program Users Website http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/rhiip/eiv/eivhome. This website contains manuals and information relating to gaining access to the EIV system and use of the EIV system for upfront verification of a tenant's *employment and income and to assist in the reduction of administrative and subsidy errors.*

12. **EIV & You* brochure. This brochure was developed by HUD to inform applicants and tenants about HUD's EIV system and how they may be impacted when owners use the data in the EIV system for verification of employment and income and for reducing errors in HUD's rental assistance programs. The brochure is available English as well as several other languages. The English version of the brochure is available at http://www.hud.gov/offices/hsg/mfh/rhiip/eivbrochure.pdf or it can be ordered as noted below under subparagraph C Ordering Publications.*

13. *Promoting Fair Housing. http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/promotingfh. This webpage outlines AFFH requirements for a wide range of HUD programs and includes a description of the Affirmative Fair Housing Marketing Plan (AFHMP) requirement that applies to multifamily housing programs covered by HUD's regulations at 24 CFR 200.600 *et seq*.*

14. *HUD Office of Fair Housing and Equal Opportunity Limited English Proficiency (LEP). http://www.hud.gov/offices/fheo/lep.xml. This website contains resources on LEP issues, including the Department's published LEP guidance for recipients of federal financial assistance. This website also contains links to translations of a wide range of vital and commonly used general and multifamily housing documents, including pertinent notices, forms, and brochures.*

C. **Ordering Publications**

Documents can be ordered on-line from the HUD Direct Distribution Center at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/dds. For those who do not have Internet access, documents can be ordered by calling HUD at 800-767-7468 or faxing *to* 202-708-2313. Interested parties can also request a catalogue of publications through the above numbers.

1-8 Handbook Waivers, Key Statutes, and Regulations

A. The procedures in this handbook are presented to ensure that the statutory, regulatory, and contractual obligations regarding HUD-subsidized multifamily housing are fulfilled. The HUD Multifamily HUB Director, or other designated HUB or Field Office Multifamily Housing Official, may waive directives specified in this handbook only if they are not formally required by statute or regulation.

B. Figure 1-2 lists the regulations and statutes that pertain to the key programs and requirements covered in this handbook.

Figure 1-2: Regulations and *Authorities* for Key HUD Multifamily Housing Programs

A. Requirements Applicable Across All Programs		
Requirement	**Regulation**	**Statute**
General HUD Program Requirements	24 CFR, part 5	Various statutes
Title VI, Subtitle D of the Housing and Community Development Act of 1992		42 U.S.C. 13641
Fair Housing Act (Title VIII of the Civil Rights Act of 1968)	24 CFR, part 100 24 CFR, part 108	42 U.S.C. 3601 et seq.
Title VI of the Civil Rights Act of 1964	24 CFR, part 1	42 U.S.C. 2000d et seq.
Section 504 of the Rehabilitation Act of 1973	24 CFR, part 8	29 U.S.C. 794
Nondiscrimination and Equal Opportunity in Housing	*24 CFR, part 107*	*Executive Order 11063*
Collection of Data	*24 CFR, part 121*	*Fair Housing Act*
Economic Opportunities for Low and Very Low Income Persons	*24 CFR, part 135*	*12.U.S.C. 1701u*
Age Discrimination Act of 1975	24 CFR, part 146	42 U.S.C. 6101 et seq.
Tenant Participation Regulations	24 CFR, part 245	12 U.S.C. 1715z-1b

Figure 1-2: Regulations and *Authorities* for Key HUD Multifamily Housing Programs

B. Regulations and Statutes by Programs		
Program	**Regulation**	**Statute**
Section 221(d)(3) BMIR	24 CFR, part 221	12 U.S.C. 1715(l); Section 221(d)(5) of the National Housing Act
Section 236	24 CFR, part 236	12 U.S.C. 1715z-1; Section 236 of the National Housing Act
Section 202 Direct Loan	24 CFR part 891, subpart E	12 U.S.C. 1701(q); Section 202 of the Housing Act of 1959
Section 202 Capital Advance	24 CFR part 891, subpart B	12 U.S.C. 1701(q); Section 202 of the Housing Act of 1959 as amended by Section 801 of the Cranston-Gonzales National Affordable Housing Act
Section 811 Capital Advance	24 CFR part 891, subpart C	42 U.S.C. 8013; Section 811 of the Cranston-Gonzales National Affordable Housing Act
Section 202/811 Mixed Finance	*24 CFR part 891, subpart F*	*12 U.S.C. 1701(q); Section 202 of the Housing Act of 1959 as amended by Section 801 of the Cranston-Gonzales National Affordable Housing Act 42 U.S.C. 8013; Section 811 of the Cranston-Gonzales National Affordable Housing Act*
Section 8 New Construction	24 CFR, part 880	42 U.S.C. 1437(f)(b); Section 8(b) of the United States Housing Act of 1937, as in effect before October 1, 1983.
Section 8 Substantial Rehab	24 CFR, part 881	42 U.S.C. 1437(f)(b); Section 8(b) of the United States Housing Act of 1937, as in effect before October 1, 1983.
State Agency Section 8	24 CFR, part 883	42 U.S.C. 1437(f)(b); Section 8(b) of the United States Housing Act of 1937.
RHS Section 515/8	24 CFR, part 884	42 U.S.C. 1437(f)(b); Section 8(b) of the United States Housing Act of 1937.
Section 8 LMSA	24 CFR part 886, subpart A	Not applicable.
Section 8 PDSA	24 CFR part 886, subpart C	42 U.S.C. 1437(f)(b); Section 8(b) of the United States Housing Act of 1937.
Section 202/8	24 CFR part 891, subpart E	42 U.S.C. 1437(f)(g); Section 8(g) of the United States Housing Act of 1937
PAC/PRAC	24 CFR, part 891	42 U.S.C. 8013(d)(2); Section 811 of the Cranston-Gonzales National Affordable Housing Act

Figure 1-2: Regulations and *Authorities* for Key HUD Multifamily Housing Programs

RAP	24 CFR part 236, subpart D	12 U.S.C. 1715z-1; Section 236 of the National Housing Act
Rent Supplement	24 CFR, part 215 (currently expired, but still in effect for existing contracts per 24 CFR 200.1302)	12 U.S.C. 1701(s); Section 101 of the Housing and Urban Development Act of 1965

CHAPTER 2. CIVIL RIGHTS AND NONDISCRIMINATION REQUIREMENTS

2-1 Introduction

A. Owners of HUD-subsidized multifamily properties are subject to several important federal civil rights laws affecting both admission and occupancy. These requirements seek to ensure that all applicants have equal access to affordable housing and that owners treat all tenants equitably. In addition, states and local jurisdictions often establish their own civil rights laws that affect rental housing.

B. This chapter provides an overview of key federal civil rights and nondiscrimination requirements that pertain to admissions and occupancy in properties subject to this handbook. It also presents examples to help explain these requirements and notes how to address circumstances when federal, state, and local requirements overlap.

C. The remaining chapters in the handbook will also refer to these requirements as they apply to the admissions or occupancy activities covered in that chapter.

D. This chapter is organized into four sections:

- **Section 1: Applicable Laws** provides an overview of key civil rights laws relevant to occupancy in HUD-subsidized multifamily housing.

- **Section 2: Nondiscrimination Requirements Under the Fair Housing Act** summarizes the key nondiscrimination requirements established under the Fair Housing Act that are applicable to multifamily housing.

- **Section 3: Additional Nondiscrimination and Accessibility Requirements for Persons with Disabilities** explains the requirements and procedures that owners of HUD-subsidized multifamily housing must follow to ensure nondiscrimination and accessibility of their properties to persons with disabilities as required by Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act.

- **Section 4: Housing Discrimination Complaints and Compliance Reviews** provides information about an owner's responsibilities in the event of a housing discrimination complaint and key references regarding fair housing compliance reviews.

2-2 Key Terms

A. There are a number of technical terms used in this chapter that have very specific definitions established by federal statute or regulations, or by HUD. These terms are listed in Figure 2-1 and their definitions can be found in the Glossary to this handbook. It is important to be familiar with these definitions when reading this chapter.

B. The terms disability and persons with disabilities are used in two contexts for civil rights protections, and for program eligibility purposes. Each use has specific definitions.

1. When used in context of protection from discrimination or improving the accessibility of housing, the civil rights-related definitions apply.

2. When used in the context of eligibility under multifamily subsidized housing programs, the program eligibility definitions apply.

NOTE: See the Glossary for specific definitions and paragraph 2-23 for an explanation of this difference.

Figure 2-1: Key Terms

• Accessible • Accessible route • Adaptability • Alteration • Auxiliary aids • Disability • Fair Housing Act • Familial status • Federal financial assistance	• Federally assisted housing • **Limited English Proficiency (LEP)** • Person with disabilities (as defined for civil rights protections) • Prohibited bases • Qualified persons with disabilities • Recipient • Section 504 • Title VI D

Section 1: Applicable Laws

2-3 Key Regulations and Statute

This paragraph identifies key regulatory and statutory citations pertaining to Section 1: Applicable Laws. The citations and their title (or topic) are listed below:

A. 24 CFR, part 1 Title VI of the Civil Rights Act of 1964

B. 24 CFR, part 8 Section 504 of the Rehabilitation Act of 1973

C. 24 CFR, part 100 et seq Fair Housing Act

D. 24 CFR, part 146 Age Discrimination Act of 1975

E. 24 CFR 200.600 Affirmative Fair Marketing Regulations

F. 24 CFR 880.612a, 881.601, 883.701, 884.223a, 886.329a (Allows preference for occupancy by elderly families in certain Section 8 developments)

G. 42 U.S.C. 13641 Title VI, Subtitle D of Housing and Community Development Act of 1992 (Sets forth criteria under which certain HUD-subsidized multifamily properties can choose to serve elderly only, or set-aside a portion of the property for elderly only)

H. Uniform Federal Accessibility Standards (UFAS), effective July 11, 1988; individual copies are available from the Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW, Suite 1000, Washington, D.C. 20004-1111, Telephone: 202-272-0080, TTY: 202-272-0082, email address: info@access-board.gov. Orders of 25 or more copies will be referred to the publisher.

2-4 General Provisions

A. Federal civil rights laws addressing fair housing prohibit discrimination against applicants or tenants based on one or more of the following classifications:

1. Race;

2. Color;

3. National origin;

4. Sex;

5. Age;

6. Disability;

7. Religion; and

8. Familial status.

NOTE: Familial status refers to families living with children under the age of 18, regardless of age or number of children. Familial status also includes pregnant women, families that are planning to adopt, and families that have or are planning to have foster children or to become guardians of children.

B. There are multiple laws that address the rights of tenants in HUD-subsidized multifamily housing. The remaining paragraphs in this section provide brief descriptions of the key federal civil rights laws regarding fair housing and accessibility that pertain to HUD-subsidized multifamily housing, along with reference to their implementing regulations. Throughout this handbook, reference is made to applicable civil rights and nondiscrimination requirements with respect to key admissions and occupancy activities in HUD subsidized multifamily housing.

C. Owners must be familiar with the regulations implementing these civil rights laws regarding fair housing and program accessibility, and with the applicable HUD Notices explaining those requirements. HUD's Office of Fair Housing and Equal Opportunity (FHEO) also provides technical assistance on these requirements.

D. Other applicable laws and regulations include the following:

1. Any state civil rights laws or local ordinances pertaining to housing; and

Note: Owners may be subject to local and/or state laws that prohibit discrimination based upon membership in other classes (e.g., marital status or sexual orientation).

2. Any other legislation protecting the individual rights of tenants, applicants, or staff that may subsequently be enacted.

2-5 Fair Housing Act, Title VIII of the Civil Rights Act of l968

A. General

The Fair Housing Act prohibits discrimination in most housing and housing-related transactions with respect to the following bases:

1. Race;

2. Color;

3. Religion;

4. Sex;

5. Disability;

6. Familial status; or

7. National origin.

The Act applies to all housing units subject to this handbook.

B. **Prohibited Actions**

Under the Fair Housing Act, owners or other housing providers must not take any of the actions listed below based on race, color, religion, sex, disability, familial status, or national origin:

1. Deny anyone the opportunity to apply to rent housing, or deny to any qualified applicant the opportunity to lease housing suitable to his or her needs;

2. Provide anyone housing that is different from that provided to others;

3. Subject anyone to segregation, even if by floor or wing;

4. Restrict anyone's access to any benefit enjoyed by others in connection with the housing program;

5. Treat anyone differently in determining eligibility or other requirements for admission, in use of the housing amenities, facilities or programs, or in the terms and conditions of a lease. See paragraph 2-5 C for a discussion of the owner's obligation to provide reasonable accommodations to persons with disabilities;

6. Deny anyone access to the same level of services;

   NOTE: An owner should be certain that all services at the project are supplied in a nondiscriminatory fashion. For example, there cannot be a preference for providing a service to persons of a specific religion, even if the agency providing the service is a faith-based organization.

7. Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program;

8. Publish or cause to be published an advertisement or notice indicating the availability of housing that prefers or excludes persons;

9. Discriminate in the provision of brokerage services or in residential real estate transactions;

10. Discriminate against someone because of that person's relation to or association with another individual; or

11. Retaliate against, threaten, or act in any manner to intimidate someone because he or she has exercised rights under the Fair Housing Act.

C. **Additional Protections for Persons with Disabilities**

Although the Fair Housing Act generally requires applicants to be given equal treatment and prohibits discrimination against anyone with respect to the prohibited bases, there are certain limited circumstances when the Act requires a housing provider to treat persons with disabilities differently to enable them to have equal access to, or enjoyment of, housing and other housing-related programs. Specifically, the Fair Housing Act requires housing providers to provide reasonable accommodations to persons with disabilities. This means an owner may have to modify rules, policies, practices, procedures and/or services to afford a person with a disability an equal opportunity to use and enjoy the housing. In addition, the Fair Housing Act contains specific accessibility requirements that apply to the design and construction of new multifamily housing built for first occupancy after March 13, 1991. (For further discussion see paragraph 2-45.)

D. **Obligation to Affirmatively Further Fair Housing**

1. The Fair Housing Act also requires HUD to administer all programs and activities relating to housing and urban development in a manner that affirmatively further fair housing. See paragraph 2-9 for a discussion of Civil Rights Related Program Requirements which implement this obligation. In addition, Subpart M of 24 CFR, part 200, sets forth HUD's equal opportunity regulations for affirmative fair housing marketing under FHA subsidized and unsubsidized housing programs. Each owner who participates in HUD's multifamily housing programs to which 24 CFR, part 200, applies must develop and provide a description of the Affirmative Fair Housing Marketing Plan for the property to comply with the requirements of Subpart M of 24 CFR, part 200. For example, under the requirement of affirmatively furthering fair housing, an owner must engage in affirmative marketing to groups least likely to apply for the owner's housing even if this group is different from the religious or ethnic group generally served by the owner organization. HUD conducts periodic compliance reviews in accordance with 24 CFR 108.40 to determine if owners are meeting these requirements and implementing their Affirmative Fair Housing Marketing Plans. The Affirmative Fair Housing Marketing Plan (AFHMP) is described in paragraph 4-12 B and the form is found in **Appendix 1**.

   a. HUD does not require subsidized multifamily projects built prior to February 1972 to have an Affirmative Fair Housing Marketing Plan, unless the property has been substantially rehabilitated

*****subsequent to February 1972 or the plan is required by a housing assistance contract. However, these owners are required to***** affirmatively market their units to those least likely to apply.

b. In addition, item 8 on the form HUD-935.2A, *Affirmative Fair Housing Marketing AFHM Plan – Multifamily Housing*, requires the owner to update the plan as the property's circumstances change. (See paragraph 4-12 F for more information.)

E. **Fair Housing Poster**

Owners of HUD-subsidized multifamily housing must also display the Fair Housing poster required by the Fair Housing Act and HUD regulations at 24 CFR, part 110.

2-6 Title VI of the Civil Rights Act of 1964

A. Title VI prohibits all recipients of federal financial assistance from discriminating based on race, color, or national origin. Title VI applies to any program or activity receiving federal financial assistance, not just housing. Each federal agency has its own Title VI regulations. Thus, owners must remember that if they receive funds from any other federal agency, they will be subject to those agencies' Title VI rules, in addition to HUD's Title VI regulations, which are found at 24 CFR, part 1.

B. In housing, Title VI and the Fair Housing Act apply to many of the same types of activities. However, HUD has broader investigative authority in complaints related to violations of Title VI and the authority to impose different types of remedies than it does in cases involving violations of the Fair Housing Act.

C. Title VI regulations require that recipients have an affirmative obligation to take reasonable steps to remove or overcome any discriminatory practice or usage that subjects individuals to discrimination based on race, color, or national origin. The regulations also require that, even in the absence of prior discrimination, recipients should take affirmative steps to overcome the effects of conditions that results in limiting participation by persons of a particular race, color, or national origin.

D. Title VI regulations also require that owners maintain racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federal financial assistance.

2-7 Age Discrimination Act of 1975

A. This Act prohibits discrimination based upon age in federally assisted and funded programs or activities, except in limited circumstances.

B. It is not a violation of the Act to use age as screening criteria in a particular program if age distinctions are permitted by statute for that program or if age distinctions are a factor necessary for the normal operation of the program or the

achievement of a statutory objective of the program or activity. Thus, a Section 202 PRAC project that only admitted elderly families would not be considered to be operating in violation of the Age Discrimination Act.

2-8 Section 504 of the Rehabilitation Act of 1973

A. Section 504 prohibits discrimination based upon disability in all programs or activities operated by recipients of federal financial assistance. Although Section 504 often overlaps with the disability discrimination prohibitions of the Fair Housing Act, it differs in that it also imposes broader affirmative obligations on owners to make their programs as a whole, accessible to persons with disabilities. These obligations include the following:

1. Making and paying for reasonable structural modifications to units and/or common areas that are needed by applicants and tenants with disabilities, unless these modifications would change the fundamental nature of the project or result in undue financial and administrative burdens;

2. Operating housing that is not segregated based upon disability or type of disability, unless authorized by federal statute or executive order;

3. Providing auxiliary aids and services necessary for effective communication with persons with disabilities;

4. Developing a transition plan to ensure that structural changes are properly implemented to meet program accessibility requirements; and

5. Performing a self-evaluation of the owner's program and policies to ensure that they do not discriminate based on disability.

6. Operating their programs in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

B. Furthermore, the Section 504 regulations establish affirmative accessibility requirements for newly constructed or rehabilitated housing, including providing a minimum percentage of accessible units. In order for a unit to be considered accessible, it must meet the requirements of the Uniform Federal Accessibility Standards (UFAS).

C. The Section 504 regulations also require that recipients not discriminate in employment based upon disability.

2-9 Civil Rights Related Program Requirements

A. HUD-subsidized multifamily housing properties are subject to Civil Rights Related Program Requirements developed under civil rights authorities. These requirements reflect HUD's obligation to ensure that the programs and activities that receive federal funds comply with federal civil rights laws.

B. Some of the Civil Rights Related Program Requirements include, but are not limited to, the items listed below.

1. Occupancy policies, which include the following:

a. Application requirements;

b. Waiting list requirements; and

c. Tenant selection requirements.

2. Use of residency preferences in a manner that does not have a disparate impact on members of any class of individuals protected by federal civil rights laws.

3. Consistent maintenance requirements; and

4. Consistent policies across properties owned by the same owner to ensure against steering, segregation, or other discriminatory practices.

C. ****Improving Access to Services for Persons with Limited English Proficiency (LEP).** Executive Order (E.O.) 13166 requires Federal agencies and grantees to take affirmative steps to communicate with persons who need services or information in a language other than English.

1. Housing owners must take reasonable steps to ensure meaningful access to the information and services they provide for persons with LEP. This may include interpreter services and/or written materials translated into other languages.

2. HUD specific LEP Guidance, Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons was published in the Federal Register on January 22, 2007.

2-10 Title VI, Subtitle D of the Housing and Community Development Act of 1992 (42 U.S.C. 13641)

A. Title VI, Subtitle D of the Housing and Community Development Act of 1992 (Title VI-D) authorizes owners of certain HUD multifamily assisted developments

to elect to serve elderly families, limit the numbers of disabled families residing in the projects or to adopt preferences for elderly families, depending upon the type of project and whether certain requirements are met. While owners must comply with all relevant sections pursuant to Title VI-D, owners should pay close attention to Sections 651 and 658 with respect to eligibility and tenant selection. See paragraph **3-18** for more information about an owner's responsibilities under these sections of the statute

B. While this statute is not a civil rights law, it is referenced in this chapter because if it is applied incorrectly, an owner may be in violation of federal civil rights laws, as well as program requirements.

2-11 Required Data and Record-Keeping

A. Required Data

1. Owners must collect and maintain various types of information regarding prospective and current tenants to help establish compliance with program requirements. (See Chapter 4.)

2. For subsidized multifamily housing, HUD requires owners to gather data about the race and ethnicity of applicants and tenants so that HUD can easily spot possible discrimination, track racial or ethnic concentrations, and focus enforcement actions on owners with racially or ethnically identifiable properties. For example, the Department might investigate a situation in which there is a sizable eligible population of a given race or ethnicity in the area, but a particular property does not house any members of that population. Ethnicity and Race of applicants and tenants is determined by self certification rather than an observation of the owner. The Department also requires that owners report the numbers of persons with disabilities served by their programs.

3. To avoid the risk of violating civil rights and nondiscrimination requirements when seeking to gather such data, owners should consistently ask the same questions of all prospective and current tenants. Also, owners should avoid asking for information only from certain populations and not others. For example, instead of asking only some applicants about their race, owners should have a means of seeking this information from all applicants.

B. Record-Keeping

1. Records. Owners must keep civil rights related records in accordance with 24 CFR 1.6, 8.55(b), and 107.30. The civil rights related records include race and ethnicity data, compliance with 504, and compliance with Executive Order 11063.

2. Access to Records. Owners are required to allow HUD staff and Contract Administrators access to the relevant records for their properties and

other sources of information, as necessary, for determining compliance with civil rights and nondiscrimination requirements.

a. In the following situations, HUD or the Contract Administrator may request information from owners: when an individual complains to HUD that he/she has been the subject of discrimination; when HUD FHEO staff performs a review of an owner's overall compliance with civil rights and nondiscrimination requirements; or when HUD Multifamily Housing staff looks for indicators of noncompliance on behalf of FHEO as part of a management review. (See Handbook 4350.1, *Multifamily Asset Management and Project Servicing* for more information.)

b. When performing limited reviews of civil rights and nondiscrimination requirements as part of a management review, HUD Multifamily Housing staff should use the checklists and operating procedures developed between the Office of Fair Housing and Equal Opportunity and the Office of Multifamily Housing to determine the relevant information needed from the owner to conduct the review. (See paragraph 1-7 for information about technical resources such as websites for FHEO checklists and guidance for HUD staff.)

2-12 Principles for Addressing Overlapping Federal, State, and Local Requirements

Refer to the principles described in paragraph 1-5.

Section 2: Nondiscrimination Requirements Under the Fair Housing Act

2-13 Key Regulation

This paragraph identifies the key regulatory citation pertaining to Section 2: Nondiscrimination Requirements Under the Fair Housing Act. The citation and its title are listed below:

- 24 CFR, part 100 Discriminatory Conduct under the Fair Housing Act

2-14 General

The Fair Housing Act prohibits discrimination in housing on the basis of race, color, religion, sex, disability, familial status, or national origin. Owners are responsible for ensuring that the policies and practices used in properties covered by this handbook do not incorporate prohibited practices. This section provides an overview of these requirements. Owners are fully responsible for understanding and complying with the requirements applicable to their properties.

2-15 Unlawful Refusal to Rent or Negotiate for Rental

A. Owners may not refuse, either directly or indirectly, to rent or negotiate for rental of a dwelling based on an individual's race, color, religion, sex, disability, familial status, or national origin, or those of a person associated with the individual.

B. Examples of prohibited activities based on race, color, religion, sex, disability, familial status, or national origin include, but are not limited to, the following:

1. Setting different rental fees for a person;

2. Not applying the screening criteria outlined in the tenant selection plan uniformly to all applicants;

3. Restricting selection of persons with disabilities in housing when this is in violation of program rules or the owner's contract with HUD; and

4. Preventing a household with children under age 6 from occupying a unit even if there are lead hazards in the unit. The owner must advise the household of the hazards, but the choice to occupy the unit is the household's.

   NOTE: Owners may affirmatively market lead-hazard-free units to families with children under the age of 6. For further information, refer to 24 CFR, part 35, and Federal Register Vol. 64, No. 178, p. 50158.

2-16 Other Prohibited Rental Activities

A. Owners must not engage in activities that steer potential tenants away from or toward particular units by words or actions based on race, color, religion, sex, disability, familial status, or national origin.

B. Owners must not make housing units and related services unavailable to any potential tenants based upon race, color, religion, sex, disability, familial status, or national origin.

C. Such prohibited actions include the following:

1. Discouraging anyone from inspecting or renting a unit in a community, neighborhood, or property;

2. Discouraging anyone from renting a unit by exaggerating the problems of a unit or failing to inform a person of the good points of the unit in a community, neighborhood, or property;

3. Assigning any person to a particular section of a community, neighborhood, or project, or to a particular floor of a building, because of race, color, religion, sex, disability, familial status, or national origin, except when assigning an accessible unit to a person with a disability who needs the features of the unit; and

4. Denying or delaying the processing of an application made by a renter.

2-17 Discrimination in the Representation of Available Dwellings

A. Owners must not purposely provide false information to applicants about the availability of units that limits the living options of prospective tenants based on race, color, religion, sex, disability, familial status, or national origin of the applicant or persons associated with the applicant.

B. Examples of such prohibited actions include, but are not limited to, the following:

1. Indicating by words or actions that an available unit has already been rented;

2. Using deeds, trusts, or other lease requirements to keep a potential tenant from renting an available unit;

3. Refusing to inform interested individuals, either verbally or through actions, that suitably priced units are available to be rented; and

4. Providing false or inaccurate information about the availability of units to anyone, (including discrimination testers), regardless of whether the person is actually looking for housing.

2-18 Discrimination in Terms, Conditions, Privileges, Services, and Facilities

A. Owners must not deny or limit services based on race, color, religion, sex, disability, familial status, or national origin of the applicant, tenant, or a person associated with the applicant or tenant.

B. Prohibited activities include, but are not limited to, the following:

1. Using different requirements in leases. Examples include charging different rents, charging different security deposits, or requiring persons with disabilities who use electric wheelchairs or motorized scooters to have personal liability insurance. (For more information about lease requirements, see paragraph 6-5);

NOTE: This prohibition includes the use of different house rules for different tenants. For instance, owners must not have more stringent noise requirements for families with children than for families without children.

2. Failing to provide or delaying maintenance on rental units;

3. Failing to process a rental offer;

4. Limiting the use of privileges, services, or facilities associated with renting a unit; and

5. Denying or limiting services because the renter failed or refused to provide sexual favors, or providing extra benefits to an individual in exchange for the provision of sexual favors.

C. Federal discrimination laws generally prohibit housing providers from implementing policies or practices that appear to be neutral on their face but have a significant adverse or disproportionate impact on persons based on race, color, religion, sex, national origin, familial status, or disability.

2-19 Discrimination in Marketing, Statements, and Notices

A. Owners must market available units in a nondiscriminatory manner.

1. This requirement covers printed or published notices, statements, or advertisements. Examples of notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards, or other documents used to market available units. For additional information about advertising requirements, please refer to paragraph 4-12 D.

2. The marketing requirement also covers oral notices or statements.

B. Actions prohibited by this requirement include, but are not limited to, the following:

1. Using words, phrases, photographs, illustrations, symbols, or forms that suggest that units are available or not available to certain people based on race, color, religion, sex, disability, familial status, or national origin;

2. Expressing to agents, brokers, employees, prospective renters, or any other person a preference for or limitation on any renter based on race, color, religion, sex, disability, familial status, or national origin;

3. Selecting media or locations for advertising the renting of units that are unlikely to attract particular people to apply for occupancy at the property because of race, color, religion, sex, disability, familial status, or national origin; and

4. Refusing to advertise for the rental of units or requiring different charges or terms for such advertising based on race, color, religion, sex, disability, familial status, or national origin.

C. For additional information on marketing and Affirmative Fair Housing Marketing Plans, see Chapter 4, Section 2.

2-20 Retaliatory Occupancy Practices, Coercion, Intimidation, and Interference

A. It is unlawful to coerce, intimidate, threaten, or interfere with any person's exercise or enjoyment of any Fair Housing right described in this chapter. It is also unlawful to take such action on account of a person's actions to aid or encourage any other person in the exercise or enjoyment of any Fair Housing rights described in this chapter.

B. Some examples of threatening activities based on race, color, religion, sex, disability, familial status, or national origin include, but are not limited to, the following:

1. Intimidating or threatening a person verbally, in writing, or in some other way that results in that person being denied the benefits of living in a unit (including creating an environment hostile to applicants or tenants with respect to one or more of the prohibited bases listed above);

2. Threatening, intimidating, or interfering with a person's enjoyment of a dwelling because of the race, color, religion, sex, disability, familial status, or national origin of such person, or of visitors or associates of such person (including sexual harassment);

3. Threatening an employee or agent with firing or other negative action for any legal, nondiscriminating, pro-regulatory, effort to help someone rent a unit;

4. Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of Fair Housing rights, or encouraging such other persons to exercise their Fair Housing rights as described in this chapter;

5. Failing to investigate and address allegations that a tenant or group of tenants is harassing or threatening another tenant because of that tenant's race, color, national origin, sex, religion, disability, or familial status.

6. Retaliating against a person who has made a complaint, testified, or in any way assisted with proceedings under the Fair Housing Act.

Section 3: Additional Nondiscrimination and Accessibility Requirements for Persons with Disabilities

Subsection 1: Overview and General Requirements

2-21 Key Regulations

This paragraph identifies key regulations pertaining to Section 3: Additional Nondiscrimination and Accessibility Requirements for Persons with Disabilities. The citations and their titles are listed below.

A. 24 CFR, part 8 Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development. (Section 504 of the Rehabilitation Act of l973)

B. 24 CFR, part 100 Discriminatory Conduct under the Fair Housing Act.

C. 24 CFR, part 108 Compliance Procedures for Affirmative Fair Housing Marketing.

2-22 Introduction

A. As discussed in Paragraph 2-5 above, the Fair Housing Act establishes specific nondiscrimination and accessibility requirements for housing sold and rented in the United States for nearly all housing, regardless of whether the housing receives any federal financial assistance.

B. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against persons with disabilities and establishes accessibility requirements by recipients of federal financial assistance in both housing and nonhousing programs. Although there is significant overlap between the Fair Housing Act nondiscrimination requirements with respect to disability and Section 504, Section 504 imposes additional broader obligations on recipients of federal financial assistance. Properties covered by this handbook are subject to the requirements of Section 504 and therefore, owners of such properties have

affirmative obligations to establish and implement nondiscrimination policies and to ensure required accessibility to persons with disabilities.

C. Section 504 establishes certain affirmative accessibility standards that owners must meet regardless of whether or not an applicant or tenant has made an individual request for a reasonable accommodation. (For information on reasonable accommodations, refer to Subsection 4 of this section.)

1. The owner's obligations include making the property physically accessible as well as operating and administering the property to enable persons with disabilities to have equal access to participate in the program.

2. This means not only that units and common areas must be physically accessible, but that owners also must ensure effective communications with applicants, tenants, and the public, and that policies regarding how the property is operated do not adversely affect applicants, tenants, and the public.

3. Under both the Fair Housing Act and Section 504, housing providers are obligated to provide reasonable accommodations to allow applicants with disabilities to meet the requirements of tenancy. The requirement to provide a reasonable accommodation is present at all times throughout the tenancy of a person with disabilities, including during lease enforcement. See discussion in Subsection 4.

4. In all discussions of accessibility under Section 504, a unit cannot be considered fully accessible unless it meets the requirements of the Uniform Federal Accessibility Standards, 24 CFR 8.32. Note that UFAS does not consider a unit to be fully accessible if it is not on an accessible route.

D. This section discusses how Section 504 and the disability/accessibility provisions of the Fair Housing Act apply to housing, and it addresses situations where both laws apply. In this respect, where a property is subject to more than one law or nondiscrimination or accessibility standard, it is necessary to comply with all applicable requirements. In some cases, it may be possible to do this by complying with the stricter requirement. Section 504 and the Fair Housing Act overlap, but in many ways Section 504 is the more stringent of the two.

E. For purposes of this section, the requirements and procedures described refer to Section 504, unless the Fair Housing Act is specifically referenced.

F. This section continues with an overview of key requirements regarding nondiscrimination and accessibility and then covers the following topics in more detail.

1. Subsection 2: Policies and Procedures to Ensure Nondiscrimination and Promote Accessibility.

2. Subsection 3: Physical Accessibility.

3. Subsection 4: Reasonable Accommodations.

4. Subsection 5: Additional Fair Housing Act Requirements.

2-23 Definition of Persons with Disabilities for Civil Rights Protections versus Program Eligibility Purposes

A. Definitions with Respect to Civil Rights Protections

1. Section 504 establishes definitions for **persons with disabilities** and **disability** that differ from the definitions established in multifamily subsidized housing program regulations for purposes of determining program eligibility.

2. The complete Section 504 definition of these terms is included in the Glossary and identified as:

   a. Persons with disabilities; and

   b. Disability.

3. When the handbook uses these terms with respect to civil rights protections, it is usually in the context of nondiscrimination or accessibility requirements, such as a discussion of requests for reasonable accommodations by applicants or tenants. In this context, the civil rights-related definitions apply.

   Note: A person who meets the definition of a person with disabilities as defined for civil rights protections may or may not meet the definition of a person with disabilities as defined for program eligibility purposes.

B. Definitions for Program Eligibility Purposes

1. In determining eligibility for admission to HUD-subsidized multifamily properties, owners must use the definitions for disabled family, disabled household, persons with disabilities, and nonelderly disabled family as presented in Chapter 3, Figure 3-6 and also presented in the Glossary.

2. When the handbook uses these terms with respect to program eligibility, it is usually in the context of an applicant's eligibility for a specific type of project, such as Section 202/8 or Section 811 PRAC project, or for a specific set-aside within a property for persons with disabilities.

2-24 Applicability

This section covers the nondiscrimination and accessibility requirements applicable to the occupancy of existing housing for which the owner receives federal financial assistance.

NOTE: For the related accessibility requirements that apply to the development of new properties, refer to the HUD Handbooks and other HUD guidance specific to the program providing assistance to the project, the Section 504 regulations and program regulations.

2-25 Overview of Key Requirements

A. Nondiscrimination and Accessibility Requirements

Under Section 504, owners must operate each existing housing project so that, when viewed in its entirety, it is readily accessible to and usable by persons with disabilities. This includes the following actions by owners:

1. Making modifications to policies and practices so they do not discriminate against persons with disabilities. (See Subsection 2.)

2. Taking appropriate steps to ensure effective communication with applicants, tenants, and the public. Owners must use requests by persons with disabilities to determine which alterations and auxiliary aids are necessary. (See Subsection 2.)

   NOTE: HUD encourages owners to provide auxiliary aids, as necessary, as a routine property expense. HUD assumes that requests for auxiliary aids will not normally result in undue financial and administrative burden.

3. Taking required steps to meet the 5% threshold for units fully accessible to persons with mobility impairments and the 2% requirement for units accessible for persons with visual and hearing impairments. (See Subsection 3.)

4. Making public spaces and dwelling units accessible, provided that the changes do not result in an undue financial and administrative burden or require fundamental alterations in the nature of their programs. (See Subsections 3 and 4.)

5. Responding to reasonable accommodations requests from tenants or applicants with disabilities for adjustments to policies or physical alterations. (See Subsection 4.)

B. **Projects with Multiple Contracts**

When a project is covered by more than one assistance contract, it is considered to be one project as long as it meets the definition of a project shown below as defined in 24 CFR 8.3.

Project means the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots that are covered by a single contract for federal financial assistance or application for assistance, <u>or are treated as a whole for processing purposes</u>, whether or not located on a common site. *[24 CFR 8.3]*

C. **Allowable Methods of Compliance**

Owners may comply through such means as reassigning services to accessible buildings, providing housing services or related services at alternate sites, or altering existing facilities. Also, owners may use any other methods that result in making the project and its activities readily accessible to and usable by persons with disabilities.

Examples of such other methods include offering an alternate rental office location; putting up signs identifying facilities for persons with disabilities; relocating/enlarging a parking space for persons with disabilities in compliance with UFAS; installing a visual smoke detector; installing a ramp; or making curb cuts or modifying curbs.

D. **Prioritizing Methods**

In deciding on ways to achieve accessibility for persons with disabilities, owners must give priority to methods that offer housing in the most integrated setting possible (i.e., a setting that enables qualified persons with disabilities and persons without disabilities to interact to the fullest extent possible).

E. **Accessible Unit Requirements**

To the maximum extent feasible and subject to reasonable health and safety requirements, accessible units must be:

1. Distributed throughout the project and site; and

2. Made available in a sufficient range of sizes and amenities so that the choice of living arrangements of qualified persons with disabilities is, as a whole, comparable to that of other persons eligible for housing assistance under the same program.

See Exhibit 2-1 for an explanation of reasonable requirements

NOTE: Any housing constructed for first occupancy after March 13, 1991, must be designed in accordance with the design and construction requirements of the Fair Housing Act in addition to the Section 504 requirements on accessibility. See paragraph 2-45.

2-26 Technical Resources

A. Regulation implementing Section 504 of the Rehabilitation Act of 1973 [24 CFR, part 8] and preamble [FR Vol. 53, No. 106, 10216].

B. Regulation implementing the Fair Housing Amendments Act of 1988 [24 CFR, part 100] and preamble [FR Vol. 54, No. 13, 3232].

C. Uniform Federal Accessibility Standards (UFAS). Individual copies are available from the Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW, Suite 1000, Washington, D.C. 20004-1111, Telephone: 202-272-0080, TTY: 202-272-0082, email address: info@access-board.gov. Orders of 25 or more copies will be referred to the publisher.

D. Adaptable Housing, Marketable Accessible Housing for Everyone, November 1987 (HUD-1124-PD4).

E. Listing of ADA Regulations and Technical Assistance Materials, Department of Justice, available on the Web at *****http://www.usdoj.gov/crt/ada/publicat.htm.*****

F. Title II Technical Assistance Manual, Department of Justice, available on the Web at http://www.usdoj.gov/crt/ada/taman2.html.

NOTE: This manual addresses not only Title II, but also Title III of the ADA, which applies to public accommodations and commercial facilities. Although this publication is written for ADA requirements, its principles are also applicable to Section 504 compliance.

Subsection 2: Policies and Procedures to Ensure Nondiscrimination and Promote Accessibility

2-27 Nondiscrimination in Owner Policies

A. Both Section 504 and the Fair Housing Act prohibit owners from following policies or practices that discriminate overtly on the basis of disability.

Example – Discriminatory Policies and Practices

An owner may not have a policy requiring tenants with disabilities to carry personal liability insurance, when it does not require tenants without disabilities to carry such insurance.

An owner may not have a policy which prohibits tenants from having live-in-aides or using assistive devices in certain parts of the premises.

B. Owners are also obligated to modify any neutral policies which have the effect of discriminating on the basis of disability.

Example – Neutral Discrimination Policies

An owner must modify a no animals policy to allow a tenant with a disability who needs an assistance animal as a result of his or her disability, to have that animal.

NOTE: Housing policies that owners can demonstrate are essential to the project will not be regarded as discriminatory under this requirement if modifications to such policies would result in a fundamental alteration in the nature of the housing program or activity or undue financial and administrative burden. (See paragraph 2-42.)

C. Owners must not fail to provide reasonable accommodations when such accommodations may be necessary to afford a person with disabilities equal opportunity to use and enjoy a dwelling unit and the public and common areas. (Refer to Subsection 4: Reasonable Accommodations for more information about reasonable accommodations.)

D. Owners must ensure that their policies and procedures do not have a disparate or impact on persons with disabilities. Refer to paragraph 2-18 C for a discussion of disparate impact.

E. Owners are not required to provide supportive or other services (e.g., counseling, medical or social services) that fall outside the scope of the applicable housing program for the property. The test for what the owner must provide is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered, not whether the applicant/tenant could benefit or obtain results from some other program that the owner does not offer.

NOTE: Applicants who need services not provided by the project must be allowed to arrange for those services on their own.

2-28 Coordinating Efforts to Comply with Section 504 Requirements

When an owner, managing entity, or project employs 15 or more people, regardless of their location or duties, the owner or managing entity must also designate one person for the property to coordinate efforts to comply with Section 504 requirements. This does not exempt owners, managing entities, or projects with fewer than 15 employees from complying with Section 504 requirements, but merely exempts the owner from having to designate a person to coordinate compliance efforts. At the owner's discretion, this person may handle Section 504 matters for more than one property.

2-29 Communications with Persons with Disabilities

A. **Overview**

1. Owners must take steps as described under this paragraph to ensure effective communication with applicants, tenants, and members of the public.

   IMPORTANT: The owner has the same obligation to provide effective communication to interested persons, applicants, and residents, regardless of whether it is ultimately determined that a particular individual is in fact income-eligible or otherwise qualified for admission to the project. (See paragraph 2-23 or the Glossary)

2. Owners are not required to take any actions under this paragraph that the owner can demonstrate would result in a fundamental alteration in the property or program or in an undue financial and administrative burden.

3. Owners must take steps to the maximum extent feasible to accommodate requests under this subsection for effective communication with persons with disabilities. This means that owners must make alternate accommodations up to the point at which further accommodations would result in either a fundamental alteration in the nature of the project or program or in undue financial and administrative burden.

B. **Providing Auxiliary Aids to Ensure Effective Communication with Hearing- and Speech-Impaired Individuals**

1. Owners must provide auxiliary aids where necessary to give tenants and applicants with disabilities equal opportunity to receive and enjoy the benefits of the project/assistance. See also Exhibit 2-2 for examples.

2. In furnishing auxiliary aids needed by persons with disabilities, owners should give primary consideration to the types of aids requested by the individual.

Example - Reasonable Requests for Auxiliary Aids

Requests for auxiliary aids may include the following: visual alarms; tactile signs; visual doorbell; reader; interpreter; applications, leases, and other information/ communications in large print or Braille; recordings of such information; and a television, in a public area, that provides closed-captioning service.

3. Appropriate auxiliary aids do not include individually prescribed devices.

Example - Auxiliary Aids that Owners Are Not Required to Provide

Requests for auxiliary aids that owners are not required to provide include reading machines, hearing aids, or personal items (e.g., an alarm clock with visual signal, computer, wheelchair, assistance animals, readers for personal use, TTY in tenant's unit, and eyeglasses).

C. **Written Communications**

1. Owners must accommodate requests by persons with disabilities to have written materials presented in a manner which can be understood by those individuals. However, requests for provision of written materials in a specific form may not have to be fulfilled if to do so would result in an undue financial and administrative burden.

Example - Written Communications that Owners Must Make Available to Persons with Disabilities

Written communications include applications, leases, **HUD-50059s**, tenant/applicant letters, and responses to inquiries.

2. If such a determination is made, owners must seek alternative ways of presenting written communications to meet the individual's needs that, to the maximum extent possible, ensure that persons with disabilities receive the benefits and services of the program or activity.

3. Written communications must state that the owner does not discriminate against persons with disabilities. (See suggested language in Exhibit 2-3.)

4. Owners, managing entities, or projects with 15 or more employees must ensure that written communications identify an employee named to coordinate compliance with nondiscrimination requirements. (See Exhibit 2-3.)

5. Owners must ensure that any fact sheets, brochures, notices, literature, or publicity of any kind accomplish the following:

   a. Give information concerning the existence and location of services, activities, and facilities that have features that make them accessible to persons with disabilities.

Example - Communicating Accessibility Features

When an owner lists a telephone number, he/she must also list a TTY number or an equally effective system.

When a property is fully accessible, that fact must be stated or the universal symbol for accessibility should be used.

   b. State that the owner does not discriminate on the basis of disability in admission or access to the project.

   c. Give the name (or position), address, and telephone number of the employee designated to coordinate the owner's efforts to comply with Section 504. (This subparagraph applies to owners, managing entities, or projects employing 15 or more people.)

NOTE: Affirmative fair housing marketing must meet the requirements in 24 CFR, part 108 Fair Housing Advertising. Prohibitions related to discriminatory advertising are described in 24 CFR 100.75. Consult with the Office of Fair Housing and Equal Opportunity for further information.

D. **Telecommunications**

Where an owner uses a telephone to communicate with members of the public, applicants, and tenants, the owner must use a telecommunications device suitable for the hearing-impaired (TTY) or equally effective communication system (such as a TTY relay service). Owners must provide TTY, unless the phone company offers it. Exhibit 2-4 presents an optional checklist to determine whether a communication system is an equally effective alternative to the TTY.

NOTE: Small properties, where the owner relies on face-to-face communications only and does not use a telephone to communicate with tenants or the public, are exempt from the requirements of this paragraph. However, the owner must provide alternative effective means of communication with persons with disabilities.

2-30 Information about Availability of Accessible Units

A. Owners must have policies and practices to ensure that information about the availability of accessible units reaches eligible persons with disabilities. (See Chapter 4, Section 2, for information about marketing.)

B. HUD also encourages owners to maintain contact with sources/agencies in the community who provide services to persons with disabilities so that, when accessible units become available, persons in need of these units may have the opportunity to live in them.

2-31 Determining Eligibility of Applicants for Admission and Assistance

A. In applying the nondiscrimination requirements of Section 504 and the Fair Housing Act regarding persons with disabilities, owners must ensure that the policies used at properties covered by this section are consistent with the requirements in this paragraph and paragraphs 2-32 and 2-33 below.

B. Owners must determine the eligibility of each applicant on a case-by-case basis.

C. Owners must admit applicants in accordance with the eligibility requirements of the particular program/project. (See Chapter 3.)

D. Owners must uniformly apply the eligibility and tenant selection criteria to all applicants. (See Chapter 4.)

E. Owners must not make certain inquiries to determine eligibility.

1. The Fair Housing Act regulations state that it is unlawful for an owner to inquire:

   a. Whether an applicant for a dwelling, a person intending to reside in a dwelling after it becomes available, or anyone associated with an applicant or resident, has a disability; or

   b. As to the nature or severity of a disability of such person(s).

2. Owners may, however, make the following inquiries, provided these inquiries are made of all applicants, whether or not they are persons with disabilities:

   a. Inquiry into an applicant's ability to meet the requirements of tenancy; and

   b. Inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance.

3. Some properties may be lawfully restricted to persons with disabilities in general, or to persons that fall within one or more of three categories of disability (i.e., physical disability, developmental disability, chronic mental illness), such as Section 811 PRAC properties or Section 202 Direct Loan properties. Owners of such properties may make inquiries of all applicants to determine whether:

   a. An applicant qualifies for the housing that is available only to persons with disabilities, or to members of the category of disability served by the project; and

   b. An applicant qualifies for a priority available to persons with disabilities or to persons with a particular category of disability.

4. It is unlawful for an owner to make inquiries designed to determine whether an applicant may live independently.

5. It is a good practice for a property's rental application to define disability per program requirements and then ask if the applicant qualifies as a person with disabilities under that definition. The application should also advise all tenants that if they have a disability, and need a reasonable accommodation in order to participate in the application process or to make effective use of the housing program, they have the right to request such an accommodation. The application should define reasonable accommodation and explain the process by which the housing provider will consider requests for reasonable accommodations.

6. For a discussion of applicable marketing, application, and screening practices, see Chapter 4.

Example – What Owners May Ask or Must Not Ask Applicants Applying for Accessible Units

An owner offers accessible units to persons needing the features of these units on a priority basis. The provider may ask applicants whether they have a disability such that they will benefit from the features of the units, but may not in such circumstances ask applicants whether they have other types of impairments.

F. Owners may verify a person's disability but must adhere to certain verification guidelines.

1. The owner may verify a person's disability only to the extent necessary to document that applicants:

   a. Are qualified for the housing for which they are applying **(see Figure 3-5 on determining project eligibility and Figure 3-6 for applicable disability definitions by program type):**

   b. Are qualified for deductions used in determining adjusted income;

   c. Are entitled to any preference they may claim;

   d. Who have requested a reasonable accommodation have a disability-related need for the requested accommodation or modification; and

   e. Need the design features of the unit.

2. Owners may not require applicants to provide access to confidential medical records in order to verify a disability.

3. Additional information on verifying eligibility of persons with disabilities can be found in paragraph **3-28** B and in **Appendix 6**.

2-32 Assigning Accessible Units

A. Applicability

The requirements of this paragraph apply to the following projects and dwelling units:

1. Projects with five or more units.

   NOTE: HUD recommends that owners of projects with fewer than five units follow these policies to the extent practicable.

2. Units made accessible under Section 504 as described in Subsection 3 and units designed for disabled families/households when the project was approved for funding.

B. **Eligibility for Accessible Units**

1. A percentage of units in most properties contain accessible features. Eligibility for these accessible units may be limited to a specific population (e.g., persons with mobility impairments). (See Chapter 3, Section 2, for more information about project eligibility.)

2. Owners must place applicants eligible for an accessible unit on the waiting list in accordance with the property's waiting list procedures. (See Chapter 4, Section 3, for more information about waiting list management.)

3. Owners may not prohibit an eligible family with a member who has a disability from accepting a suitable nonaccessible unit if no accessible unit is available when the family reaches the top of the waiting list. Owners must make physical alterations to the nonaccessible unit as a reasonable accommodation, unless the alterations would result in an undue financial and administrative burden.

4. If an appropriate-size accessible unit is not available, owners may house an applicant needing an accessible unit in a larger accessible unit in order to maximize the use of the accessible features.

C. **Order When Assigning Accessible Units**

Section 504 requires that owners take reasonable, nondiscriminatory steps to maximize the use of accessible units by eligible individuals whose disability requires the accessibility features of a particular unit. As part of this requirement, owners must assign available accessible units to tenants/applicants in the following order:

1. When there is a current tenant or qualified applicant with a household member requiring accessibility features of the unit:

   a. Current Tenants. Owners must first offer the unit to an individual with disabilities currently residing in a nonaccessible unit in the same project or comparable project under common control, who requires the features of the unit;

b. Applicants with Disabilities. If no current tenants require the special features of the accessible unit, the owner must then offer the unit to the next qualified applicant on the waiting list with a family member who needs the features of the accessible unit.

2. When neither a current tenant nor a qualified applicant requires the features of the available accessible unit:

a. Owners may offer the unit to another tenant or applicant in a manner consistent with the property's tenant selection policy and should incorporate into the lease an agreement that the tenant will move to a nonaccessible unit of the proper size within the same property when one becomes available. The lease should state whether the tenant or the owner will pay for the cost of such moves. (See paragraph **3-23** on occupancy standards and overcrowded and underutilized units, and paragraph 4-4 C on tenant selection plans.)

b. In the case where the members of the tenant household who required the special features of the accessible unit no longer reside in the unit, and where the lease permits, owners should require the remaining members of the household to move to a unit without accessibility features. The Department strongly suggests that owners incorporate this provision as an addendum to the lease to avoid placing themselves in a situation of having to retrofit additional units.

2-33 Moving Tenants Who Require Special Features into Accessible Units

A. If a member of a tenant household becomes disabled with an impairment that requires special accessibility features and the tenant requests an accessible unit, an owner may move that tenant into an accessible unit in lieu of making the tenant's existing unit accessible and usable. (See Chapter 4 for more information.) However, if a tenant needs only minor modifications to his or her unit, and does not need a fully accessible unit, the landlord should make the modifications and leave the project's fully accessible units available for tenants who need such units.

B. If a member of a tenant household is a person who does not need specific accessible features, but whose disability requires that they live on a particular floor or location on the floor, the owner must move that tenant household to the new unit. If such a unit is not available, the owner should assign the tenant to the next available unit that meets the need of the tenant. This accommodation must be based on the tenant's disability-related need for the particular floor or location on the floor, and not based on the tenant's personal preferences.

C. **If a tenant household is being moved to a different unit as a reasonable accommodation to a household member's disability, then the owner must pay for the move unless doing so would constitute an undue financial and administrative burden.**

Example – When Owners Should Move Tenants to Accessible Units

The head of household's grandmother, who is a member of the household, cannot climb the two flights of stairs to the unit because she has arthritis in her knees. The head of household requests that they be moved to a unit on the ground floor. The owner must move the household to the next available ground floor unit. If there are no ground floor units of the correct bedroom size expected to be available within a reasonable time (e.g., 30 days), the owner may make a unit available by requiring a tenant in a ground floor unit who is overhoused or underhoused to move to a unit within the project that is the correct size for the household.

2-34 Owner Self-Evaluation

A. The Section 504 regulations required recipients of federal financial assistance to conduct a self-evaluation of their policies and practices to determine if they were consistent with the requirements of this section of the Rehabilitation Act of 1973. The regulations required owners to have completed their self-evaluations no later than July 11, 1989.

B. The Section 504 regulations establish owners' ongoing responsibility to operate their programs so that they are, when viewed in their entirety, accessible to and usable by persons with disabilities *[24 CFR 8.24]*. Although the regulatory deadlines for completing self-evaluations have now passed, the self-evaluation continues to be an excellent management tool for ensuring that the owner's current policies and procedures comply with the requirements of Section 504.

C. HUD strongly recommends that owners periodically update their self-evaluations as one way to help ensure compliance. Updates are particularly important if there have been alterations to units or units have been added or demolished. When updating the self-evaluation and implementing its results, owners should take the following steps.

1. Evaluate current policies and practices, and analyze them to determine if they adversely affect the full participation of individuals with disabilities in the owner's programs, activities, and services.

   NOTE: Information on technical resources regarding Section 504 accessibility requirements can be found in paragraph 2-26.

2. Modify any policies and practices that are not or may not be in compliance with Section 504.

3. Take appropriate corrective steps to remedy those policies and practices that are either discriminatory or have a discriminatory effect.

4. Document the process and activities used to update the self-evaluation.

NOTE: Under Section 504 regulations, owners were required to complete one self-evaluation. HUD does not review or approve any subsequent self-evaluations that owners may wish to complete.

D. Owners, managing entities, or projects employing 15 or more persons were required to maintain on file, make available for public inspection, and provide to the Office of Fair Housing and Equal Opportunity upon request the information below for at least three years following completion of the evaluation:

1. A list of the interested persons consulted;

2. A description of areas of the project the owner examined and any problems identified; and

3. A description of any modifications the owner made and of any remedial steps taken.

E. Section 504 also required owners to develop a transition plan for completing structural changes needed to make the property readily accessible to and usable to persons with disabilities by July 11,1991. Owners were required to prepare the plan by January 11, 1989.

1. Although the deadlines for preparing and implementing the plan have passed, transition plans are an excellent management tool for ensuring continued compliance when structural alterations to a property (e.g., building additional units) require further action to continue meeting the physical accessibility requirements of Section 504.

2. Owners were expected to develop the plan with the assistance of interested persons. HUD recommends that transition plans include the following items that were originally required for inclusion in these plans.

a. Identify physical obstacles in the property that limit accessibility to persons with disabilities.

b. Describe in detail the methods that will be used to make the project accessible.

c. Specify the schedule for taking steps to achieve compliance with the requirements for structural changes, including making a minimum of 5% of the units accessible to persons with mobility impairments. If the time period covered by the transition plan is longer than one year, the plan must identify steps that will be taken during each year of the transition period.

d. Indicate the person (and his/her title) responsible for implementing the plan.

e. Identify persons or groups who helped the owner prepare the plan.

Subsection 3: Physical Accessibility

2-35 Owners' Requirements for Providing Physical Accessibility

A. General

In addition to ensuring that projects are operated in a manner that protects against discrimination and promotes accessibility for persons with disabilities to enable them to participate fully in the program, there are also requirements regarding the physical accessibility of properties.

B. Federally Assisted Multifamily Properties Built after July 11, 1988

Federally assisted multifamily properties built after July 11, 1988 were required to be constructed to comply with the Section 504 accessibility requirements contained in 24 CFR 8.22. This regulation requires that a minimum of 5% of the units in newly constructed multifamily housing be fully accessible in accordance with the Uniform Federal Accessibility Standards (UFAS) and an additional 2% be accessible to persons with visual and hearing impairments. This obligation is an absolute requirement and should have been met during construction. For buildings that fall within this category, an owner may not justify a failure to have met these requirements because of an undue financial and administrative burden.

C. Accessible Routes

Owners must provide accessible routes to and throughout the property (curb cuts or modifications, i.e., ramps) and provide accessible parking spaces in an accessible location as long as such improvements would not result in an undue financial and administrative burden.

D. **Common Use Facilities**

Owners must make common use facilities, or parts of facilities, and public spaces accessible to persons with disabilities, as long as such improvements would not result in an undue financial and administrative burden. This responsibility means that owners must do everything feasible to make these areas accessible up to the point at which any further modifications or improvements would result in an undue financial and administrative burden.

1. Public spaces include but are not limited to community rooms, laundry and trash rooms, parking spaces, entrances, sidewalks, public restrooms, and the management office.

   NOTE: If the common use facilities are rented to the public or a business operates out of this space, Title II and/or Title III of the Americans with Disabilities Act may also apply to these facilities. For further information on this subject, please refer to the Department of Justice website at www.usdoj.gov/crt/ada/taprog.htm.

2. Owners do not have to make each location of an amenity or facility accessible to persons with mobility impairments (e.g., each laundry room, each trash room, each entrance).

   a. An owner may decide to make one laundry room in a central location accessible to tenants with mobility impairments, or make the main entrance accessible but not the side entrances. However, if only one entrance or amenity is accessible, it must be accessible to tenants with mobility impairments who live in any part of the development. For example, it would not be appropriate to make only one laundry room accessible if the property had multiple buildings, and only tenants with mobility impairments had to go out in inclement weather to do their laundry.

   b. The owner must make one-of-a kind amenities or facilities accessible and usable to persons with disabilities or provide an alternative means for accessibility (management office, community space, public restroom).

E. **Physical Alterations to Existing Housing**

1. <u>Substantial alterations</u>.

   If an owner undertakes physical alterations to a property that has 15 or more units and the cost of the alterations is 75% or more of the replacement cost of the completed property, then the owner must follow the new construction provisions of 24 CFR 8.22 (a) and (b) which requires that a minimum of 5% of the units be made accessible for persons with

mobility impairments, and 2% of the units be made accessible for persons with visual and hearing impairments.

2. Other alterations.

a. When an owner undertakes any other alterations to a multifamily property covered by this handbook that do not qualify as substantial alterations as described above in subparagraph D.1, such alterations must be accessible, to the maximum extent feasible, until at least 5% of the units are accessible for persons with mobility impairments, and 2% of the units are accessible for persons with visual and hearing impairments unless HUD prescribes a higher number pursuant to 24 CFR 8.23 (b) (2).

b. If alterations of single elements of a dwelling unit, when considered together, amount to an alteration of the dwelling unit, the owner must make the entire dwelling unit accessible.

c. When the owner is not altering the entire unit, 100% of single elements being altered must be made accessible until 5% of the units in the property are fully UFAS accessible.

(1) However, HUD strongly encourages owners, when undertaking alterations, to make 5% of the units in a property accessible up front, as that will avoid the necessity of making every element altered accessible, which may result in having partially accessible units of little or no value for persons with mobility impairments, and is likely to be more costly overall.

(2) HUD recommends owners include up to 2% of the units for persons with hearing and vision impairments.

d. See paragraph 2-43 and 24 CFR 8.23 (b) (1) for exceptions due to undue financial and administrative burden and 24 CFR 8.32 (c) for exceptions regarding alterations that require removing or altering load-bearing structural members.

3. Under Section 504, owners are not required to make structural changes in existing housing facilities where other methods, which may not cost as much, are effective in making federally assisted housing programs or activities readily accessible to and usable by persons with disabilities.

2-36 Building Standards

A. In making physical changes to dwelling units or to common areas, facilities, and parking, owners:

1. Must follow the Uniform Federal Accessibility Standards (UFAS). (See paragraph 2-26.); or

2. May depart from particular technical and scoping requirements of UFAS, if they use other methods that provide substantially equivalent or greater access to and usability of the building.

B. Tenant modifications to units must be done in accordance with paragraph 2-47.

2-37 Limitations on Owners' Obligations to Make Their Housing Physically Accessible to Persons with Disabilities

A. Owners are not required to make structural changes where other methods are effective in achieving compliance with paragraph 2-35.

B. Owners are not required to make alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member. See 24 CFR 8.32(c).

C. In some cases, an accessible building entrance cannot be provided without triggering one of the actions in subparagraph B above or resulting in undue financial and administrative burden. In such cases, an owner will have to take other reasonable steps to insure program accessibility, including in some cases, making additional units accessible in other buildings operated by the owner.

D. Owners do not have to make mechanical rooms and other spaces accessible when, because of their intended use, they do not require accessibility by the public, by tenants, or by employees with physical disabilities.

E. Owners are not required to install an elevator solely for the purpose of making units accessible.

Subsection 4: Reasonable Accommodations

2-38 General

A. In addition to owners' affirmative obligations to operate their properties in a nondiscriminatory manner and the specific requirements to make properties physically accessible to persons with disabilities, owners must also consider requests for reasonable accommodations from applicants and tenants with disabilities.

B. An owner's responsibility to consider requests for reasonable accommodations is separate and distinct from the nondiscrimination and accessibility requirements discussed above in Subsections 2 and 3.

C. It is strongly recommended that owners include statements about the right of individuals with disabilities to request reasonable accommodations in all written notices given to applicants and tenants.

2-39 What Are Reasonable Accommodations?

A. A reasonable accommodation is a change, exception, or adjustment to a program, service, building, dwelling unit, or workplace that will allow a qualified person with a disability to:

1. Participate fully in a program;

2. Take advantage of a service;

3. Live in a dwelling; or

4. Perform a job.

B. Reasonable accommodations include, for example, those that are necessary for a person with a disability to use and enjoy a dwelling.

C. To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

2-40 Key Principles Regarding Reasonable Accommodations

A. When a family member requires an accessible feature(s), policy modification, or other reasonable accommodation to accommodate a disability, the owner must provide the requested accommodation unless doing so would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden. A fundamental alteration is a modification that is so significant that it alters the essential nature of the provider's operations.

B. If providing such accommodation(s) would result in an undue financial and administrative burden, the owner must take any other action that would not result in an undue burden. See Section 2-46 B.

C. If a provider refuses a requested accommodation because it is not reasonable, the provider should engage in an interactive dialogue with the requester to determine if there is an alternative accommodation that would adequately address the requester's disability-related needs. If an alternative accommodation would meet the individuals needs and is reasonable, the provider must grant it.

D. Under both Section 504 and the Fair Housing Act, a tenant or applicant for housing makes a reasonable accommodation request whenever he or she makes it clear to the housing provider that a request is being made for an exception, change, or adjustment to a rule, policy, practice, service, or physical structure because of his or her disability. A request can be made by the person with the disability, a family member, or someone else acting on the individual's behalf.

E. Although a request can be made orally or in writing, it is usually helpful for both the individual with the disability and the housing provider if the request is reduced to writing. If the individual with a disability requires assistance in providing a written reasonable accommodation request, the housing provider should assist the individual with a disability with this request.

F. Providers have an obligation to provide prompt responses to reasonable accommodations requests.

2-41 Reasonable Accommodations – Property Operations

Owners must make reasonable adjustments to their rules, policies, practices, and procedures in order to enable an applicant or resident with a disability to have an equal opportunity to use and enjoy the unit and the common areas of a dwelling, or to participate in or have access to other activities conducted or sponsored by the owner.

2-42 Reasonable Accommodations – Physical Alterations

A. Generally, owners subject to Section 504 requirements must make and pay for structural modifications to dwelling units and common areas when needed as a reasonable accommodation based on a request by a tenant or applicant with a disability

NOTE: Alterations and structural changes must be made in conformance with paragraph 2-36 A, Building Standards.

B. If the owner provides a reasonable accommodation by making a requested structural modification to a unit, this does not mean that the unit can automatically be counted as a fully accessible unit that meets the UFAS standard, unless the modifications made by the owner actually bring the unit into compliance with that standard.

Example – When Owners Must Make Reasonable Accommodations

An owner has a policy of updating its waiting list by sending out letters to applicants to see if they are still interested in being on the waiting list. If a person does not respond within a certain amount of time, the owner removes the individual from the waiting list. Because of an individual's disability, he is unable to understand the nature of this communication and therefore does not respond to the letter. If requested, the owner would have to reinstate the person to the original place on the waiting list as a reasonable accommodation to that individual's disability.

An owner that does not allow residents to have animals must modify the property's policies and allow a tenant with a disability to have an assistance animal if the animal is needed as a reasonable accommodation. (See paragraphs 2-44, **3-29** and 4-24 B for more information about assistance animals as a reasonable accommodation.)

An owner has a policy of only sending rent notices and other documents to tenants. An applicant with a disability that periodically results in temporary memory loss requests as a reasonable accommodation that a copy of all rent notices and requests for information also be sent to a relative who lives in the community. The owner should modify this policy and send the notices to the designated individual in order to give the resident an equal opportunity to use her dwelling and comply with her lease obligations.

An owner requires tenants to pay rent by personal check. One resident has a disability and is unable to manage a personal checking account. The owner must allow that resident's request for an accommodation to pay rent in cash or by money order, as this is a reasonable adjustment to the property's procedures that will allow this resident to have an equal opportunity to participate in the housing program.

Example – Requests for Reasonable Accommodations or Housing Adjustments

An applicant who is hearing impaired has been determined to be otherwise qualified under program requirements and the owner's tenant selection plan. The applicant asks that her unit be fitted with a visual smoke detector. The owner must accommodate the request unless it would result in undue financial and administrative burden. This limitation applies to all of the examples.

An individual with a mobility impairment requests that grab bars be installed in the bathroom.

A visually impaired tenant requests a name plate/unit number in Braille on mailbox.

A hearing-impaired tenant requests visual intercom to know when guests have arrived and to receive notice that he has messages at the office. If owner already provides some type of intercom service to all tenants, he must accommodate this request. However, if the owner provides no such service, he can deny the request if he determines that it would represent a support service not provided by the project and providing this request would result in a fundamental alteration of the program.

2-43 Limits on Obligations to Provide Reasonable Accommodations

A. Fundamental Alteration. Owners are not required to take any action that would result in a fundamental alteration in the nature of the program. A fundamental

alteration is a change so significant that it alters the essential nature of a provider's operations. For a detailed explanation of fundamental alteration, see Exhibit 2-5.

B. Undue Financial and Administrative Burden. The determination of undue financial and administrative burden must be made on a case-by-case basis, involving various factors, such as the cost of the reasonable accommodation, the financial resources of the provider, the benefits the accommodation would provide to the requester, and the availability of alternative accommodations that would adequately meet the requester's disability related needs. For examples of undue financial and administrative burden, see Exhibit 2-6.

C. Owners are not required to make structural changes that would impose an undue financial and administrative burden, even if alternatives to making housing programs or activities readily accessible to and usable by persons with disabilities are not effective.

1. HUD Field Offices will consider a request to use the residual receipts account to pay for alterations under Section 504.

2. Under HUD requirements, the reserve for replacement account is to be used for replacing existing items. (See Handbook 4350.1, *Multifamily Asset Management and Project Servicing*.) If HUD approval is received for using the reserve for replacement account for any other purpose (e.g., Section 504 alterations), then the account must be replenished through property rental income, generally within one year.

D. When a request for a reasonable accommodation will result in an undue financial and administrative burden, the owner must provide all other needed accommodations up to the point at which further accommodations would result in an undue financial and administrative burden.

Example – Reasonable Accommodation that Creates an Undue Financial and Administrative Burden

Project A is a 100-unit HUD assisted project. A tenant in this project needs more than $5,000 in structural changes for his unit to be accessible to him. The owner of Project A could not cover the costs of such extensive structural changes without a rent increase. Residual receipts are insufficient to cover the changes, and the replacement reserve cannot be replenished within one year. The project does not have sufficient administrative staff to explore numerous possibilities for obtaining funding for such structural changes. Generally an owner would not be required to make such extensive structural changes because of the burden involved. Note that the amount an owner is required to spend to make units accessible could vary based on the size of the project what the owner of a large project may be able to spend in making units accessible may be an undue burden on smaller projects.

Example – Reasonable Accommodation that Does Not Create an Undue Financial and Administrative Burden

An applicant with a mobility impairment wants to live in a dwelling unit in a particular rental housing property. The owner requires all tenants to hand-deliver their rent to the rental office. The unit is almost a block away from the rental office, but there is a mailbox located just a few yards from the unit entry door. Under 24 CFR 100.204, the owner or manager of an apartment complex must permit the applicant to mail the rent payment to the rental office. This policy accommodation would not pose an undue financial and administrative burden on the owner and allows the applicant to have equal opportunity to use and enjoy the unit.

E. For other guidance on how to determine whether a reasonable accommodation would result in an undue financial and administrative burden, refer to HUD Handbook 4350.1, *Multifamily Asset Management and Project Servicing*.

2-44 Assistance Animals as a Reasonable Accommodation

A. Assistance animals are not pets. They are animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or animals that provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals often referred to as service animals, "assistance animals," support animals, or therapy animals perform many disability-related functions, including but not limited to guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing minimal protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support.

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

C. A housing provider’s refusal to modify or provide an exception to a "no pets" rule or policy to permit a person with a disability to use and live with an assistance animal would violate Section 504 of the Rehabilitation Act and the Fair Housing Act unless:

1. The animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by a reasonable accommodation,

2. The animal would cause substantial physical damage to the property of others,

3. The presence of the assistance animal would pose an undue financial and administrative burden to the provider, or

4. The presence of the assistance animal would fundamentally alter the nature of the provider's services.

D. The fact that a person has a disability does not automatically entitle him or her to an assistance animal. There must be a relationship between the person's disability and his or her need for the animal.

E. A housing provider may not require an applicant or tenant to pay a fee or a security deposit as a condition of allowing the applicant or tenant to keep the assistance animal. However, if the individual's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, at that time, the housing provider may charge the individual for the cost of repairing the damage if the provider regularly charges tenants for any damage they cause to the premises.

Subsection 5: Additional Fair Housing Act Requirements

2-45 Fair Housing Act Basic Accessibility Requirements

The Fair Housing Act requires that all buildings designed and constructed for first occupancy after March 13, 1991 meet certain basic accessibility requirements. This requirement applies to all new construction, regardless of the presence of federal financial assistance. See 24 CFR 100.205. Owners of properties that should have been constructed in accordance with these requirements but were not, are obligated to retrofit their units to bring them into compliance with the Act. If a tenant in one of these properties requests modifications to a unit that should have been made at the time of construction, the owner has an affirmative obligation to make and pay for those modifications as part of its original obligation to conform to the Fair Housing Act design and construction requirements.

2-46 Additional Fair Housing Act Requirement to Allow Tenant Modification of the Premises

A. A person with disabilities has the right under the Fair Housing Act to make reasonable modifications to any part of his or her unit or the related common areas at his or her own expense.

B. In HUD subsidized multifamily housing, the Section 504 requirements placing the responsibility on the owner to pay for requested reasonable accommodations, including structural changes to the premises, **supersede** the Fair Housing Act provisions placing the burden of paying for structural changes on the tenant. In the circumstance where the requested structural modification to a HUD-funded property does constitute an undue financial and administrative burden, and the tenant still wanted that particular modification to be made, the Fair Housing Act would then authorize the tenant to make and pay for the accommodation.

2-47 Owner and Tenant Responsibilities When Tenant Modifies Unit in Accordance with the Fair Housing Act

A. Owners must permit the modifications if they are reasonable and may be necessary to afford a person with a disability full enjoyment of the premises.

B. Owners may, where it is reasonable to do so, impose the condition that when vacating the unit, the tenant will restore the interior of the premises to the state that existed before the modification, reasonable wear and tear excepted. The owner should not require the tenant to restore the unit to the state that existed before the modification if the modification benefits the property or is needed by another tenant.

Example – Owners Requiring Tenants to Restore Units to Their Original Condition

For marketing reasons or operational considerations, the owner may require the tenant to raise cabinets that have been lowered or replace roll-under lavatories with the previously existing vanity/sink combination.

C. Owners may not require any increased security deposits for persons with disabilities. However, where it is necessary in order to ensure that funds will be available to pay for restorations at the end of the tenancy, the Fair Housing Act allows the owner to negotiate as part of a restoration agreement, a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest of such an account must accrue to the benefit of the tenant.

D. Owners may condition permission for a modification on the tenant's providing reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained.

Section 4: Housing Discrimination Complaints and Compliance Reviews

2-48 Housing Discrimination Complaints

A. HUD is responsible for responding to complaints involving the Fair Housing Act, Section 504 requirements, and other civil rights requirements.

B. Anyone who believes that he or she has been subject to discriminatory treatment from the owner of a particular property may file a housing discrimination complaint.

C. If applicants or tenants indicate to an owner that they want to file a housing discrimination complaint, the owner should:

1. Refer the individual to HUD;

2. Provide the individual with FHEO's pamphlet, Fair Housing It's Your Right (HUD-1686-FHEO, March 2001); and/or

3. Review his/her property's policies and procedures to determine whether the individual's assertions have any merit and make corrections as necessary to ensure compliance with Fair Housing requirements.

D. Housing discrimination complaints should be directed to the HUD Regional Office of Fair Housing and Equal Opportunity responsible for the location in which the complaint occurred. FHEO staff will respond to complaints in accordance with established HUD procedures.

2-49 Compliance Reviews

Compliance reviews are conducted by FHEO staff in accordance with Departmental procedures. The procedures for FHEO reviews of Title VI requirements are discussed in HUD FHEO Handbook 8040.1, *Compliance and Enforcement Procedures for Title VI of the Civil Rights Act of 1964*. The procedures related to compliance with the Fair Housing Act are covered in HUD FHEO Handbook 8024.1, *Title VIII Complaint, Intake, Investigation, and Conciliation Handbook*.

Chapter 2 Exhibits

2-1 Examples of Undue Distribution of Accessible Units

http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4350.3/43503e2-1HSGH.pdf

2-2 Examples of Requests for Auxiliary Aids and Reasonable Accommodations by Persons with Disabilities

http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4350.3/43503e2-2HSGH.pdf

2-3 Sample Notification of Nondiscrimination on the Basis of Disability Status

http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4350.3/43503e2-3HSGH.pdf

2-4 Suggested Checklist to Determine Whether a Communication System Is an Equally Effective Alternative to the TTY

http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4350.3/43503e2-4HSGH.pdf

2-5 Examples of Fundamental Alterations

http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4350.3/43503e2-5HSGH.pdf

2-6 Financial and Administrative Burden

http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4350.3/43503e2-6HSGH.pdf

Exhibit 2-1: Distribution of Accessible Units

Paragraph 2-25 requires owners to the maximum extent feasible to distribute accessible units throughout projects and sites subject to reasonable health and safety requirements. Reasonable requirements include the following:

1. Adhering to building codes that cover the distribution of accessible units.

   a. Any building codes used for a project that are not referenced in the *Minimum Property Standards Handbook* (4910.1) must be approved by the HUD Field Office.

   b. Note that the Minimum Property standards, ANSI 117.1, and the Uniform Federal Accessibility Standards do not cover the distribution of accessible units.

OR

2. Following local or state health and safety requirements for the distribution of accessible units throughout the project and site when there is no HUD-approved building code that covers the distribution of accessible units.

OR

3. Establishing owner health and safety standards for distributing accessible units in the absence of building codes or local or state health and safety requirements that cover the distribution of accessible units. The Office of Fair Housing may ask to see such standards to determine if they are reasonable.

Exhibit 2-2: Examples of Requests for Auxiliary Aids and Reasonable Accommodations by Persons with Disabilities

NOTES:

The extent of actions that owners are required to take under Section 504 are limited by paragraph 2-37

Whether an owner must provide an auxiliary aid or reasonable accommodation will depend on the facts and circumstances of each case.

REQUEST	FULFILL REQUEST?
Visually impaired tenant requests tactile signage on the mailbox.	YES.
Hearing-impaired tenant prefers face-to-face communications and requests the owner to provide a sign language interpreter for all meetings.	The owner may deny this request when a telecommunications device for the hearing-impaired or equally effective system would suffice. However there may be certain types of meetings where the only way to provide effective communication is to provide a sign language interpreter and in such a situation the interpreter must be provided unless it would be a an undue financial and administrative burden
An applicant who is hearing impaired has been determined to be otherwise qualified under program requirements and the owner's tenant selection plan. She asks that her unit be fitted with a visual smoke detector.	YES.
Applicant who is visually impaired asks to review a lease with enlarged print.	Owner must accommodate this request because the owner can easily and inexpensively have these documents photocopied with enlarged print.
Blind applicant requests a copy of application, lease, and **HUD-50059** in Braille.	With the initial request, by a tenant or applicant, owner would have to investigate the burdens of providing these documents in Braille. If the owner determines that it is an undue administrative and financial burden, the owner must seek other methods of communication that are not undue burdens. As alternatives, the owner may consider providing the applicant with a tape recording of these documents or having an office staff person or other person read the materials to the applicant/tenant. Applicants/tenants who need material in Braille often know of sources for this service performed at reasonable cost.

REQUEST	FULFILL REQUEST?
An applicant to a family property is a quadriplegic and uses an assistance animal. The applicant requests the owner to waive a policy prohibiting animals in units to permit him to use an assistance animal	YES. The owner must permit the applicant to keep the assistance animal if needed as a reasonable accommodation to afford him equal opportunity to use and enjoy the unit and property.
Blind tenant requests copies of the day-to-day communications in Braille (notices of recertification, communications regarding maintenance services, eviction notice).	Owner investigates feasibility of providing such communications in Braille. If owner determines that this would be an undue financial and administrative burden, the owner must take other steps to accommodate the tenant (e.g., call tenant on telephone to relay information, provide tape recording of lengthy information or of information for which owner wants to keep record).
Owner requires tenants to pay their rent at the office. Tenant who is mobility impaired requests as a reasonable accommodation to mail the rent check.	YES
Tenant with emotional disability requests assistance animal as reasonable accommodation and provides documentation of relationship between disability and need for the animal.	YES
Otherwise eligible applicant with mobility impairment wishes to rent federally assisted townhouse and asks that an elevator be installed in the unit as a reasonable accommodation	In all likelihood, provision of an elevator will pose an undue financial and administrative burden. However, the landlord should explore other options (if any), for accommodating the tenant in this or a different unit.
Tenant with mobility impairment requests that a grab bars be installed in her bathroom.	YES unless provision of these grab bars would be an undue administrative and financial burden.
Tenant who uses a walker asks that she be moved to a first floor apartment as an accommodation to her physical disability since she cannot climb stairs.	YES as soon as a first floor apartment is available.

Exhibit 2-3: Sample Notification of Nondiscrimination on the Basis of Disability Status

Owners must provide the information specified in paragraph 2-29 in all written communications with the public. Owners may use this exhibit as guidance in providing this information.

INSTRUCTIONS:

Paragraphs 1 and 2 and the name and address apply to owners, managing entities, or projects employing 15 or more people.

Paragraph 1 applies to all other properties.

1. _____(Owner or project name)_____ does not discriminate on the basis of disability status in the admission or access to, or treatment or employment in, its federally assisted programs and activities.

2. The person named below has been designated to coordinate compliance with the nondiscrimination requirements contained in the Department of Housing and Urban Development's regulations implementing Section 504 (24 CFR, part 8 dated June 2, 1988).

_____
Name

_____
Address

_____
City State Zip

(____)_____
Telephone - Voice

(____)_____
Telephone – TTY

Exhibit 2-4: Suggested Checklist to Determine Whether a Communication System is an Equally Effective Alternative to the TTY

(See paragraph 2-29)

Required Criteria	Meets	Does Not Meet
1. Provides a simultaneous connection between calling and receiving parties. a. There are two phone lines: one for the TTY and a second for the regular telephone. b. An operator serves as a "link" between hearing-impaired and hearing parties, simultaneously typing or "voicing" information they receive from either phone line.		
2. Guarantees confidentiality. a. Operators do not discuss with other persons names of calling and receiving parties or any information exchanged during conversations. b. Operators know their role as a neutral "link" and do not participate in conversations between the two parties or volunteer information to either party. c. Any printed copies made of conversations are disposed of routinely.		
3. Is usable by both local and long distance callers at no greater cost to the caller than the same call would be if placed on other telephone systems made available by the owner.		
4. Is available for use during all normal working hours.		
5. Places no time limits on calls.		
6. Refuses no calls.		

Required Criteria	Meets	Does Not Meet
7. Alters no conversations. Operators convey all information accurately; they do not “edit” conversations in any way.		
8. Has the capacity to handle a reasonable number of calls without undue delay. a. Appropriate outreach efforts have been published and the system has been appropriately advertised so that callers in both the hearing-impaired and hearing communities are aware of its existence. b. If there is a heavy volume of calls, the system has the ability to place callers on “hold” for short periods of time until an operator becomes available.		

Exhibit 2-5: Examples of Fundamental Alterations

Actions that would result in a fundamental alteration in the nature of a recipient's (owner's) program or activity may include the following:

1. Actions that would require substantial modifications to or the elimination of essential lease or program requirements;

2. Actions that would require the owner to provide supportive services, e.g., counseling, medical, or social services that fall outside the scope of the services that the owner offers to tenants; and

3. Actions that would require the owner to offer housing of a fundamentally different nature than the type of housing that the owner does offer.

Example – Fundamental Alterations

Example of alterations in the nature of the program or activity.

IMPORTANT - In evaluating whether a fundamental alteration would occur, owners must consider the facts and circumstances of each case.

Jim suffers from a neurological disorder that requires 24-hour nursing care. The owner does not provide this medical service in the housing that he offers. Although the owner must allow Jim to obtain the nursing care on his own, it would constitute a fundamental alteration in the nature of the program or activity to require the owner to provide this medical service at the owner's expense.

Examples of alterations in the nature of the program or activity that are not fundamental are the following.

Jean is a quadriplegic and uses a dog to assist her in her daily living. She lives in a family project that forbids tenants from keeping animals in their units. It would not constitute a fundamental alteration in the nature of the program or activity to require the owner to make an exception to the rule so that Jean can keep her assistance animal.

Delores is hearing impaired and requests that the owner provide closed captioning on the television in the project's community room. It would not constitute a fundamental alteration in the nature of the program or activity to require the owner to purchase a closed caption decoder and attach it to the television.

EXHIBIT 2-6: EXAMPLES OF UNDUE FINANCIAL AND ADMINISTRATIVE BURDEN

Neither Section 504 nor the Fair Housing Act requires owners to provide accommodations that are an undue financial and administrative burden. Whether a particular accommodation will be an undue financial and administrative burden will depend on the facts and circumstances of the individual case. The following examples describe circumstances in which the owner generally would not be required to provide the particular accommodation requested. See also paragraph 2-46, which provides further guidance on determining whether undue financial and administrative burdens exist.

1. Marge, who suffers from chemical sensitivity disorder, has requested that the owner survey all tenants in the building to determine the time of day and the chemicals they will use to clean their units. She has asked that the owner compile this information for her on a weekly basis so that she can plan to be away from her unit at the time certain chemicals are used. For the owner to accommodate Marge, it would require an ongoing administrative burden that could not be handled by the existing staff. However, it would not be an undue financial and administrative burden for the owner to notify Marge in advance before cleaning common areas and to use nonchemical alternative cleaning methods where practical.

2. The owner has made the community room available to a local service organization every Wednesday morning to provide routine health screening to the tenants. William, Delores, Ann, and Rene, who are individuals with disabilities, all have conflicts with the scheduled day because of their own regularly scheduled medical appointments. Each has requested that the screening services be provided on a different day. It would be an undue financial and administrative burden for the owner to coordinate these requests and to decide which tenant will be accommodated and which ones will not. However, it would not be an undue financial and administrative burden for the owner to request that the local service organization vary its schedule so that more tenants could be accommodated.

3. Tom has a mobility impairment. He requests that the owner of his HUD assisted project make his unit accessible by making extensive modifications to the unit. The owner gets two estimates of the cost of doing the modifications. The project rental income will not cover even the lower of the bids without a rent increase or a reduction in services or benefits to other tenants. However, the project has a large residual receipts account. The owner in this example requests HUD approval to use money from this account to accommodate Tom's request. The owner receives HUD approval and makes the requested alterations.

   NOTE: HUD will consider a request to use residual receipts to pay for alterations under Section 504. If this property was owned by a housing provider that was not covered by Section 504, then under the Fair Housing Act, Tom would still have the right to make the alterations he needs at his own expense.

4. Diane has a mobility impairment. She asks the owner of her HUD assisted project to make her unit accessible by making extensive modifications to the unit. As in the first example, the project rental income will not cover the cost of the alterations. In this example, the project does not have funds in the residual receipts account, but does have a large reserve for replacement account.

   In this case, the cheapest estimate to accommodate Diane's request is sizable enough to require a rent increase to replenish the reserve for replacement account within one year. It would be a financial and administrative burden for the owner to make all of the modifications requested, but it may not be a financial and administrative burden for the owner to make some of the modifications and allow Diane to make the rest at her own expense.

5. Midtown Apartments is a HUD assisted housing project. There are five parking spaces located outside the main entrance to the building and another parking lot with 20 spaces a half block away. All five of the parking spaces near the entrance to the building have been assigned to disabled residents who need a parking space near their door because of their disabilities. A sixth tenant with a mobility impairment moves into Midtown Apartments and requests a parking space near his door. The owner has explored the options and concluded that the only way to provide more parking spaces near the door would be to widen the parking area by purchasing valuable real estate next door. It would be an undue financial and administrative burden for the owner to provide the sixth tenant with a parking space near the entrance, however, it would be an appropriate accommodation for the owner to provide the sixth tenant with an assigned parking space in the lot a half block away until such time as one of the five spaces near the door becomes available.

CHAPTER 3. ELIGIBILITY FOR ASSISTANCE AND OCCUPANCY

3-1 Introduction

A. This chapter discusses the requirements and procedures for determining whether applicant families may participate in HUD-subsidized multifamily housing programs. Described in this chapter are steps an owner must follow to determine whether a family is eligible to receive assistance in a HUD-subsidized multifamily property and eligible to live in a specific property and unit. These activities are described in a sequential order; however, owners may deviate from this sequence based on project circumstances as long as they determine an applicant's eligibility before admitting the family to the property.

1. While this chapter provides the rules for eligibility, the processes for developing and maintaining a waiting list and correctly selecting an applicant for the next available unit are addressed in Chapter 4, Sections 3 and 4. Determining and verifying annual income, which is an eligibility requirement, is addressed in Chapter 5.

2. Subsequent chapters in the handbook address activities that occur once an owner determines that a family is eligible for tenancy, such as leasing, recertification, terminations, billing, and reporting.

B. This chapter is divided into three sections, each of which identifies the variations in eligibility requirements based upon type of subsidy. The three sections are as follows:

- **Section 1: Program Eligibility**, which describes the criteria by which the owner must determine whether a family is eligible to receive assistance;

- **Section 2: Project Eligibility**, which describes the criteria by which the owner must determine whether a family is eligible to reside in a specific property (e.g., project eligibility limited to a specific population, unit size, and occupancy standards); and

- **Section 3: Verification of Eligibility Factors**, which describes how the owner should collect information to document family composition, disability status, social security numbers (SSNs), and other factors affecting eligibility for assistance.

3-2 Key Terms

A. There are a number of technical terms used in this chapter that have very specific definitions established by federal statute or regulations or by HUD. These terms are listed in Figure 3-1 and their definitions can be found in the Glossary to this handbook. It is important to be familiar with these definitions when reading this chapter.

B. The terms disability and persons with disabilities are used in two contexts for civil rights protections, and for program eligibility purposes. Each use has specific definitions.

1. When used in context of protection from discrimination or improving the accessibility of housing, the civil rights-related definitions apply.

2. When used in the context of eligibility under multifamily subsidized housing programs, the program eligibility definitions apply.

NOTE: See the Glossary for specific definitions and paragraph 2-23 for an explanation of this difference.

Figure 3-1: Key Terms

• Applicant • Assistance animals • Chronically mentally ill • Citizen • Developmentally disabled • Disabled family • Disabled household • Displaced family • Elderly family • Elderly person • Eligible noncitizen • *Enterprise Income Verification (EIV)* • Evidence of citizenship or eligible status • Family • Income limit • Independent student	• Live-in aide • Mixed family • National • Near-elderly family • Noncitizen • Nonelderly disabled family • PAC (Project Assistance Contract) • Person with disabilities • Physical disability • PRAC (Project Rental Assistance Contract) • Prorated assistance • RAP (Rental Assistance Payment) • Remaining member of a tenant family • Rent Supplement • Section 8

Section 1: Program Eligibility

3-3 Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 1: Program Eligibility. The citations and their titles (or topics) are listed below.

A. **Income Limits**

- 24 CFR 5.609, and 5.653 (Annual income and income eligibility)

B. **Disclosure of Social Security Numbers**

- 24 CFR 5.216 Disclosure and Verification of Social Security and Employer Identification Numbers

C. **Consent Forms**

- 24 CFR 5.230, 5.232 (Consent by applicants and assisted participants and penalties for failing to sign consent forms)

D. **Restrictions on Assistance to Noncitizens**

- 24 CFR part 5, subpart E Restrictions on Assistance to Noncitizens

E. **Restrictions on Eligibility of Students for Section 8 Assistance**

- 24 CFR 5.612 Restrictions on assistance to students enrolled at an institution of higher education.

F. ***Mandatory Use of Enterprise Income Verification System**

- 24 CFR 5.233 Mandated Use of HUD's Enterprise Income Verification (EIV) System *

3-4 Eligibility Determinations – General

Owners are required to determine whether applicants are eligible to occupy the subsidized property and receive housing assistance. Eligibility is determined by federal statute and HUD regulation. For HUD programs, eligibility is only determined at move-in or at initial certification, *(e.g. when a Section 236 tenant starts receiving Section 8 assistance)* except as discussed in paragraphs 3-13, Determining Eligibility of Students for Assistance and 3-16, Determining the Eligibility of a Remaining Member of a Tenant Family. HUD's general eligibility requirements are found in HUD's regulations at 24 CFR, part 5.

3-5 Key Program Eligibility Requirements

Applicants and tenants must meet the following requirements to be eligible for occupancy and housing assistance. Subsequent paragraphs provide more detailed information about income limits, SSNs, and consent forms.

A. The family's annual income must not exceed program income limits.

B. *Applicants and tenants must disclose SSNs for all household members, except those who do not contend eligible immigration status, and tenants age 62 or older as of January 31, 2010, whose initial determination of eligibility was begun before January 31, 2010, and provide verification of the complete and accurate SSN assigned to them.*.

C. All adults in each applicant family must sign a *Consent for the* Release of Information prior to receiving assistance and annually thereafter.

D. The unit for which the family is applying must be the family's only residence.

E. An applicant must agree to pay the rent required by the program under which the applicant will receive assistance.

F. Only U.S. citizens or eligible noncitizens may receive assistance under Section 8, Section 236, Rent Supplement, Rental Assistance Payment (RAP), and Section 202/8 programs.

G. All information reported by the family is subject to verification.

H. Various subsidy or insurance programs may impose additional occupancy restrictions.

3-6 Income Limits

HUD establishes income limits and revises them annually to ensure that federal rental assistance is provided only to low-income families. This paragraph defines income limits and describes how the owner must use them to determine applicant eligibility for HUD-subsidized multifamily properties. The following paragraphs describe which schedules apply to each type of subsidy**.**

A. **Income Eligibility**

Except under limited circumstances, in order for an applicant to be eligible for occupancy, the applicant family's annual income must not exceed the applicable income limit (see paragraph 5-4 for the definition of annual income). This limit depends upon the type of subsidy and family size.

B. **Establishing Income Limits**

1. HUD establishes and publishes income limits for each county or Metropolitan Statistical Area (MSA) in the country. The income limits are based on the median income of the geographic area for which the limit is established. Therefore, the income limit for one city or county is likely to be very different from the income limit for another city or county.

2. Income limits are published annually and are available from the local HUD office or on-line at *http://www.huduser.org/portal/index.html* .

3. Income limits are based on family size and the annual income the family receives. (Chapter 5, Exhibit 5-1 describes what is included in annual income.)

   NOTE: In the case of a property with multiple buildings that are subject to different income limits, the owner may use the higher income limit for the entire property.

C. **Timing of Income Eligibility Determinations**

1. Owners determine income eligibility prior to approving applicants for tenancy. Owners compare the family's annual income to the appropriate income limit prior to placing an applicant on the waiting list. However, owners may wait until a unit is available to verify the applicant's income eligibility.

2. Owners are required to report the income status of each assisted tenant to HUD at least annually. Tenants whose incomes increase above the income limit continue to receive assistance so long as they qualify for assistance in paying rent under the applicable program rules. (See Chapter 5, Section 4, and Chapter 7, Section 1, for more information)

D. **Program Income Limits**

The income limits used to determine eligibility vary by program and are as follows: the Below Market Interest Rate (BMIR) income limit, the low-income limit, and the very low-income limit. A family's eligibility for assistance is based on the income limit applicable to the type of housing assistance the family is to receive. A family may be income-eligible for one program but have too high an income for another program.

In addition to the three income limits used to determine eligibility, there is a fourth the extremely low-income limit used for income-targeting in Section 8 projects but not for eligibility (see paragraphs 4-5, 4-15, and 4-25). These four income limits are presented in Figure 3-2.

Figure 3-2: Income Limits

All of these income limits are based on the median income for a metropolitan statistical area (MSA). This table shows the four income limits as a percentage of median income in an MSA.

Income Limit	Median Income for the Area
BMIR income limit	95% of median income
Low-income limit	80% of median income
Very low-income limit	50% of median income
Extremely low-income limit	30% of median income

1. Section 8 Income Eligibility. Section 8 properties, depending upon the effective date of the initial Housing Assistance Payments (HAP) contract for the property, use either the low or very low-income limit.

   a. Section 8 property owners must use the extremely low-income limit when selecting applicants to fulfill the income-targeting. (See paragraphs 4-5, 4-15, and 4-25.)

   b. Projects with HAP contracts initially effective on or after October 1, 1981, must admit only very low-income families unless HUD has approved an exception to admit families whose incomes are above the very low-income limit.

   c. Projects with HAP contracts initially effective prior to October 1, 1981, may admit families up to the low-income limit.

      NOTE: Exceptions to income limits may be applicable under limited circumstances. See paragraph 3-7.

2. Section 236, Rent Supplement, and Rental Assistance Payment (RAP). These programs use the low-income limit to establish program eligibility.

3. Section 202 without assistance. Use the Section 236 low-income limit from the table of Income Limits for Section 221(d)(3) BMIR, Section 235 and Section 236 programs to establish program eligibility, with the following two exceptions:

   a. Section 202 projects for which the application was filed prior to December 15, 1962 are not subject to income limits

b. For Section 202 projects where income limits above the low-income limit were approved by HUD prior to July 21, 1972, the approved higher income limits remain in effect for these projects.

4. Section 202/162 with Project Assistance Contracts (Section 202 PACs). These contracts use the low-income limit.

5. Section 202/811 with Project Rental Assistance Contracts (Section 202/811 PRACs). These assistance contracts use the very low-income limit (except properties funded in FY 1995, which use the low-income limit). Owners must receive approval from HUD Headquarters to admit families whose incomes are above the very low-income limit. (See paragraph 3-8.A.3 and 3-20.G.)

6. Section 221(d)(3) BMIR. This program uses the BMIR income limit, which is set at 95% of the area median income.

7. Summary. Refer to Figure 3-3 for a summary of the income limits used to determine eligibility for each program.

8. Projects with more than one type of subsidy. In projects with a combination of subsidy types, such as Section 221(d)(3) BMIR and Section 236 projects that also have Section 8 in a portion of the property, owners must use the eligibility income limit based on the type of assistance provided to the family. For example, applicants for a Section 236 project that receive Section 8 must qualify using the applicable Section 8 income limit.

Figure 3-3: Income Limits by Program

Subsidy	Type of Income Limit
Section 8 (pre-1981)	Low, very low, and extremely low-income limit
Section 8 (post-1981)	Very low and extremely low-income limit
Section 236	Low-income limit
Rent Supplement	Low-income limit
Rental Assistance Payment (RAP)	Low-income limit
Section 202 without assistance	Low-income limit See paragraph 3-6.D.3 for exceptions
Section 202 with Section 8 Assistance	Pre-1981 Low, very low, and extremely low-income limit Post-1981 Very low and extremely low-income limit
Section 202 with Rent Supplement	Low-income limit
Section 202 PACs	Low-income limit
Section 202/811 PRACs, <u>except</u> those funded in FY1995	Very low-income limit
Section 202/811 PRACs funded in FY 1995	Low-income limit
Section 221(d)(3) BMIR	BMIR income limit

E. **Income Limits and Family Size**

1 Income limits vary by family size. Income limits are published based on the number of persons in the household (for example, 1 person, 2 persons, 3 persons) with increasingly higher income limits for families with more members.

2. Once the owner determines the applicable income limits based on the type of subsidy in the property, the owner must determine the appropriate limits to apply to a family based on family size. In determining the appropriate income limits, the owner must include some individuals as part of the family but exclude others.

3. When determining family size for establishing income eligibility, the owner must include all persons living in the unit except the following:

a. Live-in aide.

(1) A person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities, and who:

(a) Is determined to be essential to the care and well-being of the person(s);

(b) Is not obligated for the support of the person(s); and

(c) Would not be living in the unit except to provide the necessary supportive services.

(2) To qualify as a live-in aide:

(a) The owner must verify the need for the live-in aide. Verification that the live-in aide is needed to provide the necessary supportive services essential to the care and well-being of the person must be obtained from the person's physician, psychiatrist or other medical practitioner or health care provider. The owner must approve a live-in aide if needed as a reasonable accommodation in accordance with 24 CFR Part 8 to make the program accessible to and usable by the family member with a disability. The owner may verify whether the live-in aide is necessary only to the extent necessary to document that applicants or tenants who have requested a live-in aide have a disability-related need for the requested accommodation. This may include verification from the person's physician, psychiatrist or other medical practitioner or health care provider. The owner may not require applicants or tenants to provide access to confidential medical records or to submit to a physical examination. (See discussion in Chapter 2.)

(b) Expenses for services provided by the live-in aide, such as nursing services (dispensing of medications or providing other medical needs) and personal care (such as bathing or dressing), that are out-of-pocket expenses for the tenant and where the tenant is not reimbursed for the expenses from other sources, are considered as eligible medical expenses. Homemaker services such as housekeeping and meal preparation are not eligible medical expenses. (See Chapter 5 and Exhibit 5-3 for more information on medical expenses.)

(c) Qualifies for occupancy only as long as the individual needing supportive services requires the aide's services and remains a tenant. The live-in aide may not qualify for continued occupancy as a remaining family member. Owners are encouraged to use a HUD-approved lease addendum that denies occupancy of the unit to a live-in aide after the tenant, for whatever reason, is no longer living in the unit. (See paragraph 6-5.A.4.g for more information.) The lease addendum should also give the owner the right to evict a live-in aide who violates any of the house rules.

(d) Income of a live-in aide is excluded from annual income. (See Exhibit 5-1.)

(e) *Must disclose and provide verification of their SSN.*

(f) Must meet the screening criteria discussed in Paragraph 4-7 B.5.

(3) A relative may be considered to be a live-in aide if they meet the requirements in 1, above, especially 1(c).

(4) An adult child is eligible to move into a Section 202/8 project after initial occupancy only if they are essential to the care or well-being of the elderly parent(s). The adult child may be considered a live-in aide if all of the requirements in 1, above, apply and there is a verified need for a live-in aide in accordance with 2(a), above. (See Paragraph 7-4.D for more discussion on adult children moving in after initial occupancy.)

(5) An adult child is not eligible to move into a Section 202 PRAC or Section 811 PRAC after initial occupancy unless they are performing the functions of a live-in aide and are eligible to be classified as a live-in aide for eligibility purposes. (See Paragraph 7-4.E.)

b. Guests. (See the Glossary for the definition.)

4. When determining family size for income limits, the owner must include the following individuals who are not living in the unit:

a. Children temporarily absent due to placement in a foster home;

b. Children in joint custody arrangements who are present in the household 50% or more of the time;

c. Children who are away at school but who live with the family during school recesses;

d. Unborn children of pregnant women.

e. Children who are in the process of being adopted.

f. Temporarily absent family members who are still considered family members. For example, the owner may consider a family member who is working in another state on assignment to be temporarily absent;

g. Family members in the hospital or rehabilitation facility for periods of limited or fixed duration. These persons are temporarily absent as defined in subparagraph f above; and

h. Persons permanently confined to a hospital or nursing home. The family decides if such persons are included when determining family size for income limits. If such persons are included, they must not be listed as the head, co-head, or spouse on the lease or in the data submitted to TRACS but may be listed as other adult family member. This is true even when the confined person is the spouse of the person who is or will become the head. If the family chooses to include the permanently confined person as a member of the household, the owner must include income received by these persons in calculating family income. See paragraph 5-6.D.

5. When determining income eligibility, the owner must count the income of family members only.

F. **Determining the Applicable Income Limit and Eligibility for Assistance**

1. After determining family size, the owner must calculate the family's annual income as described in Chapter 5, Section 1.

2. After determining family income, the owner must compare the family's annual income to the appropriate income limit for the program and family size.

3. Income-eligible families must have annual income that is less than or equal to the income limit for the family size.

4. Income-eligible families must also need the assistance. The amount the family would be required to pay using the applicable HUD rent formula must be less than the gross rent for the unit or market rent for Section 236 projects.

   NOTE: This requirement does not apply to Section 202 PRACs or Section 811 PRACs.

5. **IMPORTANT:** A household does not need to have income to be eligible for assisted housing programs that provide rental assistance through an assistance contract (i.e., Section 8, Rent Supplement, RAP, Section 202 PAC, Section 202 PRAC or Section 811 PRAC).

3-7 Exceptions to the Income Limits in Section 8 Projects

A. Post-1981 Universe

On October 1, 1981, a law became effective limiting income eligibility for Section 8 assistance. At properties with Section 8 contracts effective on or after that date, only families at or below the very low-income limit are eligible for assistance. Under certain circumstances, the owner may request an exception to the very low-income limits. For this universe of properties, HUD has 15% exception authority, which it allocates on a nationwide basis. Exceptions are described in subparagraph D below.

B. Pre-1981 Universe

In this universe of properties, the law restricts occupancy by families that are other than very low-income to 25% of overall occupancy. Properties with Section 8 contracts effective prior to October 1, 1981, may admit applicants with incomes up to the low-income limit. HUD Headquarters is tracking the 25% restriction on a nationwide basis. The owner does not need to request an exception to admit low-income families to these properties.

C. Eligible In-Place Tenants (Exceptions to the income limits that do not require HUD approval)

In Section 8 properties where fewer than 100% of the units have Section 8 subsidy, some in-place, low-income tenants not receiving Section 8 may be eligible for assistance without HUD approval for an exception to the very low-income limit. This policy is permitted so that families will not be displaced when the circumstances are not the fault of the tenant. Owners may allocate Section 8 assistance to in-place, low-income families only under any of these conditions:

1. The tenant is being converted from RAP or Rent Supplement to Section 8.

2. The tenant is eligible to receive Section 8 in conjunction with the sale of a HUD-owned project,

3. The tenant is paying more than 30% of income toward rent, and is at or below the low-income limit (80% of median income).

D. Exceptions to the Income Limits for Post-1981 Properties Requiring HUD Approval

1. Conditions for exceptions. HUD will consider exceptions to the very low-income limit in a post-1981 property only under certain conditions.

a. If very low-income applicants on the waiting list are substantially fewer than the number of units in the project, the owner must market the units to attract very low-income families.

b. Requests for exceptions may fall into two categories: *individual tenant* exceptions for an individual family and *project or unit* exceptions for a specific number of units or for an entire property.

2. Individual tenant exceptions. HUD will consider approving owner requests for individual tenant exceptions under the following circumstances:

a. An in-place tenant would be displaced as a result of substantial rehabilitation under the Section 8 program; or

b. A family is displaced by a Rental Rehabilitation Demonstration project or by rehabilitation or development assisted under Section 17 of the Housing Act of 1937.

3. Project or unit exceptions. HUD will consider approving owner requests under the following circumstances:

a. A project is financed by a State housing finance agency (HFA). The HFA published a policy before October 1, 1981, requiring some of the Section 8 units to be leased to families whose incomes exceed the very low-income limit; the HFA has enforced, and will continue to enforce, that policy.

b. The project is financed under Section 11(b) of the Housing Act of 1937 or under Section 103 of the Internal Revenue Code, and the very low-income limit would make it impossible for the owner to comply with financing documents. The bondholders or mortgage must have been enforcing, and must intend to continue enforcing, the income mix requirements of those documents.

c. During development processing, a local government approved a project on the condition that some of the Section 8 units be leased to low-income families with incomes above the very low-income limit. The local government must have submitted this requirement in writing to HUD, and the owner must have been enforcing it since the date of initial occupancy.

d. All or some of the units in the project were intended for a particular occupant group (e.g., persons with disabilities or elderly persons), and there are not enough very low-income applicants in that group.

e. A project's current waiting list and the owner's marketing efforts will not provide enough very low-income applicants to fill current or imminent vacancies, and at least one of the following conditions exists:

(1) A mortgage default is likely if HUD does not grant an exception because rental income and any Section 8 vacancy payments do not cover the project's essential operating costs and mortgage payments.

(2) Market studies and rental history show that the very low-income population is too small to provide enough applicants to sustain project occupancy.

4. The existence of one of these situations does not entitle an owner to an exception. HUD has no obligation to grant any exceptions.

5. HUD will review exceptions granted to owners at regular intervals. HUD may withdraw permission to exercise those exceptions for program applicants any time that exceptions are not being used or after a periodic review, based on the findings of the review.

E. **Procedures for Requesting and Using Exceptions to the Very Low-Income Limit in Post-1981 Section 8 Properties**

1. Owners of post-1981 properties must submit a written request for an exception to the very low-income limit, with certification and documentation as specified in Exhibit 3-1, to the HUD Field Office.

a. The HUD Field Office makes the final decision on requests for exceptions.

b. In cases where HUD is not the Contract Administrator, the Contract Administrator must gather and submit all documentation with its recommendation to the HUD Field Office. The HUD Field Office makes the final decision on requests for exceptions.

c. If HUD determines that the criterion for any permitted exception has not been met, its letter to the owner will specify the reasons for its decision and advise the owner that an appeal may be considered if additional documentation is submitted to the HUD Multifamily HUB Director within 30 days. If the request is denied after submission of additional information, there are no further avenues of appeal.

2. When using exceptions, owners must adhere to the following:

a. Owners may not reuse individual tenant exceptions if the tenant for whom the exception was granted moves out or stops receiving Section 8 assistance.

b. Owners may reuse project or unit exceptions, however, until the HUD Field Office recalls them, or the timeframe permitting exceptions expires.

F. **Exceptions to Section 8 Income Targeting Requirements**

1. As discussed in paragraph 4-5, owners with Section 8 units are required to ensure that during a fiscal year at least 40% of the units that become available, together with initial certifications of in-place tenants, serve extremely low-income families. If an owner has actively marketed available units to extremely low-income families and has been unable to achieve the 40% target for admissions and initial certifications, the owner is permitted to rent to other eligible families after a reasonable marketing period has expired.

2. The owner must maintain complete records of the marketing efforts targeted to extremely low-income families, and must demonstrate that reasonable efforts were made to fill available units with extremely low-income families. The owner must also demonstrate that an ongoing effort to meet the 40% requirement is being made.

3. HUD and/or the Contract Administrator will monitor compliance with this requirement.

3-8 Admitting Over-Income Applicants

This paragraph describes the circumstances under which a property owner may admit families that do not meet income limits. The exceptions are listed by program.

A. **Section 8, Section 202/8, Section 202 PAC, Section 202 PRAC and Section 811 PRAC Units**

If the owner is temporarily unable to lease all units to income eligible families, he may admit applicants with incomes that exceed the applicable program income limits with prior written HUD approval. The owner must request HUD approval as follows:

1. For units with Section 8 assistance, the request must be submitted to the Field Office in accordance with the procedures above in paragraph 3-7.

2. For units with Section 202/8 or Section 202 PAC assistance, the owner must submit the information specified in Situation #6 of Exhibit 3-1 to the Field Office. (See paragraph 3-20.G.)

3. For Section 202 or Section 811 PRAC units, the owner must submit the information specified in Situation #6 of Exhibit 3-1 to the Field Office. The Field Office will forward the waiver request with a recommendation to HUD Headquarters for the final decision on the approval. (See paragraph 3-20.G)

4. For Section 202/8, Section 202 PAC, Section 202 PRAC and Section 811 PRAC, also see paragraph 3-20.G for a discussion of waiver requests for approval to rent to families that are not elderly or disabled.

B. **BMIR Units**

The owner must not admit income-ineligible applicants without prior written HUD approval. Any ineligible families that are admitted must pay market rent.

C. **Section 236, Rent Supplement, and RAP Units**

1. In some situations, owners may admit families with incomes that exceed the applicable program income limits to Section 236, Rent Supplement, or RAP units without HUD approval if there are no income-eligible applicants available and fewer than 10% of the units are already occupied by tenants paying market rent.

2. Any ineligible families that are admitted must pay market rent.

Example – Admission of Market Rent Applicants

- Brookside Gardens is a 100-unit Section 236 project. Currently 92 tenants pay basic rent, 5 tenants pay market rent, and 3 units are vacant. The owner may fill the 3 vacant units with tenants paying market rent if there are no income-eligible applicants available and the owner has taken all reasonable steps to attract eligible families.

- Shady Grove is a 100-unit Section 236 project where 88 current tenants pay basic rent and 10 tenants pay market rent. The owner must fill the 2 current vacancies with income-eligible tenants.

3. The owner must obtain HUD's approval to admit over-income applicants who pay market rent if at least 10% of the units authorized under the interest reduction subsidy are already occupied by tenants paying market rent.

4. For determining the 10% of units described in subparagraphs 2 and 3 above, a unit is defined as follows:

   a. For properties with Rent Supplement or RAP, units include only those units covered by the RAP or Rent Supplement contract.

   b. For Section 236 properties, units include all units in the project.

5. Before admitting any ineligible applicants, the owner must take the following steps:

   a. Admit all available eligible applicants, unless there is good cause for denying assistance.

b. Take all reasonable steps to attract eligible families, including using marketing activities most likely to attract eligible applicants and marketing outside the community or immediate area.

c. Place in the file of any ineligible tenant who is admitted, a written certification indicating that the requirements in subparagraphs a and b above have been completed.

D. **Admission of Police Officers or Security Personnel in Section 8 Properties**

1. For the purpose of deterring crime in and around the property, owners may lease a Section 8 unit to a police officer or security personnel who is over the income limits. Security personnel is defined as a qualified security professional with adequate training and experience to provide security services for project residents.

2. To be eligible, the police officer or security personnel must be employed full-time (at least 35 hours per week) by a governmental unit or private employer and be compensated by their employer for providing policing or security services.

3. Owners must submit a written plan to their HUD Field Office or Contract Administrator for authorization to lease to over-income police or security personnel. The plan must include:

a. A description of the existing social and physical conditions of the property and its surrounding area, and the benefits police or security would bring to the community and property;

b. The number of units in the property;

c. A detailed assessment of the criminal activities and how the safety of the tenants and security of the project is affected;

d. The qualifications of the police or security personnel and length of residency;

e. A description of how the owner proposes to check the background and qualifications of any security personnel who will reside in the project;

f. Disclosure of any family relationship between the police officer or security personnel and the owner. The owner includes all principals or other interested parties;

g. A description of the proposed rent, the current contract rent to the unit, the owner's annual maintenance cost for the unit and the amount of any other compensation by the owner to the resident

police or security personnel. See paragraph 5-27 for guidance on establishing rent; and

h. Owner or authorized agent signature.

4. Police officers and other security personnel that reside in subsidized units are subject to the same screening criteria as other applicants.

5. The owner may use the applicable model lease with an added provision that states that the right of occupancy is dependent on continued employment as a police officer or security personnel. (See paragraph 6-12 C for more information)

6. HUD or the Contract Administrator should notify the owners of approval or rejection within 30 days of submission. Unless there are extenuating circumstances, the local HUD Office should approve no more than 1% (or one unit if the property is less than 100 units) of the assisted units on the property for leasing to police or security personnel.

3-9 Disclosure of Social Security Numbers

All applicant and tenant household members must disclose and provide verification of the complete and accurate SSN assigned to them except for those individuals who do not contend eligible immigration status or tenants who were age 62 or older as of January 31, 2010, and whose initial determination of eligibility was begun before January 31, 2010. This paragraph explains the requirements and responsibilities of applicants or tenants to supply owners with this information, the responsibility of owners to obtain this information, and the consequences for failure to provide the information.

A. Key Requirements

1. *Applicants and tenants must disclose and provide verification of the complete and accurate SSN assigned to each household member. Failure to disclose and provide documentation and verification of SSNs will result in an applicant not being admitted or a tenant household's tenancy being terminated.

2. Exceptions to disclosure of SSN:

a. Individuals who do not contend eligible immigration status.

(1) Mixed Families: For projects where the restriction on assistance to noncitizens applies and where individuals are required to declare their citizenship status, proration of assistance or screening for mixed families must continue to be followed. In these instances, the owner will have the tenant's Citizenship Declaration on file whereby the individual did not contend eligible immigration status to support the individual not being subject to the requirements to disclose and provide verification of a SSN.

(2) For Section 221(d)(3) BMIR, Section 202 PAC, Section 202 PRAC and Section 811 PRAC properties, the restriction on providing assistance to noncitizens does not apply. At these properties, individuals who do not contend eligible immigration status must sign a certification, containing the penalty of perjury clause, certifying to that effect. The certification will support the individual not being subject to the requirements to disclose or provide verification of a SSN. The certification must be retained in the tenant file.

(See Paragraphs 3-12.N, O and P for more information on mixed families and proration of assistance)

b. Individuals age 62 or older as of January 31, 2010, whose initial determination of eligibility was begun before January 31, 2010.

(1) The exception status for these individuals is retained even if there is a break in his or her participation in a HUD assisted program.

(2) When determining the eligibility of an individual who meets the exception requirements for SSN disclosure and verification, documentation must be obtained that verifies the applicant's exemption status. A certification from the tenant is not acceptable verification of the exemption status. This documentation must be retained in the tenant file.*

*Example:

- Mary Smith does not have a SSN. Mary does not have to disclose or provide verification of a SSN because she was 73 years old as of January 31, 2010, and her initial eligibility for HUD's rental assistance program was determined when she moved into Hillside Apartments on February 1, 2009 (initial eligibility was determined prior to January 31, 2010).

- Mary moved out of Hillside Apartments on April 10, 2010 and moved in with her daughter who was not receiving HUD's rental assistance.

- Mary then applied at Jones Village, another HUD subsidized apartment complex, on November 5, 2010. Because Mary's initial eligibility to receive HUD's rental assistance was begun prior to January 31, 2010 (February 1, 2009), Mary is not required to meet the SSN disclosure and verification requirements as long as the owner can verify Mary's initial eligibility date at Hillside Apartments was begun prior to January 31, 2010.*

B. **Required Documentation**

*Applicants and tenants must provide adequate documentation to verify the complete and accurate SSNs assigned to all household members. Adequate documentation means a social security card issued by the Social Security Administration (SSA), an original document issued by a federal or state government agency, which contains the name and SSN of the individual along with identifying information of the individual, or other acceptable evidence of the SSN listed in Appendix 3. *

C. **Provisions for *Applicants Disclosure and/or* Documentation of Social Security Numbers**

*An applicant may not be admitted until SSNs for all household members have been disclosed and verification provided.

1. If all household members have not disclosed and/or provided verification of their SSNs at the time a unit becomes available, the next eligible applicant must be offered the available unit.

2. The applicant who has not disclosed and provided verification of SSNs for all household members must disclose and provide verification of SSNs for all household members to the owner within 90 days from the date they are first offered an available unit.*

3. If the owner has determined that the applicant is otherwise eligible for admission into the property, and the only outstanding verification is that of *disclosing and providing verification of* the SSN, the applicant may retain his or her place on the waiting list for the *90*-day period during which the applicant is trying to obtain documentation.

4. After *90* days, if the applicant has been unable to supply the required SSN *and verification* documentation, the applicant should be determined ineligible and removed from the waiting list (see paragraph 4-20 A).

D. ***Circumstances When Tenants Must Provide SSNs**

1. SSNs Not Previously Disclosed and/or Verified. SSNs must be disclosed and verification provided for any household member(s) who have not previously disclosed a SSN as of January 31, 2010, at the time of the next interim or annual recertification except for those individuals who do not contend eligible immigration status or tenants who are age 62 or older as of January 31, 2010, and whose initial determination of eligibility was begun before January 31, 2010.

2. Invalid SSN Disclosed. The head of household must be notified when the EIV Pre-screening Report or the Failed Verification Report (Failed the SSA Identity Test) in EIV identifies that a household member has provided an invalid SSN. Discrepancies identified in the SSN disclosed must be resolved and the correct SSN disclosed, verified and transmitted to TRACS. See Chapter 9, Enterprise Income Verification (EIV).

3. Assignment of a New SSN. If a tenant or any member of a tenant's household is or has been assigned a new SSN, the SSN must be disclosed and verification provided to the owner at:

   a. The time of receipt of the new SSN; or

   b. The next interim or regularly scheduled recertification; or

   c. Such earlier time as specified by the owner.

4. Adding a New Household Member:

   a. Age Six or Older or Under the Age of Six With an Assigned SSN.

      When adding a new household member who is age six or older, or is under the age of six and has a SSN, the tenant must disclose and provide verification of the SSN of the individual to be added to the household. This SSN must be provided to the owner at:

(1) The time of the request, or

(2) At the time the recertification that includes the new household member is processed.

b. Under the Age of Six Without an Assigned SSN.

(1) The tenant must disclose and provide verification of the new household member's SSN within 90 calendar days of the child being added to the household.

(2) The owner must grant an extension of one additional 90-day period, if the owner, in its discretion, determines that the tenant's failure to comply is due to circumstances that could not have been foreseen and were outside the control of the tenant, e.g., delay in processing by SSA, natural disaster, fire, death in family, etc)

(3) During the period that the owner is awaiting disclosure and verification of the SSN, the child is included as part of the household and shall be entitled to all of the benefits of being a household member, including the dependent deduction.

(4) A TRACS ID will be assigned to the child until the time the SSN is provided. At the time of the disclosure of the SSN, an interim recertification must be processed changing the child's TRACS ID to the child's verified SSN.

(5) If, upon expiration of the provided time period, the tenant fails to disclose and provide verification of the SSN, the tenant and the tenant's household are subject to termination of tenancy. The owner shall follow the guidance in Paragraph 8-13.A.6 to terminate the household's tenancy.*

3-10 Residence Criteria

A. Key Requirement

Assisted tenants must have only one residence and receive assistance only in that unit. This rule is meant to ensure that the government pays assistance on only one unit for a family and provides assistance to as many eligible families as possible with available funding.

B. Sole Residence Requirement

1. A family is eligible for assistance only if the unit will be the family's only residence.

2. The owner must not provide assistance to applicants who will maintain a residence in addition to the HUD-assisted unit.

3. *Owners must use the EIV Existing Tenant Search when screening applicants in order to search for applicants who may be receiving assistance at another location. See Chapter 9, Enterprise Income Verification (EIV).*

C. **Prohibition Against Double Subsidies**

Under no circumstances may any tenant benefit from more than one of the following subsidies: Rent Supplement, RAP, Section 202 PAC, Section 202 PRAC or Section 811 PRAC, project-based Section 8 housing assistance, including Section 202/8, *or any Public and Indian Housing (PIH) rental assistance programs.*

1. Tenants must not receive assistance for two units at the same time.

2. Tenants must not benefit from Housing Choice Voucher assistance in a unit already assisted through project-based Section 8, Rent Supplement, RAP, Section 202 PAC or Section 202 PRAC and Section 811 PRAC.

3. This prohibition does not prevent a person who is currently receiving assistance from applying for an assisted unit in another property. The assisted tenancy in the unit being vacated must end the day before the subsidy begins in the new unit.

4. * Owners must use the EIV Multiple Subsidy Report to search for tenants who may be receiving assistance at more than one location or under more than one HUD rental assistance program. See Chapter 9, Enterprise Income Verification (EIV),*

3-11 Consent and Verification Forms

A. **Key Requirements**

Adult members of a family must sign consent forms and, as necessary, verification documents, so that the owner can verify sources of family income and family size. The owner must consider a family ineligible if the adult members refuse to sign applicable consent and verification forms. See Chapter 5, Section 3, for additional detailed information on these forms.

1. All members of an applicant or tenant family who are at least 18 years of age and each family head, spouse *or co-head*, regardless of age, must sign *and date* the HUD-required consent forms (form HUD-9887, *Notice and Consent for the Release of Information to HUD and to a PHA* and form HUD-9887-A, *Applicant's/Tenant's Consent to the Release of Information Verification by Owners of Information Supplied by Individuals Who Apply for Housing Assistance*) *at the initial certification and each

recertification*. All adults regardless of whether they report income must sign *and date* these forms.

2. *A current form HUD-9887:

   a. Must be on file before owners access the EIV employment and income information for a tenant.

   b. Does not have to be on file to use the EIV Verification Reports. This includes the Existing Tenant Search for applicants.*

3. All adult members of an applicant or tenant family must sign individual verification forms authorizing the owner to verify family income and other applicable eligibility factors (e.g., disability status).

4. Consent and verification forms protect the rights and privacy of tenants and applicants by allowing them to have control over any information collected about them. See **Appendix 6** for sample formats.

5. Owners must comply with the provisions of the federal Privacy Act as well as any state or local laws relating to confidentiality.

B. **Who Must Sign Consent and Verification Forms**

Consent forms must be signed by:

1. The head of household (regardless of age);

2. The spouse or co-head of household (regardless of age); and

3. Any other family member who is 18 years old or older.

***NOTE:** The owner cannot use the EIV Income Reports for a tenant who turns 18 between recertifications until the tenant has signed the form, even though employment or income will be reported in EIV. The owner must address, in their Policies and Procedures, notification requirements and timeframes for tenants who turn 18 between annual recertifications to sign the consent forms, if requiring the forms to be signed other than at recertification.*

C. **Provisions for Refusal to Sign**

If the applicant or tenant, or any adult member of the applicant's or tenant's family, does not sign and submit the consent form as required in 24 CFR 5.230, the following statements apply:

1. The owner must deny assistance and admission to the applicant; or

2. The owner must terminate assistance to the *family* (see paragraph 8-5 regarding terminations).

3-12 Restriction on Assistance to Noncitizens

A. Overview

By law, only U.S. citizens and eligible noncitizens may benefit from federal rental assistance. Compliance with these rules ensures that only eligible families receive subsidy. These requirements apply to families making application to the property, families on the waiting list, and tenants. This paragraph describes the procedures owners must use to determine applicant eligibility based on citizenship/immigration status.

NOTE: See Chapters 4, 7, and 8 for other citizenship and eligible immigration status requirements. (Denial of assistance is addressed in paragraph 4-31, changes in subsidy are addressed in paragraph 7-11, and termination of assistance is addressed in paragraph 8-7.)

B. Key Requirements

1. Assistance in subsidized housing is restricted to the following:

   a. U.S. citizens or nationals; and

   b. Noncitizens that have eligible immigration status.

2. All applicants for assistance must be given notice of the requirement to submit evidence of citizenship or eligible immigration status at the time of application. The entity responsible for receiving the documentation, where possible, must arrange to provide the notice in a language that is understood by the individual if the person is not proficient in English. (See Exhibits 3-3 and 3-4 for a sample notice and its accompanying Family Summary Sheet.)

3. All family members, regardless of age, must declare their citizenship or immigration status. (See Exhibit 3-5 for a Sample Citizenship Declaration. Noncitizens (except those age 62 and older) must sign a Verification Consent Form (see Sample Verification Consent Form in Exhibit 3-6) and submit documentation of their status or sign a declaration that they do not claim to have eligible status. Noncitizens age 62 and older must sign a declaration of eligible immigration status and provide a proof of age document. U.S. citizens must sign a declaration of citizenship. Owners may establish a policy of requiring additional proof of citizenship for those declaring to be U.S. citizens or nationals.

4. A mixed family—a family with one or more ineligible family members and one or more eligible family members—may receive prorated assistance, continued assistance, or a temporary deferral of termination of assistance. See subparagraphs O, P and Q below for the requirements that must be met for a mixed family to be eligible for assistance.

5. Applicants who hold a noncitizen student visa are ineligible for assistance, as are any noncitizen family members living with the student. For

noncitizen students with a citizen spouse or citizen children, see the rules in paragraph 3-12 R.2 below.

C. **Administration of Restriction on Assistance to Noncitizen**

Owners are responsible for administering the restriction on assistance to noncitizens in accordance with regulations. When administering the restriction, the owner must treat all applicants equally, applying the same noncitizen rule procedures without regard to race, color, national origin, sex, religion, disability, or familial status, and must comply with the nondiscrimination requirements described in Chapter 2 of this handbook.

D. **Protection from Liability for Project Owners**

HUD will not take any compliance, disallowance, penalty, or other regulatory action against an owner with respect to any error in the owner's determination of eligibility for assistance based on citizenship or immigration status when:

1. The owner established eligibility based upon verification of eligible immigration status through the verification system described in regulations and this handbook;

2. The owner provided an opportunity for the family to submit evidence in accordance with regulations and this handbook;

3. The owner waited for completion of the Department of Homeland Security's (DHS') verification of immigration status in accordance with regulations and this handbook;

4. The owner waited for completion of the DHS appeal process provided in accordance with regulations and this handbook, if applicable; and

5. The owner provided an informal meeting in accordance with regulations and this handbook, if applicable.

E. **Reviewing a Family's Citizenship/Immigration Status**

Owners generally consider citizenship/immigration status once for each family, but they must do so more frequently if immigration status or family composition is likely to change (e.g., when a family member applies for a change in immigration status). (See Sample Owner's Summary of Family in Exhibit 3-7 for tracking applicants' declarations and the owner's verification.)

1. Owners determine the applicant's citizenship or immigration status during the initial eligibility determination, prior to move-in.

2. As part of the annual or interim recertification process, owners must determine the citizenship/immigration status of tenants from whom the owner has not previously collected the proper documentation or whose documentation suggested that their status was likely to change.

3. If the status of a family member in a mixed family changes from ineligible to eligible, the family may request an interim recertification.

4. The required evidence of citizenship/immigration status for any new family member must be submitted at the first interim or regular recertification after the person moves to the unit.

F. **Applicability**

The restriction on assistance to noncitizens applies to all properties covered by this handbook <u>except</u> the following:

1. Section 221(d)(3) BMIR properties;

2. Section 202 PAC;

3. Section 202 PRAC; and

4. Section 811 PRAC.

5. Section 202 projects with units not receiving assistance under the Rent Supplement or Section 8 programs.

G. **Notification to Applicants**

1. Owners must give each applicant, at the time of application, notification of the requirement either to submit evidence of citizenship or eligible immigration status or to choose not to claim eligible status. A sample notice is included in Exhibit 3-3. The notification must do as follows:

   a. State that financial assistance is contingent on submission and verification of citizenship or eligible immigration status;

   b. Describe the type of evidence that must be submitted;

   c. Give the time period in which evidence must be submitted; and

   d. State that assistance may be prorated, denied, or terminated if any or all family members are determined ineligible for assistance.

2. Owners may notify families that they are eligible for assistance, or for partial assistance, as a mixed family. A sample notification of the verification results and the family's eligibility status is included in Exhibits 3-10 and 3-11.

3. Owners must notify families in writing if they are found to be ineligible based upon citizenship/immigration status in accordance with requirements described in paragraph 4-31. The sample notification of the results of verification on noncitizen status included in Exhibits 3-8 and 3-9 includes appropriate language.

H. **Owner Preparation to Collect Documentation of Citizenship/Immigration Status**

Owners are required to verify with the DHS the validity of documents provided by applicants. To do so, owners must:

1. Provide to the Multifamily Systematic Alien Verification for Entitlements (SAVE) Administrator at HUD Headquarters the complete name, address and contact information of the owner, or management agent acting on the owner's behalf, and a list of their project numbers and/or contract numbers.

2, Upon receipt of the access code, user ID and temporary password from the Multifamily SAVE Administrator, the owner is able to access the SAVE system at https://www.vis-dhs.com/ *or through the EIV system* and use the automated, web-based SAVE system to obtain primary, and in many instances, secondary verification.

3. Multiple users can use a single computer, but since the program is web-based, SAVE can be accessed from any computer that has internet access.

4. If the owner does not have internet access, it will be necessary to verify immigration status using the paper process. A completed Document Verification Request, Form G-845S, and photocopies of the immigration documentation must be mailed to the local immigration office to receive verification of validity of the documents.

I. **Required Documentation of Citizenship/Immigration Status**

1. The owner must obtain the following documentation for each family member regardless of age:

   a. From U.S. citizens, a signed declaration of citizenship. Owners may require verification of the declaration by requiring presentation of a U.S. birth certificate or U.S. passport.

   b. From noncitizens 62 years and older, a signed declaration of eligible noncitizen status and proof of age;

   c. From noncitizens under the age of 62 claiming eligible status:

      (1) A signed declaration of eligible immigration status;

      (2) A signed consent form; and

      (3) One of the DHS-approved documents listed in Figure 3-4.

2. Noncitizens not claiming eligible immigration status may elect to sign a statement that they acknowledge their ineligibility for assistance. *This

statement is in addition to their declaring their citizenship status on the Citizenship Declaration form (see Exhibit 3-5).*

Figure 3-4: Acceptable DHS Documents

- Form I-551, **Permanent Resident Card**.
- Form 1-94, *Arrival-Departure Record* annotated with one of the following:
  - Admitted as a Refugee Pursuant to Section 207 ;
  - Section 208 or Asylum ;
  - Section 243(h) or Deportation stayed by Attorney General ; or
  - Paroled Pursuant to Section 212(d)(5) of the INA.
- Form I-94, *Arrival-Departure Record* (with no annotation) accompanied by one of the following:
  - A final court decision granting asylum (but only if no appeal is taken);
  - A letter from an DHS asylum officer granting asylum (if application was filed on or after October 1, 1990) or from an DHS district director granting asylum (application filed was before October 1, 1990);
  - A court decision granting withholding of deportation; or
  - A letter from an asylum officer granting withholding of deportation (if application was filed on or after October 1, 1990).
- A receipt issued by the DHS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and that the applicant's entitlement to the document has been verified.
- Other acceptable evidence. If other documents are determined by the DHS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the *Federal Register*.

J. Timeframes for Submitting Evidence of Citizenship/Immigration Status to the Owner

1. Applicants must submit required documentation of citizenship/immigration status no later than the date the owner initiates verification of other eligibility factors. Because of the prohibition against delaying assistance to obtain verification of citizenship/immigration status, owners are advised to implement procedures to verify eligible immigration status in advance of other verification efforts.

2. If the applicant cannot supply the documentation within the owner's specified timeframe, the owner may grant the applicant an extension of not more than 30 days, but only if the applicant certifies that the documentation is temporarily unavailable and additional time is needed to collect and submit the required documentation. Although the extension period may not exceed 30 days, the owner may establish a shorter extension period based on the circumstances of the individual case.

3. The owner must inform the applicant in writing if an extension request is granted or denied. If the request is granted, the owner must include the new deadline for submitting the documentation. If the request is denied, the owner must state the reasons for the denial in the written response. When granting or rejecting extensions owners must treat applicants consistently.

K. **Prohibition Against Delay of Assistance**

1. Owners may not delay the family's assistance if the family submitted its immigration documentation in a timely manner but the DHS verification or appeals process has not been completed.

   a. If a unit is available, the family has come to the top of the waiting list, and at least one member of the family has been determined to be eligible, the owner must offer the family a unit. The owner must provide assistance to the family member determined to be eligible and to those family members that submitted their immigration documents on time. If any family members did not provide the required immigration documentation, then the assistance for the family must be prorated.

   b. Because of the prohibition against delaying assistance to family members who have provided the required immigration documentation in a timely manner, owners are advised to implement procedures to verify eligible immigration status in advance of other verification efforts.

   c. Owners continue to provide assistance to those family members who submitted their immigration documentation in a timely manner until their immigration status has been verified.

Example – DHS Verification Process Delayed

John and Mary Yu brought in the immigration documents for John and for their two daughters immediately upon the owner's request. Citizenship for Mary had already been determined when they first applied for assistance. John's brother, who will live with them, has not yet been able to locate his papers. The SAVE system could not provide primary verification on the Yus, and secondary verification had to be requested.

The Yus were the fourth family on the waiting list for a 3-bedroom unit, but their name has come to the top of the list more rapidly than expected. First, there were two unexpected move-outs; then, two of the families above the Yus declined the units offered.

The owner must offer the Yus the available 3-bedroom unit. The owner will provide prorated assistance based on Mary being eligible, John and the two daughters having submitted their required immigration documentation in a timely manner and John's brother not having submitted his required immigration documentation. The prorated assistance will be 4/5 of full assistance. If the immigration documentation collected later indicates that any family members are not eligible, the assistance will be prorated providing assistance only for the eligible family members. If the owner receives the secondary verification information back from DHS and learns that the two daughters are eligible non-citizens but John is not an eligible non-citizen, the owner must process an interim recertification removing assistance for John. John's brother still has not submitted any immigration documentation. The prorated assistance will now be 3/5 of full assistance. The owner must give the family the required 30-day notice of increase in their rent.

If, however, the owner receives the secondary verification information back from DHS and learns that the two daughters and John are eligible non-citizens and John's brother submits his immigration documentation and is determined to be an eligible non-citizen, the owner will process an interim recertification providing full assistance to the family.

2. Once the owner has determined the citizenship/immigration status of a family assisted prior to completion of the verification or appeal process, the owner must do as follows:

   a. Provide full assistance to a family that has established the eligibility of all of its members;

   b. Offer continued prorated assistance to a mixed family, or temporary deferral of termination of assistance (See subparagraph Q for eligibility requirements) if the family does not accept the offer of prorated assistance; or

   c. Offer temporary deferral of termination of assistance to an ineligible family. At the end of the deferral period the family must either pay market rent or vacate the unit.

   (Mixed families are defined in subparagraph N below, and prorated assistance is described in subparagraph P. Temporary deferral of termination of assistance is addressed in subparagraph Q.)

L. Verifying Information on Immigration Status

Owners must verify the validity of documents provided by applicants or tenants. The personal computer method provides automated status verification when the information is contained in the Alien Status Verification Index (ASVI) database. It also automates the paper secondary verification process, which eliminates in most instances the completion of the paper Form G-845S. If the owner is unable to obtain the results using the automated primary and secondary verification method, the owner must attempt to obtain results using the secondary verification paper process.

1. Primary verification.

   a. Owners must conduct primary verification of eligible immigration status only for persons claiming eligible immigration status.

   b. Owners must conduct primary verification through the SAVE web-based program, DHS' automated system. After obtaining an access code, user ID and temporary password from the Multifamily SAVE Administrator at HUD Headquarters (see subparagraph H above), owners can access SAVE with a personal computer at https://www.vis-dhs.com/ or *through the EIV system.**

   c. After accessing the ASVI database, the owner enters the required data fields. The personal computer system will display one of the following messages for immigration status confirmation on the screen.

      (1) Lawful Permanent Resident

      (2) Temporary Resident

      (3) Conditional Resident

      (4) Asylee

      (5) Refugee

      (6) Cuban\Haitian Entrant

      (7) Conditional Entrant

2. Secondary verification. If the message institute secondary verification is displayed on the screen, the manual verification process must be used.

a. Within 10 days of receiving an Institute Secondary Verification response, the owner must prepare DHS Form G-845S, *Document Verification Request*. The owner must send DHS Form G-845S and photocopies of the DHS documents submitted by the applicant to the DHS office serving the property's jurisdiction. DHS Form G 845S is provided in Exhibit 4-2. Instructions for completing and mailing the DHS Form G 845S are found in Appendix 2-B of this handbook. This information is taken from DHS' current Systematic Alien Verification for Entitlements (SAVE) Program Instructions Manual and should be used until such time as the instruction manual is updated by DHS and included in its entirety in Appendix 2-A.

b. The DHS will return to the owner a copy of DHS Form G-845S indicating the results of the automated and manual search.

M. Appealing Determinations of Ineligibility

1. The owner must notify the family in writing as soon as possible if the secondary verification process returns a negative result. A sample notice to the family is included in Exhibits 3-10 and 3-11. The sample notice describes the tenant or applicant family's options. The family has 30 days from receipt of the notice to choose which option to follow. See paragraph 4-31 for additional information on denying assistance based upon ineligible immigration status.

2. The family may appeal the owner's decision directly to the DHS. The family must send a copy of the appeal directly to the owner. The DHS should respond to the appeal within 30 days.

   a. If the DHS decision results in a positive determination of eligibility, the owner can provide the family with housing assistance.

   b. If the DHS decision results in a negative determination of eligibility, the family has 30 days to request a hearing with the owner.

N. Mixed Families

1. A mixed family is one whose members include citizens and eligible immigrants as well as noncitizens without eligible immigration status.

2. Mixed families that were in occupancy and received full assistance prior to the verification of citizenship/immigration status may be eligible for one of three types of assistance.

   a. Continued assistance if the family was receiving assistance prior to June 19, 1995 (see subparagraph O below);

   b. Prorated assistance (see subparagraph P below); or

c. Temporary deferral of termination of assistance (see subparagraph Q below).

3. Applicant families that are mixed are eligible only for prorated assistance.

O. **Continued Assistance**

1. A mixed family who was receiving assistance on June 19, 1995, is entitled to continue receiving the same level of assistance if the following apply:

   a. The family head, spouse, or co-head was a citizen or had eligible immigration status; and

   b. The family did not include any members who did not have eligible immigration status, except for the head, spouse, parents of the head of household, parents of the spouse, or children of the head or spouse.

2. Eligibility for continued assistance must have been established prior to November 29, 1996.

3. If, after November 29, 1996, anyone is added to a family, including a head of household, spouse, parents of the head of household or spouse, or children of the head of household or spouse, the family is not eligible for continued assistance at the full level, but may receive prorated assistance (see subparagraph P below).

P. **Prorated Assistance**

If a family is eligible for prorated assistance and is not receiving continued assistance, and if the termination of the family's assistance is not temporarily deferred, the amount of assistance the family receives is adjusted based on the number of family members who are eligible compared with the total number of family members. The prorated assistance is calculated by multiplying a family's full assistance by a fraction.

NOTE: See Exhibits 3-12, 3-13, and 3-14 for more information on proration procedures regarding the restriction of assistance to noncitizens.

1. Section 8. For Section 8 assistance programs, the number of eligible people in the family divided by the total number of persons in the family determines the fraction. Then, this fraction is multiplied by the full assistance payment. The reduced assistance payment results in a revised tenant rent for the family.

Example – Section 8 or Rent Supplement Prorated Rent

Family A has four persons. Three are citizens, and one does not have eligible immigration status. The gross rent for the unit is $500. The family's Total Tenant Payment (TTP) is $100.

Gross rent	$500
TTP	-$100
Section 8 assistance	$400
Fraction is	
Number of eligible family members / Total number of family members	3 / 4
Prorated assistance	$400 x 3/4 = $300
Tenant rent increase (assistance less prorated assistance payment)	$400 - $300 = $100
New family rent (TTP + tenant rent increase)	$100 + $100 = $200

Example – Section 8 Prorated Rent (with utility allowance)

Family B has five persons. Three are citizens, and two do not have eligible immigration status. The contract rent for the unit is $500. The utility allowance is $30. The family's TTP is $100.

Contract rent	$500
Utility allowance	+$30
Gross rent	$530
TTP	-$100
Section 8 Assistance	$430
Fraction is	
Number of eligible family members / Total number of family members	3 / 5
Prorated assistance	$430 x 3/5 = $258
Increase in TTP (assistance less prorated assistance)	$430 - $258 = $172
New tenant rent (TTP + increase utility allowance = tenant rent)	$100 + $172 - $30 = $242

2. Rent Supplement. The Rent Supplement paid on the family's behalf is the amount they would otherwise be entitled to, multiplied by the fraction for which the numerator is the number of eligible people in the family and the denominator is the total number of people in the family.

3. Section 236. For Section 236 properties, the fraction is the number of ineligible persons over the total number in the family. The proration increases the rent the family is otherwise paying by an amount equal to the difference between the market rent and the rent the family would otherwise pay, multiplied by the fraction.

4. Section 236 with RAP, Rent Supplement, or Section 8 LMSA. If a property receives a combination of Section 236 with RAP, Rent Supplement, or Section 8 LMSA assistance, the owner must prorate both the Section 236 portion of the assistance and the RAP, Rent Supplement, or Section 8 assistance payment. The owner determines the new prorated rent by calculating the difference between market rent and basic rent multiplied by the fraction of ineligible family members. To determine the family's rent increase, the owner adds this total to the assistance payment multiplied by the same fraction of ineligible family.

Example – Project-Based Subsidy (Section 236) Programs

Family C has four persons and currently pays the 236 basic rent. Three are citizens, and one does not have eligible immigrant status.

Basic rent $300

Market rent $500

Fraction is

$$\frac{\text{Number of ineligible family members}}{\text{Total number of family members}} \quad \frac{1}{4}$$

Rent increase $500 - $300 = $200 x 1/4 = $50

New prorated rent $300 + $50 = $350

Q. Temporary Deferral of Termination of Assistance

1. Families that were receiving assistance on June 19, 1995 under one of the programs covered by the non-citizen rules are eligible for temporary deferral of termination of assistance. If the following applies:

   a. Family has no eligible members; or

b. Mixed family qualifies for prorated assistance (and does not qualify for continued assistance) and chooses not to accept the partial assistance.

2. The deferral allows the family time to find other suitable housing before HUD terminates assistance. During the deferral period, the family continues to receive its current level of assistance.

3. The initial deferral period is for six months and may be extended for an additional six-month period, not to exceed 18 months.

a. At the beginning of each deferral period, the owner must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

NOTE: If the family receiving assistance on June 19, 1995 includes a refugee under section 207 of the Immigration and Nationality Act, or an individual seeking asylum under section 208 of that Act, a deferral can be given to the family and there is no time limitation on the deferral period. The 18 month deferral limitation does not apply.

Example – Project-Based and Individual Tenant Subsidy Programs Prorated Rent

Family D has four persons. Three are eligible immigrants, and one has elected not to contest ineligible status. The family's TTP is $200. The gross rent for the family is the Section 236 basic rent, which is $300. The market rent is $500.

Market rent	$500
Basic rent	$300
TTP	$200
Assistance payment	$100
Fraction is	
Number of ineligible persons / Total number of family members	1 / 4
Section 236 calculation	
Project-based subsidy (market rent less basic rent)	$500 - $300 = $200
Project-based subsidy times fraction	$200 x ¼ = $50
RAP, Rent Supplement, or Section 8 Calculation	
Assistance payment times fraction	$100 x ¼ = $25
New tenant rent (TTP + Section 236 proration + tenant based subsidy proration)	$200 + $50 + $25 = $275

b. Before the end of each deferral period, the owner must determine whether affordable housing is available to the family and whether to extend the deferral of termination of assistance.

(1) To extend a deferral period, an owner must determine that no affordable housing is available. The owner must inform the family of the owner's determination at least 60 days before the current deferral period expires. The owner's determination should be based on the following:

- A vacancy rate of less than 5% for affordable housing of the appropriate unit size in the housing market for the area in which the housing is located;
- The local jurisdiction's Consolidated Plan, if applicable;
- Availability of affordable housing in the market area; and

- Evidence of the family's efforts to obtain affordable housing in the area.

(2) To terminate assistance, the owner must determine that affordable housing is available, or that the maximum deferral period has been reached.

(3) If eligible for prorated assistance, the family may request and begin to receive prorated assistance at the end of the deferral period.

(4) Affordable housing for the purpose of temporary deferral of assistance is housing that:

- Is not substandard;
- Is the appropriate size for the family; and
- Can be rented by the family for an amount less than or equal to 125 of the family's total tenant payment (TTP), including utilities.

R. **Prohibition of Assistance to Noncitizen Students**

Noncitizen students and their noncitizen families may not receive assistance. Noncitizen students are not eligible for continuation of assistance, prorated assistance, or temporary deferral of termination of assistance.

1. A noncitizen student is defined as an individual who is as follows:

   a. A resident of another country to which the individual intends to return;

   b. A bona fide student pursuing a course of study in the United States; and

   c. A person admitted to the United States solely for the purpose of pursuing a course of study as indicated on an F-1 or M-1 student visa.

2. This prohibition applies to the noncitizen student's noncitizen spouse and children. However, spouses and children who are citizens may receive assistance. For example, a family that includes a noncitizen student married to a U.S. citizen is a mixed family.

3-13 Determining Eligibility of Students for Assistance

A. Eligibility of Students for Section 8 Assistance

1. Owners must determine a student's eligibility for Section 8 assistance at move-in, annual recertification, initial certification (when an in-place tenant begins receiving Section 8), and at the time of an interim recertification if one of the family composition changes reported is that a household member is enrolled as a student.

2. Section 8 assistance shall not be provided to any individual who:

   a. Is enrolled as either a part-time or full-time student at an institution of higher education for the purpose of obtaining a degree, certificate, or other program leading to a recognized educational credential; *and*

   b. Is under the age of 24; *and*

   c. Is not married; *and*

   d. Is not a veteran of the United States Military; *and*

   e. Does not have a dependent child; *and*

   f. Is not a person with disabilities, as such term is defined in 3(b)(3)(E) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(3)(E)) and was not receiving section 8 assistance as of November 30, 2005. (See Definition E in Figure 3-6); *and*

   g. Is not living with his or her parents who are receiving Section 8 assistance; and

   h. Is not individually eligible to receive Section 8 assistance *or* has parents (the parents individually or jointly) who are not income eligible to receive Section 8 assistance. (See paragraph 3-33 for verifying parents eligibility.)

      ***NOTE:** Unless the student can demonstrate his or her independence from parents, the student must be eligible to receive Section 8 assistance **and** the parents (individually or jointly) must be eligible to receive Section 8 assistance in order for the tenant to receive Section 8 assistance.*

3. For a student to be eligible independent of his or her parents (where the income of the parents is not relevant), the student must demonstrate the absence of, or his or her independence from, parents. While owners may use additional criteria for determining the student's independence from parents, owners must use, and the student must meet, at a minimum **all** of the following criteria to be eligible for Section 8 assistance. The student must:

a. Be of legal contract age under state law;

b. Have established a household separate from parents or legal guardians for at least one year prior to application for occupancy, **or,** meet the U.S. Department of Education's definition of an independent student. (See the Glossary for definition of Independent Student);

c. Not be claimed as a dependent by parents or legal guardians pursuant to IRS regulations; and

d. Obtain a certification of the amount of financial assistance that will be provided by parents, signed by the individual providing the support. This certification is required even if no assistance will be provided.

4. Any financial assistance a student receives (1) under the Higher Education Act of 1965, (2) from private sources, or (3) from an institution of higher education that is in excess of amounts received for tuition is included in annual income, except if the student is over the age of 23 with dependent children or if the student is living with his or her parents who are receiving Section 8 assistance. (See Glossary for expanded definition of Student Financial Assistance.)

5. If an ineligible student is a member of an existing household receiving Section 8 assistance, the assistance for the household will not be prorated but will be terminated in accordance with the guidance in paragraph 8-6 A.

NOTE: An owner cannot evict or require an ineligible student to move from a unit as long as the student is in compliance with the terms of the lease.

Example:

A household is made up of two students living together and who are currently receiving Section 8 assistance. The household is made up of:

- one student who is 22 years old, is head of household, and has a dependent child
- another student who is the co-head and who does not meet the eligibility requirements in paragraph 3-13 A.2.

In order for the household to be eligible for Section 8 assistance, each individual student must meet the student eligibility requirements.

In this example, the 22-year old student is eligible because he or she has a dependent child. However, since it has been determined that the other student is ineligible, the household is not eligible to receive Section 8 assistance, and the assistance for the household must be terminated in accordance with program guidance. The household's rent will be increased to the applicable rent for the unit (contract, basic, market), as long as the ineligible student remains in the unit.

If the ineligible student moves out of the unit, the remaining household members may again be eligible for Section 8 assistance, if available. If the household composition no longer qualifies the household for the unit size, the household may be required to move to an appropriate size unit when one is available, or, with the approval of the owner, the household may move in another eligible person as a member of the household and remain in their same unit. The owner cannot evict or require the ineligible student to move, as long as the student is in compliance with the terms of the lease.

B. **Eligibility of Students for Other Assistance Programs**

1. This paragraph applies to the Rent Supplement, RAP, Section 221(d)(3) BMIR, Section 236, Section 202 PAC, Section 202 PRAC or Section 811 PRAC programs.

2. Owners must determine a student's eligibility for assistance at move-in, initial or annual recertification, and at the time of an interim recertification if one of the changes reported is that a household member is enrolled as a student, at an institution of higher education.

3. The student must meet **all** of the following criteria to be eligible. The student must:

   a. Be of legal contract age under state law;

   b. Have established a household separate from parents or legal guardians for at least one year prior to application for occupancy, **or**

   c. Meet the U.S. Department of Education's definition of an independent student. (See the Glossary for definition of Independent Student);

d. Not be claimed as a dependent by parents or legal guardians pursuant to IRS regulations; and

e. Obtain a certification of the amount of financial assistance that will be provided by parents, signed by the individual providing the support. This certification is required even if no assistance will be provided.

4. The full amount of financial assistance paid directly to the student or to the educational institution and amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs, are excluded from annual income for the programs listed in 1, above (see paragraph 5-6 D and Exhibit 5-1.)

Section 2: Project Eligibility

3-14 Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 2: Project Eligibility. The citations and their titles (or topics) are listed below.

A. **Eligibility for Admission to Section 8 Projects**

- 24 CFR part 5, subpart D (Definitions for Section 8)

B. **Eligibility for Admission to Individual Section 202, Section 202/8, Section 202/162 PAC, Section 202 PRAC, and Section 811 PRAC Projects**

1. 24 CFR part 891, subparts A, B, C, and D (Section 202 PRAC and Section 811 PRAC projects)

2. 24 CFR part 891, subpart E (Section 202/8 and Section 202 PAC projects)

C. **Occupancy Standards**

- 24 CFR 236.745; 880.603; 881.601; 883.701; 884.214 and 219; 886.121, 125, and 132; 886.321, 325, and 329; 891.410 and 420; 891.610 and 620; and 891.750 and 760 (Selection and admission of assisted tenants, and occupancy limitations)

3-15 Program versus Project Eligibility

A. *Program eligibility* determines whether applicants are eligible for assistance.

B. *Project eligibility* establishes whether applicants are eligible to reside in the <u>specific</u> project to which they have applied. Three things may affect the match

between an applicant and the applicant's eligibility for occupancy in a particular project:

1. The extent to which all or some of the units in a project are designated for specific family types, such as those who are elderly or disabled;

2. The project-specific occupancy standards established by the owner, the family size, and the unit sizes available in the project; and

3. In some instances, a family's intention to lease using a housing-choice voucher subsidy that may be used in some projects and not in others.

C. Although individual programs often serve more than one tenant population, individual projects might not.

D. There are multiple steps in determining the match between a project's eligibility requirements and a particular applicant's eligibility to live in the project. Steps to review applications are:

1. Confirm the eligibility rules for the project;

2. Determine the applicant family type in relation to project eligibility rules;

3. Determine the current occupancy of project units in relation to the populations intended to be served;

4. Compare the applicant's characteristics in relation to the availability of units; and

5. Decide the appropriate response to the applicant: (1) meets eligibility and unit available, (2) meets eligibility but unit not available, or (3) does not meet eligibility.

3-16 Determining the Eligibility of a Remaining Member of a Tenant Family

A. Periodically, family composition changes after initial occupancy. If the qualifying person leaves the unit, a determination must be made as to whether the remaining member of the household will be eligible to receive assistance. Eligibility depends upon the type of project occupied and other issues.

B. The following basic requirements for eligibility must be met for a person to qualify as a remaining member of a household:

1. The individual must be a party to the lease when the family member leaves the unit.

2. The individual must be of legal contract age under state law.

3. The remaining family member is defined in Section 202 and Section 811 regulations as the surviving member or members of an elderly family or

family with disabilities that was a party to the lease and living in the assisted unit with the now deceased member of the family at the time of his or her death.

a. The remaining family member, based on the death of the family member, is eligible to remain in the unit but must pay rent based on income. In this case, eligibility of the remaining family member, as defined by the death of the family member, is not reviewed.

b. If the individual who establishes eligibility for the project leaves the unit for any reason other than death in a Section 202/8, Section 202 PAC, Section 202 PRAC or Section 811 PRAC project, the owner must determine if the individual(s) still residing in the unit meet the eligibility requirements for the project, income and age or disability. If the individual is not eligible for the project, he/she may not receive rental assistance and depending upon the type of project, he or she may or may not be allowed to remain in the unit. In a 202/8 or a Section 202 PAC project, the individual may remain in the unit but must pay contract rent. In a Section 202 PRAC or 811 PRAC project, the individual may not remain in the unit.

4. See Figures 3-5 and 3-6 for definitions used in determining project eligibility.

3-17 Definitions of Elderly and Disability Used to Determine Project Eligibility

Definitions to establish eligibility or obtain program benefits as an elderly family or person with disabilities vary by program and in the Section 202/8, Section 202 PAC and Section 202 PRAC and Section 811 PRAC programs eligibility can vary by project. Also, some projects receive assistance from more than one program. Figure 3-5 indicates which definitions apply by type of program. Figure 3-6 presents the relevant definitions of elderly and disabled families.

Figure 3-5: Applicable Definitions for Elderly and Disability - Determining Project Eligibility Summary

Type of Project	Definition of Elderly	Definition of Disability
Section 8 New Construction **Section 8 Substantial Rehabilitation** **Section 8 State Agency** **RHS Section 515/8** **Section 8 Property Disposition Set-Aside** **Section 231 with Section 8**	Definition A Elderly Family	Definition D Disabled Family Definition E Person with Disabilities
Section 236 (insured and uninsured) **Section 236 (insured and uninsured) with Section 8 Loan Management Set-Aside** **Section 236 (insured and uninsured) with RAP** **Section 236 (insured and uninsured) with Rent Supplement** **Section 221(d)(3) BMIR with Rent Supplement** **Section 221(d)(3) BMIR with Section 8 Preservation Projects** **Section 221(d)(3) BMIR (without Section 8)**	**Note**: For Section 236 and 221(d)(3) properties, see Paragraph 3-18 B.	**Note**: For Section 236 and 221(d)(3) properties, see Paragraph 3-18 B.
Section 202 without rental assistance	Single people aged 62 or older; households the head of which (or the spouse) is aged 62 or more (12 U.S.C. 1701q(d)(4) as added by P.L. 86-372(9/23/59)	None

NOTE: Under the Section 202/8, Section 202 PAC and Section 811 Programs, project eligibility may be limited to persons qualifying under a specific disability category: persons with physical disabilities, chronically mentally ill individuals, and developmentally disabled individuals.

Figure 3-5: Applicable Definitions for Elderly and Disability - Determining Project Eligibility Summary

Type of Project	Definition of Elderly	Definition of Disability
***Section 202/8**	Definition B Elderly Family	Definition G Disabled (Handicapped) Family Definition H Person with Disabilities (Handicapped person) Definition I Nonelderly Disabled (Handicapped) Family
***Section 202 PAC**	NA	Definition G Disabled (Handicapped) Family Definition H Person with Disabilities (Handicapped person)
Section 202 PRAC	Definition C Elderly Person	NA
*** Section 811 PRAC**	NA	Definition F Disabled Household Definition H Person with Disabilities

* **NOTE**: Under the Section 202/8, Section 202 PAC and Section 811 Programs, project eligibility may be limited to persons qualifying under a specific disability category: persons with physical disabilities, chronically mentally ill individuals, and developmentally disabled individuals.

Figure 3-6: Applicable Definitions of Elderly and Disability - Determining Project Eligibility

(*taken from federal regulations as cited at each definition***)**

Elderly Definitions

Definition A – Elderly Family. ***[24 CFR 5.403]***

Elderly Family. Elderly family means a family whose head or spouse or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more live-in aides.

Definition B – Elderly Family. ***[24 CFR 891.505]*** Elderly families are:

(1) Families of two or more persons, the head of which (or his or her spouse) is 62 years of age or older;

(2) The surviving member or members of a family described in paragraph (1) living in a unit assisted under subpart E of this part (Section 202 loans) with the now deceased member of the family at the time of his or her death;

(3) A single person who is 62 years of age or older; or

(4) Two or more elderly persons living together or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well-being.

Definition C – Elderly Person. ***[24 CFR 891.205]*** An elderly person is a household composed of one or more persons at least one of whom is 62 years of age or more at the time of initial occupancy.

Disability Definitions

Definition D – Disabled Family. ***[24 CFR 5.403]*** A disabled family is a family whose head, spouse, or sole member is a person with disabilities. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.

(Continued)

Figure 3-6: Applicable Definitions of Elderly and Disability - Determining Project Eligibility

(*taken from federal regulations as cited at each definition***)**

Definition E – Person with Disabilities *[24 CFR 5.403].* A person with disabilities for purposes of program eligibility:

(1) Means a person who:

(i) Has a disability, as defined in 42 U.S.C. 423;
(A) Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or
(B) In the case of an individual who has attained the age of 55 and is blind, inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he/she has previously engaged with some regularity and over a substantial period of time. For the purposes of this definition, the term blindness, as defined in section 416(i)(1) of this title, means central vision acuity of 20/200 or less in the better eye with use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for the purposes of this paragraph as having a central visual acuity of 20/200 or less.

(ii) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:
(A) Is expected to be of long-continued and indefinite duration,
(B) Substantially impedes his or her ability to live independently, and
(C) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or

(iii) Has a developmental disability, as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(8)), i.e., a person with a severe chronic disability that
(A) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
(B) Is manifested before the person attains age 22;
(C) Is likely to continue indefinitely;
(D) Results in substantial functional limitation in three or more of the following areas of major life activity:
a. Self-care,
b. Receptive and expressive language,
c. Learning,
d. Mobility,
e. Self-direction,
f. Capacity for independent living, and
g. Economic self-sufficiency; and
(E) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

(Continued)

Figure 3-6: Applicable Definitions of Elderly and Disability - Determining Project Eligibility

(*taken from federal regulations as cited at each definition***)**

Definition E – Person with Disabilities (continued)

(2) Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome;

(3) For purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence; and

(4) Means person with disabilities (individual with handicaps), as defined in 24 CFR 8.3, for purposes of reasonable accommodation and program accessibility for persons with disabilities.

Definition F – Disabled Household. ***[24 CFR 891.305]*** Disabled household means a household composed of:

(1) One or more persons at least one of whom is an adult (18 years or older) who has a disability;

(2) Two or more persons with disabilities living together, or one or more such persons living with another person who is determined by HUD, based upon a certification from an appropriate professional (e.g., a rehabilitation counselor, social worker, or licensed physician) to be important to their care or well-being; or

(3) The surviving member or members of any household described in paragraph (1) of this definition who were living in a unit assisted under this part (Section 811 Capital Advance) with the deceased member of the household at the time of his or her death.

Definition G – Disabled (Handicapped) Family. ***[24 CFR 891.505]*** Disabled (handicapped) family means:

(1) Families of two or more persons the head of which (or his or her spouse) is a person with disabilities (handicapped);

(2 The surviving member or members of any family described in paragraph (1) of this definition living in a unit assisted under subpart E of this part (Section 202 loans) with the deceased member of the family at the time of his or her death;

(3) A single person with disabilities (handicapped person) over the age of 18; or

(4) Two or more persons with disabilities (handicapped persons) living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well-being.

(Continued)

Figure 3-6: Applicable Definitions of Elderly and Disability - Determining Project Eligibility

(*taken from federal regulations as cited at each definition***)**

Definition H – Person with a Disability (Handicapped Person). ***[24 CFR 891.505 and 891.305]*** A person with disabilities means:

(1) Any adult having 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 a nature that such ability could be improved by more suitable housing conditions.

(2) A person with a developmental disability, as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(8)), i.e., a person with a severe chronic disability that:

- (i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (ii) Is manifested before the person attains age 22;
- (iii) Is likely to continue indefinitely;
- (iv) Results in substantial functional limitation in three or more of the following areas of major life activity:
  - (A) Self-care,
  - (B) Receptive and expressive language,
  - (C) Learning,
  - (D) Mobility,
  - (E) Self-direction,
  - (F) Capacity for independent living, and
  - (G) Economic self-sufficiency; and
- (v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

(3) A person with a chronic mental illness, i.e., a person who has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently, and whose impairment could be improved by more suitable housing conditions.

(4) Persons infected with the human acquired immunodeficiency virus (HIV) who are disabled as a result of infection with the HIV are eligible for occupancy in the Section 202 projects designed for the physically disabled, developmentally disabled, or chronically mentally ill depending upon the nature of the person's disability. (24 CFR 891.505)

Note: A person whose sole impairment is alcoholism or drug addiction (i.e., who does not have a developmental disability, chronic mental illness, or physical disability that is the disabling condition required for eligibility in a particular project) will not be considered to be disabled for the purposes of the Section 202 program.

(5) A person infected with the human acquired immunodeficiency virus (HIV) and a person who suffers with alcoholism or drug addition, provided they meet the definition of person with disabilities in Section 811 (42 U.S.C) 8013(k)(2). A person whose sole impairment is a diagnosis of HIV positive or alcoholism or drug addiction (i.e., does not meet the qualifying criteria in Section 811will not be eligible for occupancy in a section 811 project. (24 CFR 891.305)

Definition I – Nonelderly Disabled (Handicapped) Family. ***[24 CFR 891.505]*** A nonelderly disabled (handicapped) family means a disabled family in which the head of the family (and spouse, if any) is less than 62 years of age at the time of the family's initial occupancy of a project.

Figure 3-6: Applicable Definitions of Elderly and Disability - Determining Project Eligibility

(*taken from federal regulations as cited at each definition***)**

NOTE: The term *handicapped* appears in a number of regulatory definitions that have not yet been updated to reflect current statutes. In this handbook, HUD replaced *handicapped* with the term *disabled*, *disability*, or *impairment* to reflect current statutes. The parenthetical reference to handicapped indicates that the term handicapped has been replaced with disabled, disability, or impairment in that definition.

3-18 Eligibility Requirements for Admission to Elderly Projects, By Program Type Covered by Title VI, Subtitle D of the Housing and Community Development Act of 1992

Title VI, Subtitle D of the Housing and Community Development Act of 1992 (Title VI-D) authorizes owners to establish a preference for elderly families in certain Section 8 assisted properties that were designed primarily for occupancy by elderly families if certain requirements are met. Title VI-D also permits owners of certain other federally assisted properties that were designed in whole or part for the elderly to continue to restrict occupancy to elderly families in accordance with the rules, standards, and agreements governing occupancy at the time of development of the project if certain requirements are met. While owners must comply with all relevant sections pursuant to Title VI-D, owners should pay close attention to Sections 651 and 658 with respect to eligibility and tenant selection. Section 3-18 A provides guidance on the optional elderly preference for covered Section 8 properties. Section 3-18 B provides guidance on restricting occupancy to elderly families in other federal assistance programs.

A. Owner-Adopted Preferences for Elderly, Disabled, Nonelderly Disabled, and Near-Elderly Disabled Families

Section 651 of Title VI, Subtitle D of the Housing and Community Development Act of 1992 permits owners of covered Section 8 housing projects designed primarily for occupancy by elderly families to adopt a selection preference for elderly families. An owner may, but is not required to, implement this preference. If the owner adopts the preference, it must be implemented in accordance with the rules described in this paragraph.

1. Applicability. Owners of properties assisted through the following programs (insured and non-insured) are eligible to implement this preference:

   a. Section 8 New Construction;

   b. Section 8 Substantial Rehabilitation;

   c. State Housing Agency programs for Section 8 New Construction and Substantial Rehabilitation;

d. Rural Housing 515/8; and

e. Section 8 Property Disposition Set-Aside (applies only to properties that involve substantial rehabilitation).

2. Definitions. The following definitions are used when implementing this preference:

a. An elderly family is one in which the head of the household, co-head, or spouse is at least 62 years of age. (See Figure 3-6, Definition A.)

b. A near-elderly family is a family whose head, spouse, or sole member is a person with disabilities who is at least 50 years of age, but below the age of 62; or two or more persons with disabilities who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62, living with one or more live-in aides.

c. A nonelderly disabled family is one in which the head of the household, co-head, or spouse is disabled and 18 to 49 years of age. (See Figure 3-6, Definition D.)

3. Owners must be able to demonstrate that the property was originally designed for occupancy primarily by elderly families to implement an elderly preference. Owners must be able to produce one primary source of information or two secondary sources of information showing that the project was intended to house elderly families.

a. Primary sources: Identification of the project (or portion of the project) as serving elderly families should be documented in at least one primary source such as:

(1) The application submitted in response to the notice of funding availability;

(2) The terms of the notice of funding availability under which the application was solicited;

(3) The regulatory agreement;

(4) The loan commitment;

(5) The bid invitation;

(6) The owner's management plan;

(7) Any underwriting or financial document collected at or before loan closing; or

(8) Application for Mortgage Insurance

b. Secondary sources. If an owner does not have at least one primary source, two or more secondary sources of evidence may be used such as:

(1) Lease records from the first two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse, or sole member is 62 years of age or older;

(2) Evidence that services for elderly persons have been provided, such as services-funding by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging;

(3) Project unit mix with more than 50% of efficiencies and one-bedrooms; and

(4) Other relevant historical data, unless clearly contradicted by other comparable evidence.

c. Sources in conflict.

(1) If one primary source is contradictory to another primary source used to establish the use for which the project was originally designed, the owner cannot make the election of preferences for elderly families based upon primary sources alone.

(2) In any case, where primary sources do not provide clear evidence of original design of the project for occupancy primarily by elderly families or when primary sources conflict, secondary sources may be used to establish the use for which the project was originally designed.

(3) In the event that HUD staff is requested to make a decision based upon totality of circumstances , HUD staff should thoroughly research HUD records prior to making such a decision. If there is uncertainty regarding the weight of the available source documents used for determining eligibility, HUD staff must render a decision that the project was not designed primarily to serve the elderly.

4. An owner is not required to obtain approval from HUD prior to implementing the elderly preference. Although the owner is not required to submit documentation to HUD prior to implementing the elderly preference, an owner must provide the documentation as evidence of eligibility to apply the preference upon HUD's request.

5. When implementing the preference, an owner must:

   a. Notify nonelderly families on the waiting list of the decision to implement this preference and of the impact the decision will have on nonelderly families on the waiting list.

   b. Reserve a percentage of the units for occupancy only by disabled families or individuals who are neither elderly nor near-elderly (collectively referred to as nonelderly disabled persons/families) that is equal to the lesser of:

      (1) The higher of the percentage of units occupied by nonelderly disabled families on (i) January 1, 1992, or (ii) October 28, 1992; or

      (2) 10% of the total number of units in the project.

      NOTE: Although the reservation of units is capped at 10% of the total number of units, the owner can exceed the 10% cap as long as the units exceeding the cap are leased in a nondiscriminatory manner.

Example – Establishing the Number of Units for Nonelderly Persons with Disabilities

An owner has a covered Section 8 housing property with 100 units. On January 1, 1992, nonelderly persons/families with disabilities occupied 10 of the units. On October 28, 1992, nonelderly persons/families with disabilities occupied 20 units.

A. The owner would have to compare the number of units occupied by nonelderly disabled persons/families on January 1, 1992, (10 units) with the number of units occupied by nonelderly disabled persons/families on October 28, 1992, (20 units) and use the **higher** number. In this case, it would be **20 units**.

B. 10% of 100 units = **10 units**

To obtain the percentage or number of units that must remain available for nonelderly disabled persons/families, the owner must take the number of units determined above for **Item A (20 units)**, compare with **Item B (10 units)**, and use the **lower** number for the number of units that must be reserved.

Therefore, Item B is less than Item A, and **the owner must reserve 10 units** for occupancy by nonelderly disabled persons/families.

Note: If an owner determines that there were no nonelderly persons occupying units on those two dates, the required number of units to be reserved for nonelderly persons with disabilities can be zero (0).

6. If an owner exceeds the established number of units and leases additional units to nonelderly disabled families and the units later become available for occupancy, the owner may fill the vacancies with elderly families/persons, as long as the established set-aside percentage of units is met.

7. The set-aside number of units for nonelderly disabled families is not unit specific. A nonelderly disabled family may occupy a unit without accessible design features. Elderly families may occupy any unit as long as the set-aside number of units for nonelderly persons with disabilities is preserved.

8. Owners may exceed the set-aside number of units for nonelderly disabled families and are encouraged to do so if the need exists in the community. Owners who exceed the set-aside number of units are not required to continue to exceed the set-aside number of units.

9. If there is an insufficient number of elderly families available to fill the units designated for elderly families, owners may establish a preference for near-elderly persons with disabilities for these units.

10. If there is an insufficient number of nonelderly disabled families available for the units designated for nonelderly persons with disabilities, the owner

may establish a preference for near-elderly persons with disabilities for these units.

11. If there are an insufficient number of near-elderly disabled families available, the owner shall make units generally available for occupancy by families who have applied and are eligible, without regard to preferences.

12. Elderly Restriction at RHS Section 515/8 Projects. Owners of RHS Section 515/8 projects designated as elderly are limited to housing elderly persons or persons with disabilities meeting the Definitions A, D or E in Figure 3-6. Age restrictions cannot be waived at these projects. If there is an insufficient number of eligible applicants and the owner wishes to house persons who do not meet the elderly or disabled eligibility requirements in Figure 3-6, the owner must request RHS to reclassify the project designation from elderly to family. In cases where RHS has determined there is no longer a demand for the elderly units in the community where the project is located and changes the project designation to family, HUD or CA should consult with Legal Counsel to determine if there is a need to amend the assistance contract.

B. **Owner-Adopted Elderly Restrictions in Certain Federally Assisted Housing Projects that were Designed to Serve the Elderly**

Section 658 of Title VI of Subtitle D of the Housing and Community Development Act of 1992 (HCDA) permits owners of certain federally assisted projects to restrict occupancy in such projects (or portions of projects) to elderly families in accordance with the rules, standards, and agreements governing occupancy in effect at the time of the development of the project.

1. Applicability. Only owners of properties that were originally designed for the elderly and assisted through the following programs are eligible to apply this restriction:

   a. Section 236 (insured and non-insured);

   b. Section 221(d)(3) BMIR; and

   c. Section 202 of the Housing Act of 1959, as Section 202 existed before the enactment of the Cranston-Gonzalez National Affordable Housing Act (i.e., Section 202 projects developed prior to 1991). See paragraph 3-20 B for 202/8 eligibility requirements.

   NOTE: In order to restrict occupancy to the elderly in accordance with Section 658, the project must have continuously operated solely as an elderly project.

2. Definitions. The following definitions are used when implementing this restriction:

a. For Section 236 projects (insured and noninsured with or without Rent Supplement, RAP, or LMSA) and for the Section 221 (d) (3) BMIR projects (with or without Rent Supplement) the following definitions are used:

(1) An Elderly person or family is defined as a household where the head or spouse is age 62 or older.

(2) A disabled or handicapped person or family is defined by the Section 202 definition in effect at the time the project was endorsed. See the definitions for Section 202 projects in Figure 3-5 for projects endorsed prior to the change of definition in 1974. In 1974 the definition of handicap was amended to include other categories of disabilities. See the definition for Section 202/8 in Figure 3-5)

b. For the Section 202 Direct Loan Program funded from Fiscal Year 1960 through Fiscal Year 1964 the following definitions are used:

(1) Elderly is defined as single people aged 62 or older; households the head of which (or the spouse) is aged 62 or more.

(2) Nonelderly Disabled are not included in the definition and are not eligible.

c. For the Section 202 Direct Loan Program funded from Fiscal Year 1965 through Fiscal Year 1974 the following definitions and requirements are used:

(1) Elderly is defined as single people aged 62 or more or households the head of which (or the spouse) is aged 62 or more.

(2) The definition of elderly was amended to include handicapped in 1965. A person shall be considered handicapped if such person is determined to have a physical impairment which is (a) expected to be of long-continued and indefinite duration; (b) substantially impedes his ability to live independently; and, (c) is of such a nature that such ability could be improved by more suitable housing conditions.

(3) Ten percent of the units in a Section 202 project for the elderly were designed for people with mobility impairments and could house persons (elderly or nonelderly) who required the accessibility features of the unit; a Section 202 project could also be developed just for non-elderly persons with physical disabilities.

(4) To qualify for admission to one of the units for the elderly, the applicant must be an elderly family (see definitions in Figures 3-5 and 3-6).

(5) To qualify for admission to one of the units specifically designed for persons with physical disabilities, the head or spouse must be at least 18 years old and have a disability requiring the accessible design features of the unit.

NOTE: Persons with degenerative conditions (e.g., AIDS, multiple sclerosis, or cancer) qualify for one of these units if they require the accessible design features of the unit.

(6) Any Section 202 direct loan project developed specifically for persons with disabilities is not covered under Section 658.

(7) Persons who meet the definition of a "person with disabilities" and who do not require the accessible features of these units may be admitted to the project only if they qualify as elderly for one of the units designed for elderly occupancy.

(8) In assigning units designed for disabled persons needing accessible features, owners must treat elderly applicants with disabilities and nonelderly applicants with disabilities equally, unless one applicant has a preference adopted by the owner such as a residency preference or a preference for working families, disability or other groups as described in paragraph 4-6 C.

3. Owners must be able to demonstrate that the property was originally designed for occupancy only by elderly families in order to restrict occupancy to the elderly. Owners must be able to produce one primary source of information or two secondary sources of information showing that the project was intended to house elderly families.

a. Primary sources. Identification of the project (or portion of the project) as serving elderly families in at least one primary source such as:

(1) The application submitted in response to the notice of funding availability;

(2) The terms of the notice of funding availability under which the application was solicited;

(3) The regulatory agreement;

(4) The loan commitment;

(5) The bid invitation;

(6) The owner's management plan;

(7) Any underwriting or financial document collected at or before loan closing; or

(8) Application for Mortgage Insurance

b. Secondary sources. If an owner does not have at least one primary source, two or more secondary sources of evidence may be used such as:

(1) Lease records from the first two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse, or sole member is 62 years of age or older;

(2) Evidence that services for elderly persons have been provided, such as services-funding by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging;

(3) Project unit mix with more than 50% efficiencies and one-bedrooms; and

(4) Other relevant historical data, unless clearly contradicted by other comparable evidence.

c. Sources in conflict

(1) If a primary source establishes a design contrary to that established by another primary source upon which the owner would base support that the property is an eligible project, the owner cannot make the election of preferences for elderly families as provided by this paragraph based upon primary sources alone.

(2) In any case where primary sources do not provide clear evidence of original design of the project for occupancy primarily by elderly families, including those cases where primary sources conflict, secondary sources may be used to establish the use for which the project was originally designed.

(3) In the event that HUD staff is requested to make a decision based upon totality of circumstances , HUD staff should thoroughly research HUD records prior to making such a decision. If there is uncertainty regarding the weight of the available source documents used for determining eligibility,

HUD staff must render a decision that the project was not designed to serve the elderly.

4. An owner is not required to submit documentation that the project was originally designed for occupancy by the elderly for HUD approval prior to implementing the elderly restriction. An owner must produce the documentation as evidence of eligibility to apply the restriction when asked by HUD.

5. Waiving the Elderly Restriction. An owner may request to waive the elderly restriction due to market conditions and/or to maintain the economic soundness of the project. In such cases, HUD approval is required before the restriction can be waived and the waiting list opened to nonelderly persons. For example, if an owner of a project governed by 658 elects to continue to restrict occupancy to the elderly under this section of the Act, the applicants eligible for occupancy would be based on this restriction. However, if an owner lifts the restriction to fill a vacant unit in the project and rents to a nonelderly tenant, the owner may, but is not required to, retain the elderly restriction for those units previously occupied by non-elderly tenants. The owner may retain the elderly restriction only if the unit was rented to a nonelderly tenant due to market conditions and/or to maintain the economic soundness of the project. HUD will review the request, and if approved, the HUD approval is not to exceed three years. HUD approval must be obtained to extend the waiver beyond the three-year period. If HUD approval is obtained and there are eligible elderly persons on the waiting list, the owner may select elderly applicants in accordance with the elderly restriction over nonelderly tenants on the waiting list. The owner also has responsibility for updating the Tenant Selection Plan and notifying the nonelderly applicants currently on the waiting list within ten business days of such update. The owner must provide written notification and the notice must be sent to the applicant by certified mail, return receipt requested. Proof of notification to the applicants on the waiting list must be maintained in the project occupancy files.

3-19 Eligibility Requirements for Admission to Elderly Projects, By Program Type Not Covered by Title VI, Subtitle D of the Housing and Community Development Act of 1992

A. Section 231 Projects with Section 8 (not covered by Section 651) and/or Rent Supplement Contracts

The Section 231 program is an elderly housing program that provided that some units may be specifically designed for persons with physical disabilities. A preference could be provided for those individuals who require the features of those units.

1. Projects or parts of projects for the elderly.

a. A minimum of 50% of the units in a Section 231 project and a maximum of 100% of the units will have been designated at development as reserved for elderly persons or elderly families.

b. Any units specifically designated for elderly families must be occupied only by such families.

c. Elderly persons with disabilities are eligible to live in elderly units in Section 231 projects.

2. Units designed for persons with disabilities.

a. Owners must give a preference for any unit designed for persons with disabilities to those persons with disabilities of any age who need the features of the units.

b. The applicable definition of a person with a disability is referenced in Figure 3-5.

c. Owners that wish to serve a greater percentage of persons with disabilities than the percentage specified in the Regulatory Agreement or other loan agreements may do so upon receiving written approval from HUD.

B. **Section 221(d)(3) with a Rent Supplement Contract;**

1. Projects designed entirely for the elderly must restrict occupancy to elderly families or elderly persons. By their very nature, these projects have no units designed or reserved for nonelderly persons with disabilities.

2. Projects designed in part for the elderly, which have a specific number of units with accessible features designed for persons with disabilities, may restrict occupancy of units without accessible features to elderly families. Those projects cannot restrict occupancy to the elderly for those units designed for persons with disabilities as nonelderly persons with disabilities are also eligible to occupy those units. For units in the project that are designed for persons with disabilities who need accessible units, owners may not give elderly persons with disabilities priority over nonelderly persons with disabilities.

C. **Prepaid Projects with Formerly HUD-Insured Mortgages Under Section 221, Section 231, Section 8 not covered by Title VI D or Property Disposition Set-Aside that does not involve substantial rehabilitation**

Owners may restrict occupancy in the elderly units in these projects to only elderly families, but are not required to do so. These projects may also have accessible units. For the accessible units:

1. Owners may not give elderly persons with disabilities priority over nonelderly persons with disabilities.

2. A member of the family must meet the definition of "a person with a disability" and have a disability that requires the accessible features of the unit.

3-20 Eligibility for Admission to Individual Section 202, Section 202/8, Section 202 PAC, and Section 202 and Section 811 PRAC Projects

A. Section 202 (SH) projects serve the elderly as defined in Definition B in Figure 3-6.

B. Section 202/8 projects for the elderly serve:

1. Elderly families as defined in Definition B in Figure 3-6; and

2. For 10% of the units which are accessible, persons (elderly or nonelderly) who require the accessible features of the unit.

NOTE: When assigning accessible units, owners must treat equally elderly and nonelderly applicants with disabilities who require the accessible features of the unit, unless one applicant has an owner-adopted restriction or preference. See paragraphs 3-18 B and 4-6 C.

C. Section 202/8 and Section 202 PAC projects for persons with disabilities serve one or more of the following statutorily recognized categories of disability based upon the population to be served as described in the application for funding and defined in Definition H in Figure 3-6.

1. Persons with physical disabilities;

2. Persons with development disabilities; and/or

3. Persons with chronic mental illness

D. Section 202 PRAC projects serve a household composed of one or more persons at least one of whom is 62 years of age or more at the time of initial occupancy. See definition C in Figure 3-6.

E. Section 811 projects serve one or any combination of the following statutorily recognized categories of disability based upon the population to be served as described in the application for funding and defined in definition H in Figure 3-6.

1. Persons with physical disabilities;

2. Persons with developmental disabilities; or

3. Persons with chronic mental illness.

In addition, sponsors of Section 811 projects may propose in their applications to restrict occupancy to a subcategory of one of the statutorily recognized categories of disability (e.g., AIDS is a subcategory of physical disability), provided they do not deny occupancy to any otherwise qualified person with a disability in the overall category that the subcategory falls under.

F. Applicants with disabilities who meet the eligibility requirements for admission to a Section 202/8 project for the elderly or for persons with disabilities or a Section 811 project for persons with disabilities cannot be excluded on the basis of having another disability in addition to the one served by the particular project.

Examples – Eligible Applicants with Disabilities

- An owner of a project with accessible units cannot exclude an otherwise eligible person with a disability requiring an accessible unit, who also has another disability such as chronic mentally illness.
- An owner of a project for the chronically mentally ill cannot exclude an otherwise eligible person from the project because of his or her physical disability.

G. Leasing Units to Non-Eligible Families

1. If the owner is temporarily unable to lease all units to eligible families, he may request HUD approval to lease one or more units to families that do not meet the income eligibility requirements of 24 CFR Part 5 as follows:

   a. Section 202/8 or Section 202 PAC

      (1) A written request for a waiver must be submitted to the HUD Field Office in accordance with Exhibit 3-1.

      (2) The request must provide documentation of the owner's continuing marketing efforts to attract eligible applicants and that an increased level of occupancy will prevent financial default and foreclosure.

      (3) HUD's approval of a request must be for a limited time initially one year. HUD may impose other terms and conditions to the approval that are consistent with program objectives and necessary to protect the loan.

      (4) HUD may reduce the number of units covered by either a HAP or PAC contract if the owner does not comply with the requirements for leasing to families that do not meet the eligibility requirements; or, if HUD determines that the owner's inability to lease to families that do not meet the eligibility requirements is not a temporary problem.

b. Section 202 PRAC or Section 811 PRAC

The owner's written request providing the information specified in Situation 6 of Exhibit 3-1 must be submitted to HUD Headquarters with the recommendation of the HUD Field Office.

2. If permitting over-income families to lease one or more units is not sufficient to solve the vacancy problem, in order to protect the financial viability of the project, an owner may request approval to serve a population other than the one(s) it was approved to serve.

a. A request to waive the age requirement for a Section 202 project for the elderly must provide documentation of the owner's continuing marketing efforts to attract eligible applicants and that an increased level of occupancy will prevent financial default and foreclosure. The request with the recommendation of the HUD Field Office is sent to the Multifamily Hub for approval except that in the case of a Section 202 PRAC project, the request and recommendation must be sent by the Multifamily Hub to Headquarters for approval.

H. For projects serving persons with disabilities, the owner must apply to the HUD Field Office for permission to serve a different disabled population. The owner must demonstrate a plan to the HUD Field Office that shows the following:

1. The owner can adequately serve the proposed disabled population based on past experience in serving the proposed population;

2. Funds are available from the state or local government or from other outside sources to pay for any necessary supportive services and a written commitment for funding is provided by the source or the owner;

3. The need for the original occupancy category no longer exists;

4. The current tenants can choose to remain in the project or move. If the tenants remain, the owner can begin housing persons in the newly approved category only as vacancies occur; and

5. There are sufficient subsidized units available in the area to house current tenants who are willing to move, as well as to house individuals who no longer qualify for the housing because of the changed category.

6. The request and recommendation of the HUD field office is sent to the HUD Multifamily HUB Director for approval.

3-21 Applicants with Housing Choice Vouchers

Owners may receive inquiries or applications from families wishing to use a Housing Choice Voucher in their property. The Housing Choice Voucher program is a form of rental subsidy administered by public housing agencies (PHAs) that allows families to

rent units in the marketplace and receive a subsidy from the PHA. The rules governing the use of vouchers in multifamily projects vary depending upon the type of subsidy operating at the project.

Owners must use the Existing Tenant Search in accordance with their screening policy to determine if an applicant or members of an applicant's household are receiving assistance at another location. Owners must also use the Multiple Subsidy Report to determine if any of their tenants are receiving assistance at another location. These reports search both the Public and Indian Housing's Inventory Management System (IMS (formerly known as the Public and Indian Housing Information Center (PIC)) and the Multifamily Housing's TRACS databases. See Chapter 9, Enterprise Income Verification (EIV).

A. **100% of Units Receive Assistance under an Assistance Contract**

Owners may not admit an applicant with a voucher, unless the applicant agrees to give up the voucher prior to occupancy. Before admitting such applicants, owners must inform voucher holders of the following:

1. The family must be placed on the project waiting list and must give up the voucher when the family moves into the project.

2. If the family later moves out of the project, the project subsidy will not move with the family as it does with a voucher; and

3. The family will need to reapply to the PHA to receive another voucher.

B. **Partially Assisted Properties**

1. Owners may accept applicants with the housing choice vouchers into units that do not already have a form of rental assistance such as Section 8, RAP, Rent Supplement, Section 202 PAC, or Section 202 PRAC and Section 811 PRAC. Owners may not admit an applicant with a voucher to a unit with Section 8, RAP, or Rent Supplement, Section 202 PAC, or Section 202 PRAC and Section 811 PRAC unless the applicant agrees to give up the voucher prior to occupancy.

2. The PHA and HUD may limit rents that may be charged and subsidies the owners may collect in units where a voucher family is housed *(see the Housing Choice Voucher regulations at 24 CFR 982.521 for the requirements on the rent that can be paid to the owner in a subsidized property).* Since these limits vary by locality, owners should discuss rent and subsidy limitations with the local PHA. If the owner accepts a voucher holder, the PHA will perform annual inspections to ensure that the unit meets housing quality standards, recertify the family annually, and make the assistance payments to the owner.

C. **Section 236, Section 221(d)(3) BMIR, and Section 202 Units (without Assistance Contracts)**

Owners may accept applicants with the housing choice vouchers into their units. As described in subparagraph B.2 above, the PHA and HUD may limit rents and subsidies *(see the Housing Choice Voucher regulations at 24 CFR 982.521 for the requirements on the rent that can be paid to the owner in a subsidized property)*. Also, the PHA will conduct annual unit inspections and recertify family income annually prior to making assistance payments.

D. **Previously HUD-Owned Projects**

1. Previously HUD-owned projects must give a preference to families holding vouchers. (This preference is required by the sales contract and deed executed between HUD and the owner.)

2. The PHA and HUD may limit rents that may be charged and subsidies the owners may collect in units where a voucher family is housed. Because these limits vary by locality, owners should discuss rent and subsidy limitations with the local PHA. If the owner accepts a voucher holder, PHA will perform annual inspections to ensure that the unit meets housing quality standards, recertify the family annually, and make the assistance payments to the owner.

3-22 Eligibility of Single Persons

A. HUD does not restrict the admission of single persons to assisted housing.

B. Section 8 Housing Limited to Single Sex Occupancy

1. Established HUD policy has traditionally allowed universities to separate students according to gender and to provide separate bathroom facilities by gender based on compelling privacy reasons. See implementing regulations to Title IX of the Education Amendments of 1972, as amended, 45 C.F.R. Sections 86.32 and 86.33.

2. The Department also believes that in certain other limited circumstances, limiting occupancy of Section 8 programs to members of one sex may not violate the Fair Housing Act, although the legality of the practice is not settled.

a. The Department is aware that under Section 42 of the Internal Revenue Code, housing must be for use by the general public to receive Federal low-income housing tax credits. Under Internal Revenue Service interpretations, a housing facility will be deemed to qualify as being for use by the general public if it does not violate any HUD policy governing nondiscrimination as expressed in a HUD handbook. This Handbook should not be construed to ban single sex facilities, since the issue as to whether limiting housing to one sex is permissible depends on the facts and circumstances of the particular case.

b. The Department does not interpret the Internal Revenue Code to require housing providers to obtain a certification from HUD that they are operating in compliance with nondiscrimination requirements as a prerequisite to obtaining the tax credit or as authorizing or requiring HUD to issue such certifications. This Handbook should not be construed to suggest that facilities which have received the tax credit in the past are operating in violation of the Fair Housing Act. However, assisted housing providers who wish to do so, may contact HUD Field Office personnel for guidance on the applicability of the Fair Housing Act to their particular housing facility.

c. Guidance provided by the Department would evidence a staff opinion, based on the information provided at that time, whether the housing facility is operating in accordance with HUD policy governing nondiscrimination as expressed in the HUD handbooks.

d. However, if a complaint of discrimination were to be filed with HUD alleging that the policy is discriminatory, such guidance would not preclude the Department from determining that the policy is discriminatory, since such a determination can only be made by the responsible HUD officials after a full investigation based on all facts and circumstances. In addition, it should be noted that such guidance cannot insulate housing providers from potential private suits by persons who may feel aggrieved by the policy.

3-23 Occupancy Standards

A. Overview

1. Owners must develop and follow occupancy standards that take into account the size and number of bedrooms needed based on the number of people in the family.

2. Occupancy standards serve to prevent the over- or underutilization of units that can result in an inefficient use of housing assistance. Occupancy standards also ensure that tenants are treated fairly and consistently and receive adequate housing space. By following the standards described in this paragraph, owners can ensure that applicants and tenants are housed in appropriately sized units in a fair and consistent manner as prescribed by law. Occupancy standards must be part of an owner's tenant selection procedures. Refer to paragraph 4-4 for more details on developing tenant selection procedures.

B. Key Requirements

1. Owners of all properties subject to this handbook, including subsidized housing cooperatives, must assign a family to a unit of appropriate size, taking into consideration all persons residing in the household.

2. Owners must have written standards describing the project eligibility criteria. Owners have discretion in developing specific occupancy standards for a property, as long as the standards do not violate fair housing requirements or contain prohibited policies and comply with the following (see Exhibit 3-2 for HUD policy guidance).

   a. Federal, State, and local fair housing and civil rights laws;

   b. Tenant-landlord laws;

   c. Zoning restrictions; and

   d. HUD's Equal Opportunity and nondiscrimination requirements under HUD's administrative procedures.

C. **Timeframe for Applying Occupancy Standards**

1. Owners apply their occupancy standards before assigning the family to a unit. Owners should review family size and occupancy standards prior to completing all of the required verifications so that if the property cannot accommodate the family, the owner may immediately inform the family of its ineligibility.

2. Owners also compare family composition to occupancy standards when there is a change in family size. This comparison is done to determine whether the family needs to transfer to another unit.

D. **Prohibition of Occupancy Standards that Exclude Children**

1. The Fair Housing Act prohibits housing providers from discriminating on the basis of familial status, making it illegal to discriminate against families because of the presence of children.

2. Owners may neither exclude families with children from their properties, nor may they develop policies or procedures that have the purpose or effect of prohibiting children (e.g., policies in tenant selection plan, occupancy standards and house rules).

3. Owners may not exclude otherwise eligible elderly families with children from elderly properties or elderly/disabled properties covered by this handbook.

E. **General Occupancy Standards**

1. Owners have discretion in developing occupancy policies that meet the needs of the specific property. HUD does not prescribe specific policies owners must implement but provides guidelines owners must follow when developing written occupancy standards.

2. HUD's occupancy guidelines are provided in Exhibit 3-2. Generally a two-persons-per-bedroom standard is acceptable. An owner may establish a different standard for assigning unit size based on specific characteristics of the property (e.g., some bedrooms are too small for two persons).

3. An owner's occupancy standards establish the size of the unit a family will occupy, but owners must avoid making social judgments on a family's sleeping arrangement. For example, it is not for the owner to determine whether an unmarried couple may share the same bedroom or whether a young child can share a bedroom with a parent.

4. Owners may consider the size of the unit, the size of the bedrooms, and the number of bedrooms so long as their policy allows for family preferences (within HUD guidelines) to be considered. As owners develop and implement occupancy standards, they must take into consideration the following factors:

   a. The number of persons in the family;

   b. The age, sex and relationship of family members;

   c. The family's need for a larger unit as a reasonable accommodation; and

   d. Balancing the need to avoid overcrowding with the need to avoid underutilization of the space and unnecessary subsidy.

5. If a family, based on the number of members, would qualify for more than one unit size, the owner must allow the family to choose which unit size they prefer.

6. Counting family members. In order to determine the size of unit that would be appropriate for a particular family, the owner needs to determine the number of family members.

   a. The owner must count all full-time members of the family.

   b. The owner must also count all anticipated children. Anticipated children include the following:

      (1) Children expected to be born to a pregnant woman;

      (2) Children in the process of being adopted by an adult family member;

      (3) Children whose custody is being obtained by an adult family member;

      (4) Foster children who will reside in the unit;

(5) Children who are temporarily in a foster home who will return to the family; and

(6) Children in joint custody arrangements who are present in the household 50% or more of the time.

c. The owner may count children who are away at school and who live at home during recesses.

NOTE: Owners should not count children who are away at school who have established residency at another address or location as evidenced by a lease agreement. The new address or location is considered the student's principle place of residence.

d. The owner must count live-in aides for purposes of determining appropriate unit size.

e. The owner may establish reasonable standards for counting family members that are temporarily in a correctional facility. For example, it is reasonable for an owner to count a teenager who will return to the family in six months from a detention center. It is not reasonable to count an adult member who may return to the family in two years following incarceration.

f. The owner must not count nonfamily members, such as adult children on active military duty, permanently institutionalized family members, or visitors.

g. The owner must count foster adults living in the unit.

F. Assigning a Smaller Unit Than Required

An owner may assign a family to a smaller unit size than suggested by the owners' occupancy policies if the family requests the smaller unit and if all of the following apply:

1. The family is eligible for the smaller unit based upon the number of family members, and occupancy of the smaller unit will not cause serious overcrowding;

2. Assigning a smaller unit results in a lower rent payment for the occupant in a Section 236 or BMIR property; and

3. The assignment will not conflict with local codes.

G. Assigning Units Larger Than Required

1. An owner may assign a family to a larger unit than suggested by the owner's occupancy standards if one of the following conditions exists (see exception for assigning a larger unit to a single person in G.2 below):

a. No eligible family in need of the larger unit is available to move into the unit within 60 days, the property has the proper size unit for the family but it is not currently available, and the family agrees in writing to move at its own expense when a proper size unit becomes available.

b. A family needs a larger unit as a reasonable accommodation for a family member who is a person with a disability.

2. However, a single person must not be permitted to occupy a unit with two or more bedrooms, except for the following persons:

a. A person with a disability who needs the larger unit as a reasonable accommodation.

b. A displaced person when no appropriately sized unit is available.

c. An elderly person who has a verifiable need for a larger unit.

d. A remaining family member of a resident family when no appropriately sized unit is available.

H. **Change in Family Size After Initial Occupancy**

1. After a family moves into a unit, the unit may become overcrowded or underutilized due to a change in family size.

a. Rental properties.

(1) The owner may require the family to move to a unit of appropriate size. If a unit of appropriate size is not available, the owner must not evict the family and must not increase the family's rent to the market rent. See the example below.

Example - Change in Family Size

Atta and Kumari Gupta live in a 3-bedroom unit at Elmwood Terrace. The Guptas have lived in the unit with their three children for 12 years. However, all of the Gupta children are grown and have moved out of the family. Atta and Kumari Gupta no longer need a 3-bedroom unit and could move into a 1-bedroom unit. Elmwood Terrace has only 2- and 3-bedroom units. If a 2-bedroom unit becomes available, the owner may require the Guptas to move into the smaller unit, but must not require them to move out of the property. If the owner asks the Guptas to move into a 2-bedroom unit, the Guptas may choose to move into it and continue to receive assistance, or remain in the 3-bedroom unit and pay market rent.

If a family refuses to move to the correct size unit, the family may stay in the current unit and pay the market rent. The owner must not evict the tenant for refusing to move but may evict the family if it fails to pay the market rent in accordance with the lease.

b. Subsidized housing cooperatives.

(1) Units occupied by families who are not receiving rental assistance under a contract for assistance. In Section 236 and BMIR cooperatives in which the member is receiving no other assistance, the cooperative may establish its own policy on whether the cooperative should:

- Offer over-housed members smaller units; and
- Require members who refuse such offers to pay the market rate carrying charge.

(2) Units occupied by families receiving assistance through an assistance contract. These will typically be families receiving Rent Supplement, RAP, or Section 8 assistance. When an appropriately sized unit becomes available, the cooperative must require an over-housed member to either:

- Transfer to the appropriately sized unit offered by the cooperative and continue to receive assistance; or
- Remain in the same unit and pay a higher carrying charge.

The choice remains with the member. If an appropriately sized unit is available, a cooperative may permit an over-housed member to remain in the same unit and continue to receive Section 8/Rent Supplement/RAP assistance only as long as there is no market for the size of unit the member would be vacating.

(3) If a family refuses to move to the correct size unit, the family may stay in the current unit and pay the market rate carrying charge. The owner must not evict the tenant for refusing to move but may evict the family if it fails to pay the market rate carrying charge in accordance with the lease.

2. See Chapter 7, Section 3, for additional information about unit transfers for tenants.

I. **Change in Need for Accessible Features**

If a family is in an accessible unit but no longer needs the accessible features, the owner may request that the family move to another unit in the project. For such a request to be enforceable, this provision must be made in the lease.

Section 3: Verification of Eligibility Factors

3-24 Key Regulations

This paragraph identifies the key regulatory citations pertaining to Section 3: Verification of Eligibility Factors. The citations and their titles are listed below.

A. 24 CFR 5.659 Family Information and Verification

B. 24 CFR 5.216 Disclosure and Verification of Social Security and Employer Identification Numbers

C. *24 CFR 5.233 Mandated Use of HUD's Enterprise Income Verification (EIV) System*

3-25 Introduction

Applicants may be assisted only after it is determined that they meet the eligibility criteria for the program and the project. This requirement is intended to ensure that an available subsidy is provided to families that are eligible under the program rules and not provided to ineligible families. Determining eligibility requires that the owner verify information that is provided by the applicant on the application form and in subsequent interviews. In general, applicants are not required to disclose their status with respect to any protected basis; however, if the family requests a reasonable accommodation based upon a disability, the family must disclose its disability status.

Chapter 5, Section 3, of this handbook provides general information and tips on verifying all types of information, including methods to avoid accepting tampered documents and detailed information on verifying income. This section addresses verification of eligibility factors, other than income, about which information must be collected in order to determine eligibility.

3-26 Key Requirements

A. Owners must verify all income, expenses, assets, family characteristics, and circumstances that affect family eligibility, order of applicant selection, or level of assistance.

B. *Methods of verification acceptable to HUD listed in the order of priority:

1. Up-front Income Verification (UIV)

(a) Using HUD's EIV system for tenants (not available for applicants) (**Mandatory)**;

(b) UIV using non-EIV system **(Optional)**

2. Third-party verification from source (written);

3. Third-party verification from source (oral); or

4. Family certification.

See Chapter 5, Paragraph 5-13 for more information on acceptable verification methods.*

C. This section covers Verification of Family Composition, Verification of Family Type and Individual Status, Verification of the Need for an Assistance Animal, Verification of Income Eligibility, Collecting Proof of Social Security Numbers, and Verification of Citizenship and Immigration Status. See Chapter 5, Section 3, for other key requirements regarding verifications,*including income verification*, and **Appendix 3** for information about verification methods.

3-27 Verification of Family Composition

A. Owners may seek verification of family composition only if the owner has clear written policy. Verification is not required.

B. Owners may use a policy to verify family composition to determine whether children reside in the household 50% or more of the time, as well as determine the appropriate unit size for the family.

C. Owners may also want to verify the departure of family members reported to have moved out by reviewing the lease signed by the departing member for a new residence, a new driver's license or utility bill showing the departed member's name and a new address or accepting a signed affidavit from the remaining head of household when reasonable efforts to obtain verification have been exhausted.

D. If an owner determines it necessary to verify family composition, information may be collected from sources listed in **Appendix 3**.

3-28 Verification of Family Type and Individual Status

A. **Overview**

Eligibility for certain projects (as identified in Section 2 of this chapter), certain income deductions, and preferences are based upon whether the family is identified as elderly or disabled, or whether a family has any individual members who are elderly or disabled. Therefore, verifications of age and disability status are very important issues in determining eligibility and rent.

B. **Disability**

An owner may verify disability to determine whether a family or person meets the definition of disability used to determine eligibility for a project, preferences, or an allowance, or to identify applicant needs for features of accessible units or reasonable accommodations. The owner may not specifically ask for or verify the nature and extent of the disability. There are ways to verify disability status without obtaining detailed information or information that must not be collected. Verification of disability may be obtained through the following methods:

1. A third-party verification form may be sent by the owner to an appropriate source of information, including but not limited to *a physician, psychologist, clinical social worker, other licensed health care*, or the Veterans Administration.

   a. If a third-party form is used, it must be signed by the applicant authorizing the release of such information to the owner.

   b. The form should provide the definitions of disability used to determine eligibility and rent and should request that the source completing the form identify whether the applicant meets the definition. In this way the owner is not required to make any judgments about whether a condition is considered a disability, and will not have prohibited information.

2. Receipt of social security disability payments is adequate verification of an individual's disability status for programs listed in Figure 3-5 that use definition E for person with disabilities. Such information is obtained through verification of the social security disability payments. See the discussion in Chapter 5, Section 3.

   NOTE: Applicants who meet the Social Security's definition of disabled are eligible even if they do not receive social security benefits. The Section 202 and Section 811 programs do not use this definition of disability, *therefore*, this note does not apply to applicants for units in Section 202 or 811 projects. *Because the Disability Status in EIV is not always accurate, owners must not use this status for determining an applicant's or tenant's eligibility as disabled for a HUD program or for receiving the elderly/disabled household allowance. Owners must obtain current tenant-provided documentation, or verification directly from the Social Security office to determine whether an applicant or tenant meets their definition as disabled for programs listed in Figure 3-5 that use definition E for person with disabilities.*

3. Receipt of a veteran's disability benefits does not automatically qualify a person as disabled, because the Veteran's Administration and Social Security Administration define disabled differently.

C. **Age**

Owners may need to verify age for several reasons: to determine eligibility for a property restricted to elderly persons or families or to determine whether a person is old enough to sign a legally binding contract. Owners may also need to verify age to determine whether a family is entitled to certain allowances based upon the age of the head, spouse, co-head, or minor. Verification of age may be obtained using any of the documents listed in **Appendix 3**.

3-29 Verification of the Need for an Assistance Animal

Some applicants or residents may require the use of assistance animals as a reasonable accommodation for a disability. (See the glossary for a definition of assistance animals).

A. An owner may verify that the applicant or resident has a disability and that there is a disability-related need for the requested accommodation, in this case the assistance animal.

B. The owner may require the applicant or resident to provide documentation of the disability and the need for the animal from an appropriate third party, such as a medical provider, mental health provider, or other professional in a position to provide this verification. For example, if a tenant or applicant seeks a reasonable accommodation for an assistance animal that provides emotional support, that individual may be required to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides support that alleviates one or more of the identified symptoms or effects of an existing disability.

C. The owner must implement its policy related to inquiries consistently for all applicants requesting permission to keep an assistance animal. However, a tenant or applicant should not be required to provide documentation of the disability or the disability-related need for the assistance animal if the disability is or the need is readily apparent or already known to the provider. For example, a blind tenant should not be required to provide documentation of his or her disability and the need for a guide dog.

3-30 Verification of Income Eligibility

Verifications of all sources of income required by HUD to be included in a family's income and used to determine applicant eligibility are described further in Chapter 5, Section 3. *This includes using the EIV system for up-front verification of employment and income information.*

3-31 *Verification* of Social Security Numbers

A. *Applicants and tenants, excluding individuals who do not contend eligible immigration status and tenants age 62 or older as of January 31, 2010, whose initial determination of eligibility was begun before January 31, 2010, must disclose and provide verification of the complete and accurate SSN assigned to

each household member. (See Paragraph 3-9 for more information on SSN requirements.)

B. Adequate documentation to verify the SSN of an individual is a social security card issued by the SSA, an original document issued by a federal or state government agency which contains the name and SSN of the individual along with identifying information of the individual, or other acceptable evidence of the SSN listed in **Appendix 3**.

C. Owners may reject documentation of the SSN provided by the applicant or tenant that:

1. Is not an original document; or

2. Is the original document but it has been altered, mutilated, or is not legible; or

3. Appears to be a forged document (e.g., does not appear to be authentic)*.

3-32 Verification of Citizenship and Immigration Status

A. In properties subject to the restriction on assistance to noncitizens (see paragraph 3-12 F), owners may require that applicants provide verification of citizenship and must require that noncitizens provide verification of immigration status. The verification process for immigration status is dependent upon receiving information from the DHS. Because the process of verification can involve a number of steps and may result in "partial" eligibility, verification of immigration status has been covered in Section 1 of this chapter.

B. **Access to Services for Persons with LEP.** Housing owners must take reasonable steps to ensure meaningful access to the information and services they provide for persons with LEP. This may include interpreter services and/or written materials translated into other languages. See HUD Guidance referenced in Paragraph 2-9.C for further details.

3-33 Verifying Eligibility of a Student for Assistance

A. Verification of Eligibility of Students for Section 8 Assistance

1. Verifying parents' income.

a. Owners must verify parents income each time they determine the eligibility of the student to receive Section 8 assistance unless the student can demonstrate his or her independence from parents. (See Paragraph 3-13 for determining a student's eligibility.)

b. Owners may accept a signed declaration and certification of income from the parents, which includes a penalty of perjury clause.

(1) If the owner determines that the parents' declaration and certification of income or their eligibility is questionable, the owner may request and review supporting documentation including, but not limited to:

(a) IRS tax returns;

(b) Consecutive and original pay stubs;

(c) Bank statements;

(d) Pension benefit statements;

(e) Temporary Assistance to Needy Families (TANF);

(f) Social Security Administration award letters; or

(g) Other official and authentic documents from a federal, State or local agency.

(2) If the student's parents refuse to provide a declaration and certification of their income, the student is not eligible for Section 8 assistance unless the student can demonstrate his or her independence from parents.

(3) Owners may adopt and implement the following criteria for determining whether to obtain the declaration and certification of income from parents individually or jointly:

(a) If the student's parents are married and living with each other, obtain the declaration and certification of income from each parent.

(b) If the student's parent is widowed or single, obtain the declaration and certification of income from that parent.

(c) If the student's parents are divorced or separated, obtain the declaration and certification of income from each parent.

(d) If the student has been living with one of his or her parents and has not had contact with or does not know where to contact his or her other parent, obtain from the student a certification addressing the circumstances and that they have not received any financial assistance, directly or indirectly, from the absent parent. The certification must include a penalty of perjury clause. The owner must also obtain from the parent with whom the student has

been living or has contact with the declaration and certification of income.

c. The owner should use the applicable *low* income limit for the parents' family size for the locality where the parents reside when determining the parents' income eligibility for Section 8 assistance. (See paragraph 3-6 E.4 for guidance on determining family size for income limits and paragraph 3-6 F for applying the income limit to determine eligibility for assistance.)

If the student's parents live outside of the United States in areas where income limits have not been established for the Section 8 program, the owner should use the applicable *low* income limit for the parent's family size for the same locality used in determining the student's eligibility.

2. Verification of student's independence from parents.

When a student claims his or her independence from parents, owners must verify the student's independence from his or her parents by taking into consideration **all** of the following. Owners must:

a. Review and verify previous address information to determine evidence of a separate household, or

b. Verify the student meet's the U.S. Department of Education's definition of independent student.

c. Review prior year income tax returns to verify if a parent or guardian has claimed the student as a dependent (except if the student meets the Department of Education's definition of independent student.)

d. Verify income provided by a parent by requiring a written certification from the individual providing the support. Certification is also required if the parent(s) is not providing support to the student. Financial assistance that is provided by persons not living in the unit is part of annual income.

e. Verify additional criteria established, if applicable, to use when determining the student's independence from parents. Verification would be obtained in accordance with the owner's policies.

f. Verify the amount of financial assistance the student receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education.

3. Owners should also verify the following, if applicable:

a. Age (See paragraph 3-28 C and Appendix 3)

b. Dependent child (See the Glossary for definition of Dependent Child)

c. Married

d. Institution of Higher Education. The owner will need to verify that the school where the student is enrolled meets the Department of Education's definition for an institution of higher education. (See the Glossary for the definition of Institution of Higher Education.)

e. Tuition (See the Glossary for the definition of Tuition.)

f. Veteran status (See the Glossary for the recommended definition for Veteran.)

g. Disabled student was receiving Section 8 assistance on November 30, 2005.

B. **Verification of Eligibility of Students for Other Assistance Programs**

1. Verification of student's independence from parents.

a. Review and verify previous address information to determine evidence of separate household from parents or legal guardians. or

b. Verify the student meet's the U.S. Department of Education's definition of independent student.

c. Review prior year income tax returns to verify if a parent or guardian has claimed the student as a dependent (except if the student meets the Department of Education's definition of independent student.)

d. Verify income provided by a parent by requiring a written certification from the individual providing the support. Certification is also required if the parent(s) is not providing support to the student. Financial assistance that is provided by persons not living in the unit is part of annual income.

e. Verify the amount of financial assistance the student receives from other sources. (See paragraph 5-6 D and Exhibit 5-1 for financial assistance excluded from annual income.)

2. Owners should also verify the following, if applicable.

a. Age (See paragraph 3-28 C and Appendix 3)

b. Institution of Higher Education. (See the Glossary for the definition of Institution of Higher Education)

Chapter 3 Exhibits

3-1. Form HUD-90104, Sample Request for Exception to Limitations on Admission of Families with Incomes Above 50% of the Area Median Income

http://portal.hud.gov/hudportal/documents/huddoc?id=90104.pdf

3-2. 12/18/98 Federal Register Notice: Fair Housing Enforcement—Occupancy Standards Notice of Statement of Policy

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35681.pdf

3-3. Sample Owner's Notice No. 1

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35683.pdf

3-4. Sample The Family Summary Sheet

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35685.pdf

3-5. Sample Citizenship Declaration

http://portal.hud.gov/hudportal/documents/huddoc?id=43503e3-5HSGH.pdf

3-6. Sample Verification Consent Format

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35689.pdf

3-7. Sample Owner's Summary of Family

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35691.pdf

3-8. Sample Owner's Notice No. 2 for a Tenant Family

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35693.pdf

3-9. Sample Owner's Notice No. 2 for an Applicant Family

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35695.pdf

3-10. Sample Owner's Notice No. 3 for a Tenant Family Final Decision on Immigration Status

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35672.pdf

3-11. Sample Owner's Notice No. 3 for an Applicant Family Final Decision on Immigration Status

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35674.pdf

3-12. Section 8, RAP, and Rent Supplement Programs Special Instructions for Determining Prorated Assistance Payment and Prorated Total Tenant Payment/Tenant Rent for Families Subject to Proration Procedures Regarding the Restriction on Assistance to Noncitizens

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35676.pdf

3-13. Section 236 Without Additional Assistance Special Instructions for Determining Prorated Assistance Payment and Prorated Total Tenant Payment/Tenant Rent for Families Subject to Proration Procedures Regarding the Restriction on Assistance to Noncitizens

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35678.pdf

3-14. Section 236 With Benefit of Additional Assistance Special Instructions for Determining Prorated Assistance Payment and Prorated Total Tenant Payment/Tenant Rent for Families Subject to Proration Procedures Regarding the Restriction on Assistance to Noncitizens

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35680.pdf

Exhibit 3-1: Request for Exception to Limitations on Admission of Families with Incomes Above 50% of the Area Median Income

TO: HUD Field Office

FROM: _____

SUBJECT: Request for Exception to Limitations on Admission of Families Whose Income Exceeds Very Low-Income Limit

Project Name _____

Contract No. _____ FHA Project No. _____

This request is for permission to lease (number) unit(s) in the subject project to families with incomes between 51% and 80% of the area median income. We believe this project meets the applicable conditions under situation _____ Chapter 3 of Handbook * 4350.3 REV-1.*

The following justifies the request for exception:

(Provide the supporting documentation required by the following four pages of this Exhibit).

For further information, you may call _____ at _____. I certify that the statements and supporting documentation in this request are true and complete. I also certify that:

a. I have admitted all available very low-income, qualified applicants; and

b. I will lease assisted units to families with incomes above 50% of median income only when no very low-income, qualified applicants are available.

NOTE: Include this certification only if you are requesting an exception for Situation 6D.

Signed by:

Owner or owner's representative

_____ _____
Name Signature

_____ _____
Title Date

Warning: Under 18 U.S.C. 1001, whoever willingly makes or uses a document or writing he/she knows has any false or fraudulent statement or entry, in any matter under the jurisdiction of any department or agency of the United States, may be fined up to $10,000 or imprisoned for up to five years, or both.

IMPORTANT: At a minimum, requests for exceptions must include the supporting justification listed below. Situations (1) through (6) are described in paragraph 3-7 D of this handbook.

SITUATION 1: Displaced Tenant

A. State the name of the tenant for whom the exception is being requested.

B. State approximately when the tenant would be displaced and why. Name the program under which the rehabilitation is being funded.

C. State how long the tenant has lived in the project, the tenant's current rent, and the rent the tenant would pay after rehabilitation (without assistance).

SITUATION 2: Project Financed Under Section 11(b) or Section 103

A. Submit a copy of the portion of the bond documents or other controlling document that specifically obligates the project to lease to low-income families with incomes above 50% of the area median. Provide evidence of the date the document was signed and the period for which it is effective.

B. Submit evidence that the bondholder or mortgagee has and will continue to enforce that policy. This could be a statement signed by the entity that established a policy.

C. State what penalties the project will incur for failure to comply with the economic mix described in subparagraph A above.

SITUATION 3: Project Supervised by a State Agency

A. Submit a copy of the State agency's policy and any document you signed obligating the project to that policy. Provide evidence of the date the policy was first published, the date your agency signed that document, and the term of the document you signed.

B. Submit evidence that the State agency has been and will continue to enforce its income mix policy. This evidence could be a statement signed by the Agency. The statement must clearly explain both how and how frequently the State agency has monitored and enforced its requirements.

SITUATION 4: Project Approved Based on Agreement to Comply with Local Government's Income Mix Requirements

A. Submit a copy of the letter the local government sent to the HUD Field Office during development. Be sure the letter shows the date the local government wrote the letter. Also submit a copy of any document you signed or any letter the HUD Field Office issued obligating you to comply with the local government policy.

B. Discuss whether and how the local government has monitored and enforced its income mix policy.

SITUATION 5: Units Designed for a Specific Occupant Group

A. Name the group.

B. Submit a chart showing occupancy of assisted units by unit type (e.g., 2-bedroom, 1-bath; 2-bedroom, 2-bath) for the specific occupant group.

Contract Units Designed For This Occupant Group				
Unit Type	Total Number	Number Vacant	Number of Families on Waiting List for These Units	
			Very Low-Income	Low-Income But Not Very Low-Income

C. Provide the information requested in subparagraphs B-3, 4, 5, and 6 under Situation 6, but consider ONLY UNITS DESIGNED FOR THE SPECIFIC OCCUPANT GROUP.

D. State the average number of days these units were vacant during the last six months. Divide the total days vacant by the number of units that were vacant. (If this is a new project, use the period since the project has been occupied.)

SITUATION 6: Insufficient Number of Very Low-Income Applicants

A. Submit a chart showing total occupancy and occupancy of assisted units by unit type (e.g., 2-bedroom, 1-bath; 2-bedroom, 2-bath).

Unit Type	Total Units in the Project		Contract Units		Number of Families on Waiting List	
	Total Number	Number Vacant	Total Number	Number Vacant	Very Low-Income	Low-Income But Not Very Low-Income

B. Submit the following data:

1. Average number of days units were vacant during the last six months. Divide the total days vacant by the number of units that were vacant. (If this is a new project, use the period since the project has been occupied.)

   a. For Section 8 units _____

   b. For PRAC units _____

   c. For all other units _____

2. State the vacancy factor used in development processing.

3. a. Number of assisted families admitted in last two years. (For new projects, state date of initial occupancy and period the data covers.) _____

   b. Number of families in 3.a who were very low-income at admission _____

   c. Line 3.b divided by line 3.a: 3.b / 3.a _____

4. Number of current tenants who are:

   a. Low-income but not very low-income _____

   b. Very low-income _____

   c. Paying market rent _____

5. Describe what you have done to attract very low-income applicants. Specify dates, methods, and whom you contacted. Marketing must include **contacting** the local Housing Authority to verify if there is anyone on the Housing Authority waiting list that is income/age eligible. Include copies of recent advertisements. The text of each advertisement must mention the availability of the subsidy to reduce tenant rent to 30% of income and give an example of income eligibility.

6. Describe what more you will do to attract qualified very low-income applicants and indicate how many you expect to attract during each of the next four quarters.

C. Submit the following only if you are requesting an exception because the very low-income population is too small to provide sustaining occupancy.

List all market studies and surveys of which you are aware.

Include studies you, State agencies, the Rural Housing Service, or anyone else has done. Briefly summarize those studies' conclusions as to the income levels of potential applicants in your project's market area and any nearby market area.

D. Submit the following additional information if you are requesting an exception because a default is likely.

1. Explain why vacancy payments will not provide adequate protection while you seek very low-income applicants.

2. State the cause of any vacancy payments or cash-flow problems. State which types of units, if any, are particularly hard to rent.

3. For each of the last six months, provide the financial and vacancy information listed below. If some of this information is available on monthly accounting reports already sent to the Field Office, the Field Office may authorize you to submit only the information those reports don't cover.

Financial and Vacancy Data Required for Exceptions Under Situation 6D

Provide the following data for each of the last six months.

Income Expenses

1. Monthly apartment rent potential for whole project

2. Apartment rents collected from HUD and tenants

3. Percent of potential collected (Line 2 / Line 1)

Month-End Accounts

1. Number of units vacant

   a. Section 8 units

   b. Other units

2. Number of units not in rentable condition.

3. Accounts receivable

   a. From tenants

   b. HUD

   c. Others

Provide the following data for each of the last six months.

Income Expenses

4. Other income earned (specify source)

5. Total income earned (Line 2 + Line 4)

6. Mortgage payment (Principal + Interest) actually required (use workout amount, if applicable)

7. Operating expenses incurred

8. Net income/loss from operations

Month-End Accounts

4. Accounts payable

   a. From routine operations

   b. Mortgage delinquency

   c. Other

5. Cash on hand

==========

Public reporting burden for this collection is estimated to average 12 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This information is required to obtain benefits and is voluntary. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. The request and required supporting documentation are sent to HUD or the Contract Administrator (CA) for approval. Upon approval of the waiver, the owner/management agent will designate the household's eligibility by electronically transmitting to TRACS one of the eligibility Exception Codes. This form is used when requesting an income waiver.

This information is authorized by 24 CFR 236.715, 880.504, 884.223, 886.129, 886.329, 891.575, 891.20 cover the requirements for requesting a waiver to admit ineligible persons for the Section 8, Section 202 and Section 811 programs. 24 CFR 5.661 covers the approval for a police officer or other security personnel to live in a Section 8 project. Section 658 of Title VI of Subtitle D of the Housing and Community Development Act of 1992 covers the restriction of occupancy to elderly families. This information is considered non-sensitive and does no require any special protection.

federal register

Friday
December 18, 1998

Part IV

Department of Housing and Urban Development

Fair Housing Enforcement—Occupancy Standards Statement of Policy; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4405–N–01]

Fair Housing Enforcement—Occupancy Standards Notice of Statement of Policy

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of statement of policy.

SUMMARY: This statement of policy advises the public of the factors that HUD will consider when evaluating a housing provider's occupancy policies to determine whether actions under the provider's policies may constitute discriminatory conduct under the Fair Housing Act on the basis of familial status (the presence of children in a family). Publication of this notice meets the requirements of the Quality Housing and Work Responsibility Act of 1998.

DATES: Effective date: December 18, 1998.

FOR FURTHER INFORMATION CONTACT: Sara Pratt, Director, Office of Investigations, Office of Fair Housing and Equal Opportunity, Room 5204, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–2290 (not a toll-free number). For hearing- and speech-impaired persons, this telephone number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (toll-free).

SUPPLEMENTARY INFORMATION:

Statutory and Regulatory Background

Section 589 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998, ''QHWRA'') requires HUD to publish a notice in the **Federal Register** that advises the public of the occupancy standards that HUD uses for enforcement purposes under the Fair Housing Act (42 U.S.C. 3601–3619). Section 589 requires HUD to publish this notice within 60 days of enactment of the QHWRA, and states that the notice will be effective upon publication. Specifically, section 589 states, in relevant part, that:

> [T]he specific and unmodified standards provided in the March 20, 1991, Memorandum from the General Counsel of [HUD] to all Regional Counsel shall be the policy of [HUD] with respect to complaints of discrimination under the Fair Housing Act . . . on the basis of familial status which involve an occupancy standard established by a housing provider.

The Fair Housing Act prohibits discrimination in any aspect of the sale, rental, financing or advertising of dwellings on the basis of race, color, religion, national origin, sex or familial status (the presence of children in the family). The Fair Housing Act also provides that nothing in the Act ''limits the applicability of any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.'' The Fair Housing Act gave HUD responsibility for implementation and enforcement of the Act's requirements. The Fair Housing Act authorizes HUD to receive complaints alleging discrimination in violation of the Act, to investigate these complaints, and to engage in efforts to resolve informally matters raised in the complaint. In cases where the complaint is not resolved, the Fair Housing Act authorizes HUD to make a determination of whether or not there is reasonable cause to believe that discrimination has occurred. HUD's regulations, implementing the Fair Housing Act (42 U.S.C. 3614) are found in 24 CFR part 100.

In 1991, HUD's General Counsel, Frank Keating, determined that some confusion existed because of the absence of more detailed guidance regarding what occupancy restrictions are reasonable under the Act. To address this confusion, General Counsel Keating issued internal guidance to HUD Regional Counsel on factors that they should consider when examining complaints filed with HUD under the Fair Housing Act, to determine whether or not there is reasonable cause to believe discrimination has occurred.

This Notice

Through this notice HUD implements section 589 of the QHWRA by adopting as its policy on occupancy standards, for purposes of enforcement actions under the Fair Housing Act, the standards provided in the Memorandum of General Counsel Frank Keating to Regional Counsel dated March 20, 1991, attached as Appendix A.

Authority: 42 U.S.C. 3535(d), 112 Stat. 2461.

Dated: December 14, 1998.

Eva M. Plaza,

Assistant Secretary for Fair Housing and Equal Opportunity.

Appendix A.

March 20, 1991.

MEMORANDUM FOR: All Regional Counsel
FROM: Frank Keating, G
SUBJECT: Fair Housing Enforcement Policy: Occupancy Cases

On February 21, 1991, I issued a memorandum designed to facilitate your review of cases involving occupancy policies under the Fair Housing Act. The memorandum was based on my review of a significant number of such cases and was intended to constitute internal guidance to be used by Regional Counsel in reviewing cases involving occupancy restrictions. It was not intended to create a definitive test for whether a landlord or manager would be liable in a particular case, nor was it intended to establish occupancy policies or requirements for any particular type of housing.

However, in discussions within the Department, and with the Department of Justice and the public, it is clear that the February 21 memorandum has resulted in a significant misunderstanding of the Department's position on the question of occupancy policies which would be reasonable under the Fair Housing Act. In this respect, many people mistakenly viewed the February 21 memorandum as indicating that the Department was establishing an occupancy policy which it would consider reasonable in any fair housing case, rather than providing guidance to Regional Counsel on the evaluation of evidence in familial status cases which involve the use of an occupancy policy adopted by a housing provider.

For example, there is a HUD Handbook provision regarding the size of the unit needed for public housing tenants. *See* Handbook 7465.1 REV–2, Public Housing Occupancy Handbook: Admission, revised section 5–1 (issued February 12, 1991). While that Handbook provision states that HUD does not specify the number of persons who may live in public housing units of various sizes, it provides guidance about the factors public housing agencies may consider in establishing reasonable occupancy policies. Neither this memorandum nor the memorandum of February 21, 1991 overrides the guidance that Handbook provides about program requirements.

As you know, assuring Fair Housing for all is one of Secretary Kemp's top priorities. Prompt and vigorous enforcement of all the provisions of the Fair Housing Act, including the protections in the Act for families with children, is a critical responsibility of mine and every person in the Office of General Counsel. I expect Headquarters and Regional Office staff to continue their vigilant efforts to proceed to formal enforcement in all cases in which there is reasonable cause to believe that a discriminatory housing practice under the Act has occurred or is about to occur. This is particularly important in cases where occupancy restrictions are used to exclude families with children or to unreasonably limit the ability of families with children to obtain housing.

In order to assure that the Department's position in the area of occupancy policies is fully understood, I believe that it is imperative to articulate more fully the Department's position on reasonable occupancy policies and to describe the approach that the Department takes in its review of occupancy cases.

Specifically, the Department believes that an occupancy policy of two persons in a bedroom, as a general rule, is reasonable under the Fair Housing Act. The Department of Justice has advised us that this is the

general policy it has incorporated in consent decrees and proposed orders, and such a general policy also is consistent with the guidance provided to housing providers in the HUD handbook referenced above. However, the reasonableness of any occupancy policy is rebuttable, and neither the February 21 memorandum nor this memorandum implies that the Department will determine compliance with the Fair Housing Act based *solely* on the number of people permitted in each bedroom. Indeed, as we stated in the final rule implementing the Fair Housing Amendments Act of 1988, the Department's position is as follows:

[T]here is nothing in the legislative history which indicates any intent on the part of Congress to provide for the development of a national occupancy code. * * *

On the other hand, there is no basis to conclude that Congress intended that an owner or manager of dwellings would be unable to restrict the number of occupants who could reside in a dwelling. Thus, the Department believes that in appropriate circumstances, owners and managers may develop and implement reasonable occupancy requirements based on factors such as the number and size of sleeping areas or bedrooms and the overall size of the dwelling unit. In this regard, it must be noted that, in connection with a complaint alleging discrimination on the basis of familial status, the Department will carefully examine any such nongovernmental restriction to determine whether it operates unreasonably to limit or exclude families with children.

24 C.F.R. Chapter I, Subchapter A. Appendix I at 566–67 (1990).

Thus, in reviewing occupancy cases, HUD will consider the size and number of bedrooms and other special circumstances. The following principles and hypothetical examples should assist you in determining whether the size of the bedrooms or special circumstances would make an occupancy policy unreasonable.

Size of bedrooms and unit

Consider two theoretical situations in which a housing provider refused to permit a family of five to rent a two-bedroom dwelling based on a ''two people per bedroom'' policy. In the first, the complainants are a family of five who applied to rent an apartment with two large bedrooms and spacious living areas. In the second, the complainants are a family of five who applied to rent a mobile home space on which they planned to live in a small two-bedroom mobile home. Depending on the other facts, issuance of a charge might be warranted in the first situation, but not in the second.

The size of the bedrooms also can be a factor suggesting that a determination of no reasonable cause is appropriate. For example, if a mobile home is advertised as a ''two-bedroom'' home, but one bedroom is extremely small, depending on all the facts, it could be reasonable for the park manager to limit occupancy of the home of two people.

Age of children

The following hypotheticals involving two housing providers who refused to permit three people to share a bedroom illustrate this principle. In the first, the complainants are two adult parents who applied to rent a one-bedroom apartment with their infant child, and both the bedroom and the apartment were large. In the second, the complainants are a family of two adult parents and one teenager who applied to rent a one-bedroom apartment. Depending on the other facts, issuance of a charge might be warranted in the first hypothetical, but not in the second.

Configuration of unit

The following imaginary situations illustrate special circumstances involving unit configuration. Two condominium associations each reject a purchase by a family of two adults and three children based on a rule limiting sales to buyers who satisfy a ''two people per bedroom'' occupancy policy. The first association manages a building in which the family of the five sought to purchase a unit consisting of two bedrooms plus a den or study. The second manages a building in which the family of five sought to purchase a two-bedroom unit which did not have a study or den. Depending on the other facts, a charge might be warranted in the first situation, but not in the second.

Other physical limitations of housing

In addition to physical considerations such as the size of each bedroom and the overall size and configuration of the dwelling, the Department will consider limiting factors identified by housing providers, such as the capacity of the septic, sewer, or other building systems.

State and local law

If a dwelling is governed by State or local governmental occupancy requirements, and the housing provider's occupancy policies reflect those requirements, HUD would consider the governmental requirements as a special circumstance tending to indicate that the housing provider's occupancy policies are reasonable.

Other relevant factors

Other relevant factors supporting a reasonable cause recommendation based on the conclusion that the occupancy policies are pretextual would include evidence that the housing provider has: (1) made discriminatory statements; (2) adopted discriminatory rules governing the use of common facilities; (3) taken other steps to discourage families with children from living in its housing; or (4) enforced its occupancy policies only against families with children. For example, the fact that a development was previously marketed as an ''adults only'' development would militate in favor of issuing a charge. This is an especially strong factor if there is other evidence suggesting that the occupancy policies are a pretext for excluding families with children.

An occupancy policy which limits the number of *children* per unit is less likely to be reasonable than one which limits the number of *people* per unit.

Special circumstances also may be found where the housing provider limits the total number of dwellings he or she is willing to rent to families with children. For example, assume a landlord owns a building of two-bedroom units, in which a policy of four people per unit is reasonable. If the landlord adopts a four person per unit policy, but refuses to rent to a family of two adults and two children because twenty of the thirty units already are occupied by families with children, a reasonable cause recommendation would be warranted.

If your review of the evidence indicates that these or other special circumstances are present, making application of a ''two people per bedroom'' policy unreasonably restrictive, you should prepare a reasonable cause determination. The Executive Summary should explain the special circumstances which support your recommendation.

[FR Doc. 98–33568 Filed 12–17–98; 8:45 am]

BILLING CODE 4210–28–M

Exhibit 3-3: **Sample** Owners Notice No. 1

Dear (insert name of head of household):

Section 214 of the Housing and Community Development Act of 1980, as amended, prohibits the Secretary of HUD from making financial assistance available to persons other than U.S. citizens or nationals, or certain categories of eligible noncitizens, in the following HUD programs:

a. Section 8 Housing Assistance Payments programs;

b. Section 236 of the National Housing Act including Rental Assistance Payment (RAP); and

c. Section 101/Rent Supplement Program.

You have applied, or are applying for, assistance under one of these programs; therefore, you are required to declare U.S. Citizenship or submit evidence of eligible immigration status for each of your family members for whom you are seeking housing assistance. You must do the following:

1. Complete a Family Summary Sheet, using the attached blank format (**see sample Family Summary Sheet in Exhibit 3-4**) to list all family members who will reside in the assisted unit.

2. Each family member (including you) listed on the Family Summary Sheet must complete a **Citizenship** Declaration (**see Sample Citizenship Declaration in Exhibit 3-5**). If there are 10 people listed on the Family Summary Sheet, you should have 10 completed copies of the **Citizenship** Declaration. The **Citizenship** Declaration has easy-to-follow instructions and explains what, if any other forms and/or evidence must be submitted with each **Citizenship** Declaration.

3. Submit the Family Summary Sheet, the **Citizenship** Declarations, and any other forms and/or evidence to the name and address listed below by (insert date).

_____

_____

_____

_____

This Section 214 review will be completed in conjunction with the verification of other aspects of eligibility for assistance. If you have any questions or difficulty in completing the attached items or determining the type of documentation required, please contact (insert name and telephone number). He/she will be happy to assist you. Also, if you are unable to provide the required documentation by the date shown above, you should immediately contact this office and request an extension, using the block provided on the **Citizenship** Declaration Format. Failure to provide this information or establish eligible status may result in your not being considered for housing assistance.

If this Section 214 review results in a determination of ineligibility, you will have an opportunity to appeal the decision. Also, if the final determination concludes that only certain members of your family are eligible for assistance, your family may be eligible for proration of assistance. That means that when assistance is available, a reduced amount may be provided for your family based on the number of members who are eligible.

If assistance becomes available and the other aspects of your eligibility review show that you are eligible for housing assistance, that assistance may be provided to you if at least one member of your household has submitted the required documentation. Following verification of the documentation submitted by all family members, assistance may be adjusted depending on the immigration status verified. You will be contacted as soon as we have further information regarding your eligibility for assistance.

Exhibit 3-4: **Sample** Family Summary Sheet

Member No.	Last Name of Family Member	First Name	Relationship to Head of Household	Sex	Date of Birth
Head					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					

Exhibit 3-5: Sample Citizenship Declaration

INSTRUCTIONS: Complete this Declaration for each member of the household listed on the Family Summary Sheet

LAST NAME_____

FIRST NAME_____

RELATIONSHIP TO HEAD OF HOUSEHOLD _____ SEX _____ DATE OF BIRTH _____

SOCIAL SECURITY NO._____ ALIEN REGISTRATION NO._____

ADMISSION NUMBER_____if applicable (this is an 11-digit number found on DHS Form I-94, *Departure Record*)

NATIONALITY _____ (Enter the foreign nation or country to which you owe legal allegiance. This is normally but not always the country of birth.)

SAVE VERIFICATION NO._____
(to be entered by owner if and when received)

INSTRUCTIONS: Complete the Declaration below by printing or by typing the person's first name, middle initial, and last name in the space provided. Then review the blocks shown below and complete either block number 1, 2, or 3:

DECLARATION

I, _____ hereby declare, under

penalty of perjury, that I am _____
(print or type first name, middle initial, last name):

_____ 1. A citizen or national of the United States.

Sign and date below and return to the name and address specified in the attached notification letter. If this block is checked on behalf of a child, the adult who will reside in the assisted unit and who is responsible for the child should sign and date below.

_____ _____
Signature Date

Check here if adult signed for a child: _____

_____ 2. A noncitizen with eligible immigration status as evidenced by one of the documents listed below:

NOTE: If you checked this block and you are 62 years of age or older, you need only submit a proof of age document together with this format, and sign below:

If you checked this block and you are less than 62 years of age, you should submit the following documents:

a. Verification Consent Format (see Sample Verification Consent Form in

Exhibit 3-6).

AND

b. One of the following documents:

(1) Form I-551, **Permanent Resident Card**

(2) Form I-94, *Arrival-Departure Record*, with one of the following annotations:

(a) "Admitted as Refugee Pursuant to section 207";

(b) "Section 208" or "Asylum";

(c) "Section 243(h)" or "Deportation stayed by Attorney General"; or

(d) "Paroled Pursuant to Sec. 212(d)(5) of the INA."

(3) If Form I-94, *Arrival-Departure Record*, is not annotated, it must be accompanied by one of the following documents:

(a) A final court decision granting asylum (but only if no appeal is taken);

(b) A letter from an DHS asylum officer granting asylum (if application was filed on or after October 1, 1990) or from an DHS district director granting asylum (if application was filed before October 1, 1990);

(c) A court decision granting withholding or deportation; or

(d) A letter from an DHS asylum officer granting withholding of deportation (if application was filed on or after October 1, 1990).

(6) A receipt issued by the DHS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and that the applicant's entitlement to the document has been verified.

(7) *Other acceptable evidence. If other documents are determined by the DHS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the *Federal Register*.*

If this block is checked, sign and date below and submit the documentation required above with this declaration and a verification consent format to the name and address specified in the attached notification. If this block is checked on behalf of a child, the adult who will reside in the assisted unit and who is responsible for the child should sign and date below.

If for any reason, the documents shown in subparagraph 2.b. above are not currently available, complete the Request for Extension block below.

_____ _____
Signature Date

Check here if adult signed for a child: _____

REQUEST FOR EXTENSION

I hereby certify that I am a noncitizen with eligible immigration status, as noted in block 2 above, but the evidence needed to support my claim is temporarily unavailable. Therefore, I am requesting additional time to obtain the necessary evidence. I further certify that diligent and prompt efforts will be undertaken to obtain this evidence.

_____ _____
Signature Date

Check if adult signed for a child: _____

_____ 3. I am not contending eligible immigration status and I understand that I am not eligible for financial assistance.

If you checked this block, no further information is required, and the person named above is not eligible for assistance. Sign and date below and forward this format to the name and address specified in the attached notification. If this block is checked on behalf of a child, the adult who is responsible for the child should sign and date below.

_____ _____
Signature Date

Check here if adult signed for a child: _____

Exhibit 3-6: **Sample** Verification Consent Form

INSTRUCTIONS: Complete this format for each noncitizen family member who declared eligible immigration status on the **Citizenship** Declaration format. If this format is being completed on behalf of a child, it must be signed by the adult responsible for the child.

CONSENT

I, _____ hereby consent to the following:
(print or type first name, middle initial, last name)

1, The use of the attached evidence to verify my eligible immigration status to enable me to receive financial assistance for housing; and

2, The release of such evidence of eligible immigration status by the project owner without responsibility for the further use or transmission of the evidence by the entity receiving it to the following:

a. HUD, as required by HUD; and

b. The DHS for purposes of verification of the immigration status of the individual.

NOTIFICATION TO FAMILY:

Evidence of eligible immigration status shall be released only to the DHS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the DHS.

_____ _____
Signature Date

Check here if adult signed for a child: _____

Exhibit 3-7: **Sample** Owner's Summary of Family

Member No.	Last Name of Family Member	First Name of Family Member	Relationship to Head of Household	Sex	Date of Birth	Declaration	Date Verified
Head							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							

Exhibit 3-8: **Sample** Owner's Notice No. 2 for a Tenant Family

Dear (insert name of head of household):

I regret to inform you that the primary and secondary verification reviews of immigration status performed by DHS failed to confirm eligibility for the following members of your family:

First and Last Name Reason for termination of assistance

Based on these reviews, your family is not eligible to continue receiving housing assistance and must begin paying market rent or vacate the unit unless you exercise one of the following options:

Option 1 – Appeal the results of secondary verification to DHS;

Option 2 – Request an informal hearing with my representative; or

Option 3 – Request a determination on your family's eligibility for (a) continued assistance, (b) prorated assistance, or (c) a temporary deferral of termination of assistance. These three types of assistance are explained in an attachment to this letter.

If you choose Option 1 and would like to appeal the results of secondary verification to the DHS, you must submit the following information to the DHS office located at (owner should insert address of local DHS office) no later than (insert date 30 days from date of this letter):

1. A copy of this letter (Notice No. 2);

2. A letter to DHS requesting the appeal;

3. Additional documentation of immigration status or a written explanation in support of the appeal;

4. A copy of the enclosed DHS Form G-845S that was used to request secondary verification, marked at the top center of the form in bold print "HUD APPEAL"; and

5. Two stamped envelopes, one addressed to you and one addressed to (owner should insert owner's name and address).

A copy of your request and proof of mailing, such as a receipt for certified or registered mail, must also be sent to (owner's name and address). If this appeal is denied by the DHS, you will still have the opportunity to proceed to Option 2 but must do so within 14 days of the date the DHS mailed its decision on the appeal (established by the postmark).

If you choose to bypass the DHS appeal process and proceed directly to option 2 and would like to schedule an informal hearing with my representative, contact (insert name and telephone number of contact) no later than (insert date 30 days from date of this letter) to schedule this meeting. If this hearing ends in a negative determination, you can proceed to Option 3.

If you proceed directly to Option 3 and bypass all other options, you should understand that you have not been determined eligible for one of these types of assistance but are requesting a determination of eligibility.

If you wish to choose Options 1, 2, or 3, please check the option of your choice on the attached option sheet and return it to (owner's name and address) no later than (insert date 30 days from date of this letter). Failure to do this will cause this office to believe that you are accepting the results of secondary verification, and you will either pay market rent or vacate the unit.

TYPES OF ASSISTANCE AND AVAILABILITY

Prorated assistance

What it is? The amount of assistance paid for a mixed family is reduced when not all family members have eligible status.

Availability. It is available to mixed applicant families and mixed tenant families who meet the conditions below:

1. The family is not receiving continued assistance; and

2. Termination of the family's assistance is not temporarily deferred.

Temporary deferral of termination of assistance

What it is? Deferral of the termination of assistance a tenant family is currently receiving to permit the family additional time to make an orderly transition to other affordable housing.

Deferral period. The initial period is for six months and may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of 18 months.

NOTE: If the family receiving assistance on June 19,1995 includes a refugee under section 207 of the Immigration and Nationality Act, or an individual seeking asylum under section 208 of that Act, a deferral can be given to the family and there is no time limitation on the deferral period. The 18 month deferral limitation does not apply.

Availability.

1. *The family was in residence on June 19, 1995; *

2. It is available to a mixed tenant family who qualifies for prorated assistance but decides not to accept prorated assistance;

3. A tenant family who has no members with eligible status and for whom the temporary deferral is necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing.

Conditions. Temporary deferral shall be granted to the family if one of the following conditions is met:

1. The family demonstrates that reasonable efforts to find other affordable housing of appropriate size have been unsuccessful;

2. The vacancy rate for affordable housing of appropriate size is below 5% in the housing market area; or

3. The Consolidated Plan, if it applies to the program, indicates that the local jurisdiction's housing market lacks sufficient affordable housing opportunities for households having a size and income similar to the family seeking the deferral.

OPTION SHEET

_____ Option 1 – DHS Appeal

I/We hereby declare our intention to appeal the results of secondary verification of immigration status to the DHS. I/We understand that we must submit the following information to the DHS office:

1. A copy of this letter (Notice No. 2);
2. A letter requesting the appeal;
3. Additional documentation of immigration status or a written explanation in support of the appeal;
4. A copy of the enclosed DHS Form G-845S that was used by the owner to request Secondary Verification, marked at the top center of the form in bold print "HUD APPEAL"; and
5. Two stamped envelopes, one addressed to me and one addressed to the owner.

_____ _____
(Signature, head of household) (Date)

_____ Option 2 – Informal Hearing with Owner

I/We hereby request an informal hearing with a representative of the owner.

_____ _____
(Signature, head of household) (Date)

_____ Option 3 – Request for a Determination on Other Type of Assistance

I/We understand that our family may be eligible for another type of assistance, and I/we are interested in pursuing this option, rather than Options 1 and 2. Please consider this our request for a meeting to discuss the availability of another type of assistance for our family.

_____ _____
(Signature, head of household) (Date)

Exhibit 3-9: Sample Owner's Notice No. 2 for an Applicant Family

Dear (insert name of head of household):

I regret to inform you that the primary and secondary verification reviews of immigration status performed by the DHS failed to confirm eligibility for financial assistance for the following members of your family:

First and Last Name Reason for denial of assistance

NOTE: Also insert any other reasons they may be ineligible in accordance with Handbook 4350.3, paragraphs 3-12 and 4-31.

Based on these reviews, your family is not eligible to receive the housing assistance for which you applied. At this point, you can either accept this decision and have your application for housing assistance withdrawn from further consideration or exercise one of the following options:

Option 1 – Appeal the results of secondary verification to the DHS;

Option 2 – Request an informal hearing with my representative; or

Option 3 – Pursue your eligibility for prorated assistance.

If you choose Option 1 and would like to appeal the results of secondary verification to the DHS, you must submit the following information to the DHS office located at (owner should insert address of local DHS office) no later than (insert date 30 days from date of this letter):

1. A copy of this letter (Notice No. 2);

2. A letter to the DHS requesting the appeal;

3. Additional documentation of immigration status or a written explanation in support of the appeal;

4. A copy of the enclosed DHS Form G-845S that was used to request secondary verification, marked at the top center of the form in bold print "HUD APPEAL"; and

5. Two stamped envelopes, one addressed to you and one addressed to (owner should insert owner's name and address).

A copy of your request and proof of mailing, such as a receipt for certified or registered mail, must also be sent to (owner's name and address). If this appeal is denied by the DHS, you will still have the opportunity to proceed to Options 2 and 3, but must do so within 14 days of the date the DHS mailed its decision on the appeal, established by the postmark.

If assistance becomes available during the appeal process, and your family is otherwise eligible to receive the assistance, it will be provided. However, the assistance may be adjusted or terminated subsequent to the conclusion of the Section 214 review and appeal process.

If assistance becomes available after a negative conclusion by the DHS on your appeal and before the conclusion of the informal hearing process (Option 2), the assistance will be delayed until a final conclusion is reached.

If you choose to bypass the DHS appeal process and proceed directly to Option 2 and would like to schedule an informal hearing with my representative, contact (insert name and telephone number of contact) no later than (insert date 30 days from date of this letter) to schedule this meeting. Of course, if this hearing ends in a negative determination, you can proceed to
Option 3.

If you proceed directly to Option 3 and bypass all other options, you should understand that you have not been determined eligible for prorated assistance but are requesting a determination of eligibility. Prorated assistance means that the amount of assistance your family receives would be reduced based on the number of ineligible family members in your family. In other words, the rent you pay may be less than market rent, but would not be reduced to the level it would be if your whole family could evidence eligible immigration status.

If you wish to choose Options 1, 2, or 3, please check the option of your choice on the attached option sheet and return it to (owner's name and address) no later than (insert date 30 days from date of this letter). Failure to do this will cause this office to believe that you are accepting the results of secondary verification, and your application for housing assistance will be removed from further consideration.

OPTION SHEET

_____ Option 1 – DHS Appeal

I/We hereby declare our intention to appeal the results of secondary verification of immigration status to the DHS. I/We understand that we must submit the following information to the DHS office:

1. *A copy of this letter (Notice No. 2);
2. A letter requesting the appeal;
3. Additional documentation of immigration status or a written explanation in support of the appeal;
4. A copy of the enclosed DHS Form G-845S that was used by the owner to request secondary verification, marked at the top center of the form in bold print "HUD APPEAL"; and
5. Two stamped envelopes, one addressed to me and one addressed to the owner.*

_____ _____
(Signature, head of household) (Date)

_____ Option 2 – Informal Hearing with Owner

I/We hereby request an informal hearing with a representative of the owner.

_____ _____
(Signature, head of household) (Date)

_____ Option 3 – Request for a Determination on Proration

I/We understand that our family may be eligible for prorated assistance, and I/we are interested in pursuing this option, rather than Options 1 and 2. Please consider this our request for a meeting to discuss the availability of proration for our family.

_____ _____
(Signature, head of household) (Date)

Exhibit 3-10: **Sample** Owner's Notice No. 3 for a Tenant Family Final Decision On Immigration Status

Dear (insert name of head of household):

[USE THE FOLLOWING FOR AN ELIGIBLE TENANT FAMILY]

We have concluded the Section 214 review (and appeal) process and determined that your family is eligible to continue receiving the financial assistance that you currently receive.

If there are any changes to your family (either additions to or removal of any family member or changes in their immigration status), you must contact this office immediately to determine whether a further Section 214 review is necessary. As long as there are no changes to your family and you are continuously assisted, this review will not be repeated unless you move from your present unit to another project with assisted housing.

In the event that your family does move and/or change the type of housing assistance you receive, a new Section 214 review will be completed by the new project owner (or other responsible entity).

OR

[USE THE FOLLOWING FOR A MIXED TENANT FAMILY]

We have concluded the Section 214 review (and appeal) process and determined that your family meets the definition of "mixed family."

A "mixed family" means a family whose members include those with citizenship or eligible immigration status and those without citizenship or eligible immigration status. Mixed families can, under certain conditions, receive prorated assistance. That means that the amount of assistance paid for a mixed family is reduced based on the number of family members who have ineligible status rather than paid based on the total number of family members.

In your case, ___ out of ___ family members are ineligible; therefore, your assistance will be reduced by ___ %, unless the ineligible members move from the family or you request and receive one of the following other types of assistance:

Prorated Assistance

<u>What it is</u>? The amount of assistance paid for a mixed family is reduced based on the number of family members who have eligible status rather than paid based on the total number of family members.

<u>Availability</u>. It is available to mixed applicant families and mixed tenant families who meet the conditions below:

1. The family is not receiving continued assistance; and

2. Termination of the family's assistance is not temporarily deferred.

Temporary deferral of termination of assistance

What it is? Deferral of the termination of assistance a tenant family is currently receiving to permit the family additional time to make an orderly transition to other affordable housing.

Deferral period. The initial period is for six months and may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of *18 months.*

NOTE: If the family receiving assistance on June 19,1995 includes a refugee under section 207 of the Immigration and Nationality Act, or an individual seeking asylum under section 208 of that Act, a deferral can be given to the family and there is no time limitation on the deferral period. The 18 month deferral limitation does not apply.

Availability.

1. *The family was in residence on June 19,1995; *

2. It is available to a mixed tenant family who qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance;

3. A tenant family who has no members with eligible status and for whom the temporary deferral is necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing.

Conditions. Temporary deferral shall be granted to the family if one of the following conditions is met:

1. The family demonstrates that reasonable efforts to find other affordable housing of appropriate size have been unsuccessful;

2. The vacancy rate for affordable housing of appropriate size is below 5% in the housing market area; or

3. The Consolidated Plan, if it applies to the program, indicates that the local jurisdiction's housing market lacks sufficient affordable housing opportunities for households having a size and income similar to the family seeking the deferral.

Please contact this office immediately to discuss the type of assistance you wish to pursue. At that time, these options will be discussed with you in detail. If you fail to contact this office within 30 days from the date of this letter, your financial assistance will automatically be reduced under the proration of assistance requirements.

Also, if there are any changes to your family (either additions to or removal of any family member or changes in their immigration status), you must contact this office immediately to

determine if a further Section 214 review is necessary. As long as there are no changes to your family, this review will not be repeated unless you move from your present unit to another assisted-housing situation.

In the event that your family does move and/or you change the type of housing assistance you receive, a new Section 214 review will be completed by the new project owner (or other responsible entity).

This decision does not preclude your family from exercising the right that may otherwise be available to seek redress directly through judicial procedures.

OR

[USE THE FOLLOWING FOR AN INELIGIBLE TENANT FAMILY]

I regret to inform you that we have concluded the Section 214 review (and appeal) process and were unable to confirm eligible immigration status for any of your family members. Therefore, your family is not eligible to continue receiving financial assistance except as noted below.

You may continue to occupy the unit by paying $_____, which is the market rent for the unit, or you may choose to vacate the unit. Also, your family may be eligible for a temporary deferral of termination of assistance to permit your family additional time to make an orderly transition to other affordable housing.

These options will be discussed in detail with you if you contact this office within 30 days from the date of this letter. Failure to arrange this discussion within the 30 days will cause this office to begin termination of tenancy.

This decision does not preclude your family from exercising the right that may otherwise be available to seek redress directly through judicial procedures.

Exhibit 3-11: **Sample** Owner's Notice No. 3 for an Applicant Family Final Decision on Immigration Status

Dear (insert name of head of household):

[USE THE FOLLOWING FOR AN ELIGIBLE APPLICANT FAMILY]

We have concluded the Section 214 review (and appeal) process and determined that your family is eligible to receive financial assistance.

This office will contact you as soon as assistance is available for your family.

OR

[USE THE FOLLOWING FOR A MIXED APPLICANT FAMILY]

We have concluded the Section 214 review (and appeal) process and determined that your family meets the definition of "mixed family" and is eligible to receive prorated financial assistance.

A "mixed family" means a family whose members include those with citizenship or eligible immigration status and those without citizenship or eligible immigration status. Mixed families can, under certain conditions, receive prorated assistance. That means that the amount of assistance paid for a mixed family is reduced based on the number of family members who have ineligible status rather than paid based on the total number of family members.

In your case, ___ out of ___ family members are ineligible; therefore, you would receive ___ % of the financial assistance your family would typically be entitled to if all members were eligible. In the event that the family composition changes prior to your receiving assistance, further adjustments may be made to this percentage.

When assistance becomes available for your family, this percentage will be finalized and used in calculating the rent you pay for your unit. This decision does not preclude your family from exercising the right that may otherwise be available to seek redress directly through judicial procedures.

This office will contact you as soon as assistance is available for your family.

OR

[USE THE FOLLOWING FOR AN INELIGIBLE APPLICANT FAMILY]

I regret to inform you that we have concluded the Section 214 review (and appeal) process and were unable to confirm eligible immigration status for any of your family members. Therefore, your family is not eligible to receive financial assistance. The application that you filed for housing assistance will be removed from further consideration.

This decision does not preclude your family from exercising the right that may otherwise be available to seek redress directly through judicial procedures.

If the immigration status of your family changes in the future and you are able to provide evidence that would confirm eligible status, we would be happy to accept a new application for housing assistance. Any new application will be subject to a complete review, including program and income eligibility determinations.

Exhibit 3-12: Section 8, RAP, and Rent Supplement Programs – Special Instructions for Determining Prorated Assistance Payment and Prorated Total Tenant Payment/Tenant Rent for Families Subject to Proration Procedures Regarding the Restriction on Assistance to Noncitizens

Special Instructions for Determining
Prorated Assistance Payment and
Prorated Total Tenant Payment/Tenant Rent

Tenants Paying a Rent Assisted Under
Section 8, Rental Assistance Payment (RAP), and
Rent Supplement

NOTE: If this tenant receives assistance under one of the programs listed above and this is a Section 236 Project, see Exhibit 3-14.

A. **Calculate the Total Tenant Payment (TTP) and the resulting assistance payment without prorations.**

1. _____ Enter the Gross Rent. Follow the instructions for Gross Rent of the HUD-50059.

2. *_____ Determine the TTP. Follow the instructions for Total Tenant Payment of the HUD-50059. This is the TTP the family would pay without prorations.

3. _____ Subtract the TTP entered in line 2 from the Gross Rent entered in line 1. Enter the difference here. (This is the Assistance Payment the family would receive if they were not subject to the proration requirements. Follow the instructions in Assistance Payment Amount of the HUD-50059 in completing this item.)*

B. **Calculate the prorated assistance payment. Enter this amount as the Assistance Payment Amount.**

4. _____ Enter the number of people in the family who are Eligible Persons, i.e., citizens or eligible noncitizens. See the Glossary for the definition of these terms.

5. _____ Enter the fraction that represents the number of Eligible Persons (numerator) and the number of persons in the family (denominator).
EXAMPLE: There are five persons in the family, of which three are eligible. The fraction for this family would be 3/5.

6. _____ Multiply the amount in line 3 (the Assistance Payment the family would pay if they were not subject to the proration procedures) by the fraction determined in line 5. Enter the product here and in the Assistance Payment field of the HUD-50059. This is the Prorated Housing Assistance Payment for this family.

C. **Calculate the prorated TTP.**

7. _____ Enter the Gross Rent from, Gross Rent (not Market Rent), the HUD-50059.

8. _____ Subtract the amount in line 6 (Prorated Housing Assistance Payment) from the amount in line 7 (Gross Rent). This is the Prorated TTP for this family. Transfer this amount to the Total Tenant Payment of the HUD-50059.

D. **Calculate the prorated tenant rent and any utility reimbursement.**

9. _____ Enter the Utility Allowance from Utility Allowance Amount of the HUD-50059.

10. _____ Subtract the Utility Allowance in line 9 from the Prorated TTP in line 8 and enter the amount here and in Tenant Rent of the HUD-50059. Follow the instructions in Tenant Rent. This is the Prorated Tenant Rent.

If you entered zero in line 10 (and in Tenant Rent of the HUD-50059), complete line 11.

11. _____ If the Utility Allowance in line 9 is greater than the Prorated TTP in line 8, enter the difference here and in Utility Reimbursement of the HUD-50059. Otherwise leave this line and Utility Reimbursement, blank.

Exhibit 3-13: Section 236 Without Additional Assistance – Special Instructions for Determining Prorated Assistance Payment and Prorated Total Tenant Payment/Tenant Rent for Families Subject to Proration Procedures Regarding the Restriction on Assistance to Noncitizens

Special Instructions for Determining
Prorated Assistance Payment and
Prorated Total Tenant Payment/Tenant Rent

Section 236 Tenants Who are Paying
Between Basic and Market Rent
(WITHOUT the benefit of additional assistance)

NOTE: If the tenant receives assistance under Section 8, Rent Supplement, or Rental Assistance Payment and this is a Section 236 project, use *Exhibit 3-14.*

A. **Calculate the difference between market rent and tenant rent without prorations.**

1. _____ Enter the Market Rent from Market Rent field of the **HUD-50059**.

2. _____ Determine the Tenant Rent in accordance with the instructions for Tenant Rent of the **HUD-50059**.

3. _____ Subtract line 2 (Tenant Rent), from line 1 (Market Rent) and enter the result here. This is the difference between the Market Rent and the Tenant Rent, before considering prorations.

B. **Calculate the prorated difference between the market rent and the tenant rent.**

4. _____ Enter the number of people in the family who are Ineligible Persons; i.e. persons who do not meet the definition of a citizen or eligible noncitizen. See the Glossary for the definition of these terms.

5. _____ Enter the fraction that represents the number of Ineligible Persons (numerator) and the number of persons in the family (denominator).
EXAMPLE: There are five persons in the family, of which two are ineligible. The fraction for this family would be 2/5.

6. _____ Multiply the amount in line 3, the difference between the Market Rent and the Tenant Rent before prorations, by the fraction determined in line 5. Enter this amount in Line 6. This represents the prorated difference between the Market Rent and the Tenant Rent.

C. **Calculate the prorated tenant rent.**

7. _____ Add the following amounts and enter the result in line 7: add line 2 (Tenant Rent before prorations) and line 6 (prorated difference between the Market Rent and the Tenant Rent). The result is the Prorated Tenant Rent. Enter the amount in line 7 in Tenant Rent of the **HUD-50059**.

Exhibit 3-14: Section 236 With Benefit of Additional Assistance – Special Instructions for Determining Prorated Assistance Payment and Prorated Total Tenant Payment/Tenant Rent for Families Subject to Proration Procedures Regarding the Restriction on Assistance to Noncitizens

Special Instructions for Determining
Prorated Assistance Payment and
Prorated Total Tenant Payment/Tenant Rent

*Section 236 Tenants Who are Paying
Between Basic and Market Rent
(WITH the benefit of Section 8, RAP or Rent Supplement assistance)*

A. **Calculate the difference between market rent and the contract rent/basic rent for the unit (without prorations).**

1. *_____ Enter the Section 236 Market Rent from Market Rent of the HUD-50059.

2. _____ Enter the Section 236 Basic Rent from Basic Rent Amount of the HUD-50059. Note: Basic Rent is a new field on the HUD-50059 starting with the release of TRACS 202C.

3. _____ Subtract line 2, Basic Rent, from line 1, Market Rent, and enter the difference here.*

B. **Calculate the prorated difference between the market rent and the basic rent.**

4. _____ Enter the number of people in the family who are Ineligible Persons; i.e. persons who do not meet the definition of a citizen or eligible noncitizen. See the Glossary for the definition of these terms.

5. _____ Enter the fraction that represents the number of Ineligible Persons (numerator) and the number of persons in the family (denominator).
EXAMPLE: There are five persons in the family, of which two are ineligible. The fraction for this family would be 2/5.

6. *_____ Calculate the prorated difference between the Market Rent and the Basic Rent. Multiply line 3 difference between the Basic Rent and the Market Rent by the fraction determined in line 5. Enter the amount in line 6.*

C. **Calculate the assistance adjustment for Rent Supplement, RAP, or Section 8 assistance the tenant would otherwise receive.**

7. _____ Enter the Gross Rent. Follow the instructions in Gross Rent (not Market Rent) of the HUD-50059.

8. _____ Determine the Total Tenant Payment (TTP). Follow the instructions in Total Tenant Payment of the HUD-50059. This is the TTP the family would pay without prorations.

9. _____ Subtract the TTP entered in line 8 from the Gross Rent entered in line 7. Enter the difference here. (This is the Assistance Payment for this family if they were not subject to the proration requirements. Follow the instructions in Assistance Payment Amount of the HUD-50059 in completing this item.)

10. _____ Multiply the amount in line 9 (the Assistance Payment for this family if they were not subject to the proration procedures) by the fraction determined in line 5. Enter the product here. This is the Assistance Adjustment for this family.

D. **Calculate the prorated TTP.**

11. _____ Add the following amounts: line 6 + line 8 + line 10. You are adding the following amounts: the prorated difference between the Market Rent, the TTP the family would pay without prorations, and the Assistance Adjustment the family would otherwise receive. Enter the lesser of line 12 (Gross Rent) and the sum of lines 6, 8 and 10 in line 11.

E. **Calculate the prorated assistance payment.**

12. _____ Enter the Gross Rent for this unit from Gross Rent (not Market Rent) of the HUD-50059.

13. _____ Subtract line 11 from line 12 (Gross Rent minus Prorated TTP). This is the Prorated Assistance Payment.

F. **Calculate the prorated tenant rent and any utility reimbursement.**

14. _____ Enter the Utility Allowance from Utility Allowance Amount of the HUD-50059

15. *_____ Subtract the Utility Allowance in line 14 from the Prorated TTP in line 11, and enter the amount here and in Tenant Rent of the HUD-50059. Follow the instructions in Tenant Rent. This is the Prorated Tenant Rent.*

If you entered zero in line 15 (and in Tenant Rent of the HUD-50059), complete Item 16.

16. _____ If the Utility Allowance in line 14 is greater than the Prorated TTP in line 11, enter the difference here and in Utility Reimbursement of the HUD-50059. Otherwise leave this line and Utility Reimbursement, blank.

CHAPTER 4. WAITING LIST AND TENANT SELECTION

4-1 Introduction

A. This chapter describes requirements and makes suggestions regarding activities that occur during the marketing, application, waiting list, and tenant selection process. Owners may complete these activities before, concurrently with, or after the eligibility determination made in accordance with the requirements described in Chapter 3 of this handbook.

B. This chapter is organized into four sections.

- **Section 1: Tenant Selection Plan** describes the required and recommended contents of the HUD tenant selection plan.
- **Section 2: Marketing** describes marketing and outreach activities to attract tenants with particular attention to Affirmative Fair Housing Marketing Plans.
- **Section 3: Waiting List Management** includes information related to application taking, waiting lists, and record-keeping related to tenant applications.
- **Section 4: Selecting Tenants from the Waiting List** covers tenant selection and screening criteria. It also discusses applicant interviews, and applicable requirements and procedures when applicants are found to be ineligible, including written notification to applicants of denial of assistance.

C. All pre-occupancy activities must be undertaken in a manner that does not discriminate on the basis of race, color, national origin, sex, religion, disability, or familial status. See Chapter 2 for general civil rights requirements. This chapter does address some particular nondiscrimination and equal opportunity requirements for pre-occupancy activities.

4-2 Key Terms

A. There are a number of technical terms used in this chapter that have very specific definitions established by federal statute or regulations, or by HUD. These terms are listed in Figure 4-1 and their definitions can be found in the Glossary to this handbook. It is important to be familiar with these definitions when reading this chapter.

B. The terms disability and persons with disabilities are used in two contexts for civil rights protections, and for program eligibility purposes. Each use has specific definitions.

1. When used in context of protection from discrimination or improving the accessibility of housing, the civil rights-related definitions apply.

2. When used in the context of eligibility under multifamily subsidized housing programs, the program eligibility definitions apply.

NOTE: See the Glossary for specific definitions and paragraph 2-23 for an explanation of this difference.

Figure 4-1: Key Terms

• Applicant	• Preferences
• Application	• Preliminary application
• Denial of tenancy or assistance	• Residency preference
• Displaced person	• Screening
• *Enterprise Income Verification (EIV)*	• Tenant selection plan
• Income-targeting	• *Violence Against Women Act (VAWA)*
• Market area	• Waiting list

Section 1: Tenant Selection Plan

4-3 Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 1: Tenant Selection Plan. The citations and their titles (or topics) are listed below.

A. **Tenant Selection Plan**

1. 24 CFR 5.655 Owner Preferences in Selection for a Project or Unit

2. 24 CFR 880.104, 881.104, 883.105, 884.118, 886.119, 886.318 (Applicability of 24 CFR, part 5, and responsibilities of the owner)

3. 24 CFR 891.410, 891.610, 891.750 (Selection and admission of tenants)

B. **Income-Targeting**

These regulations are applicable only to the Section 8 project-based program except where otherwise noted.

1. 24 CFR 5.653 Admission Income-eligibility and income-targeting

2. 24 CFR 5.601, 5.603 (Occupancy Requirements for Section 8 Project-Based Assistance)

C. **Preferences**

1. 24 CFR 5.655, 880.602, 881.601, 883.701, 884.214, 886.132, 886.321, 891.230, 891.750 (Owner preferences/requirements in selection for a project or unit)

2. 24 CFR 236.715 Determination of Eligibility

3. 24 CFR 880.612a, 881.601, 883.701, 884.223a, 886.329a (Preference for occupancy by elderly families)

D. **Required Criminal and Drug Screening Standards**

1. 24 CFR part 5, subpart I Preventing Crime in Federally Assisted Housing Denying Admission and Terminating Tenancy for Criminal Activity and Alcohol Abuse

2. 24 CFR part 5, subpart J Access to Criminal Records and Information

E. *__Social Security Number (SSN) Requirements__1. 24 CFR 5.216 Disclosure and Verification of Social Security and Employer Identification Numbers

2. 24 CFR 5.218 Penalties for failing to disclose and verify Social Security and Employer Identification Numbers*

F. **Screening for Suitability**

- 24 CFR 5.655 Owner Preferences in Selection for a Project or Unit

G. **Rejecting Applicants and Denial of Rental Assistance**

- 24 CFR 880.603, 881.601, 883.701, 884.214, 886.121 and 132, 886.321 and 329, 891.410, 891.610, 891.750 (Tenant selection and admission)

H. **Denial of Assistance to Noncitizens and DHS Appeal Process**

- 24 CFR part 5, subpart E Restrictions on Assistance to Noncitizens

*I. **Mandatory Use of Enterprise Income Verification (EIV)**

- 24 CFR 5.233 Mandated Use of HUD's Enterprise Income Verification (EIV) System *

4-4 Tenant Selection Plan

A. **Key Requirements**

Owners must develop and make public written tenant selection policies and procedures that include descriptions of the eligibility requirements and income limits for admission. Figure 4-2 provides a sample outline of a tenant selection plan. The Tenant Selection Plan must include whether or not there is an elderly restriction or preference in the admission of tenants. The restriction or preference must cite the supporting documentation to ensure nondiscrimination in the selection of tenants. The contents of the plan also must be consistent with the purpose of improving housing opportunities and be reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease.

B. HUD Review of the Tenant Selection Plan

HUD does not approve tenant selection plans (except when owners wish to adopt local or residency preferences). However, if HUD staff becomes aware that a plan fails to comply with applicable requirements, the owner must modify the plan accordingly.

Figure 4-2: Written Tenant Selection Plan - Topics

A. Required Topics

1. Project eligibility requirements:
   - Project-specific requirements (see Chapter 3, Section 2);
   - Citizenship requirements (see Chapter 3, Section 1); and
   - Social security number requirements (see Chapter 3, Section 1).
2. Income limits (including economic mix requirements for Section 8 properties) (see Chapter 3, Section 1).
3. Procedures for accepting applications and selecting from the waiting list:
   - Procedures for accepting applications and pre-applications (see Chapter 4, Section 3);
   - Procedures for applying preferences (including income-targeting in Section 8 properties) (see Chapter 4, Sections 1 and 4);
   - Applicant screening criteria (see Chapter 4, Sections 1 and 4);
     - Required drug-related or criminal activity criteria *including State lifetime sex offender registration check in all states where applicant household members have resided or using a database that checks against all state registries, e.g., the Dru Sjodin National Sex Offender Database.
     - Procedures for using the EIV Existing Tenant Search;*
     - Other allowable screening criteria; and
   - Procedures for rejecting ineligible applicants (see Chapter 4, Section 1).
4. Occupancy standards (see Chapter 3, Section 2).
5. Unit transfer policies, including selection of in-place residents versus applicants from the waiting list when vacancies occur (see Chapter 7, Section 3).
6. Policies to comply with Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act and other relevant civil rights laws and statutes (see Chapter 2, Section 3).
7. Policy for opening and closing the waiting list for the property (see Chapter 4, Section 3).
8. Eligibility of students (see Chapter 3, Sections 1 and 3).
9. *Policies for applying Violence Against Women Act (VAWA) protections (Section 8 only).*

B. Recommended Topics

1. Applicant notification and opportunity to supplement information already provided (see Chapter 4, Sections 1 and 4).
2. Procedures for identifying applicant needs for the features of accessible units or reasonable accommodations (see Chapter 2, Section 3).
3. Updating the waiting list (see Chapter 4, Section 3).
4. Policy for notifying applicants and potential applicants of changes in the tenant selection plan (see Chapter 4, Section 1).
5. Procedures for assigning units with originally constructed design features for persons with physical disabilities (see Chapter 2, Section 3).
6. Charges for facilities and services (see Chapter 6, Section 3).
7. Security deposit requirements (see Chapter 6, Section 2).
8. Unit inspections (see Chapter 6, Section 4).
9. Annual recertification requirements (see Chapter 7, Section 1).
10. Interim recertification reporting policies (see Chapter 7, Section 2).
11. Implementation of house rule changes (see Chapter 6, Section 1).

C. Required Contents of the Tenant Selection Plan

The tenant selection plan helps to ensure that tenants are selected for occupancy in accordance with HUD requirements and established management policies. HUD requires that the plan specify a number of procedures and policies, including the following items:

1. Project eligibility requirements.

   a. Project specific requirements. If the property is designated for a special population, such as elderly or disabled, the owner must define population served.

   b. Citizenship/immigration status requirements. The owner must describe how citizenship/immigration requirements are implemented, including policies regarding verification of citizenship (if any).

   c. *Social security number (SSN) requirements. Requirements for disclosing and providing verification of SSNs.*

2. Income limits (including economic mix for Section 8 properties). The income limit schedule used for the property must be identified (i.e., very low- or low-income. The specific maximum annual income amounts need not be included).

3. Procedures for taking applications and selecting from the waiting list.

   a. Taking applications. The plan must include policies for taking pre-applications (if applicable) and applications.

   b. Preferences. The plan must define each preference adopted for use in the property and any rating, ranking, or combining of the preferences the owner has established that will affect the order in which applicants are selected from the waiting list. The plan should also describe the acceptable sources of information to verify the qualification for preferences.

      REMINDER: Owners implementing state, local, or residency preferences must have prior HUD approval.

   c. Income-targeting. For Section 8 properties only, the plan must describe the procedures used by the owner to meet the income-targeting requirements, if applicable. This description must explain how and when applicants will be skipped over in favor of housing an extremely low-income household and how their applications will be treated when they are skipped.

d. Applicant screening criteria. The plan must describe the property's standards used to screen for information on drug-related or criminal activity (including registration as a sex offender) *and use of the EIV Existing Tenant Search*, as well as the other screening activities implemented by the owner (e.g., rental history).

e. Procedures for rejecting ineligible applicants. The plan must describe the circumstances under which the owner may reject an applicant for occupancy or assistance. If the owner establishes a policy to consider extenuating circumstances in cases when applicants would normally be rejected but have circumstances that indicate the family might be an acceptable future tenant, such a policy must also be described in the plan.

4. Occupancy standards. Standards used by the owner to determine appropriate unit size, and procedures to place families on the lists for more than one unit size, must be included in the plan.

5. Unit transfer policies, including procedures for selecting between applicants on the waiting list and current tenants who need:

a. A unit transfer because of family size;

b. A new unit because of changes in family composition;

c. A deeper subsidy (Rent Supplement, RAP, or Section 8 assistance);

d. A unit transfer for a medical reason certified by a doctor; or

e. A unit transfer based on the need for an accessible unit.

6. Policies to Comply with Section 504 of the Rehabilitation Act of 1973, The Fair Housing Act Amendments of 1988 and Title VI of the Civil Rights Act of 1964.

a. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in any program or activity receiving federal financial assistance from HUD.

b. The Fair Housing Act prohibits discrimination in housing and housing related transactions based on race, color, religion, sex, national origin, disability and familial status. It applies to housing, regardless of the presence of federal financial assistance.

c. Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color or national origin in any program or activity receiving federal financial assistance from HUD.

7. Policy for opening and closing the waiting list. The methods of advertising used to announce opening and closing of the waiting list should be described.

8. Eligibility of students. The plan must include the requirements for determining eligibility of students enrolled at an institution of higher education.

9. *VAWA protections (applicable to the Section 8 program only). The plan, as well as House Rules where applicable, must include policies and procedures covering the VAWA protections. Owner policies must support or assist victims of domestic violence, dating violence or stalking and protect victims, as well as members of their family, from being denied housing or from losing their HUD assisted housing as a consequence of domestic violence, dating violence or stalking.

   (a) Owners must provide notice to Section 8 tenants of their rights and obligations under VAWA.

   (b) Certification of Domestic Violence, Dating Violence or Stalking.

      (1) Owners must provide tenants the option to complete the Certification of Domestic Violence, Dating Violence or Stalking, form HUD-91066. The certification form may be made available to all eligible families at the time of admission or, in the event of a termination or start of an eviction for cause proceeding, the certification may be enclosed with the appropriate notice, directing the family to complete, sign and return the form within fourteen (14) business days. The owner may extend this time period at his/her discretion.

      (2) Alternately, in lieu of the certification form or in addition to it, owners may accept:

         (i) A federal, state, tribal, territorial, or local police record or court record, or

         (ii) Documentation signed by an employee, agent, volunteer of a victim service provider, an attorney, or medical professional from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking or, the effects of the abuse in which the professional attests under penalty of perjury under 28 U.S.C 1746 to the professional's belief that the incident or incidents are bona fide incidents of abuse, and the victim of domestic violence, dating violence or stalking has signed or attested to the documentation.

(3) Owners are not required to demand that an individual produce official documentation or physical proof of an individual's status as a victim of domestic violence, dating violence or stalking in order to receive the protections of the VAWA. Owners, at their discretion, may provide assistance to an individual based solely upon the individual's statement or other corroborating evidence. Owners are encouraged to carefully evaluate abuse claims as to avoid conducting an eviction based on false or unsubstantiated accusations.

(4) Owners should be mindful that the delivery of the certification form to the tenant via mail may place the victim at risk, e.g., the abuser may monitor the mail. Therefore, in order to mitigate risks, owners are encouraged to work with the tenant in making acceptable delivery arrangements, such as inviting them into the office to pick up the certification form or making other discreet arrangements.

(c) Confidentiality of Information.

The identity of the victim and all information provided to owners relating to the incident(s) of domestic violence, dating violence or stalking must be retained in confidence by the owner and must not be entered into any shared database or provided to a related entity, except to the extent that the disclosure is:

(1) Requested or consented to by the individual in writing;

(2) Required for use in an eviction proceeding; or

(3) Otherwise required by applicable law.

The HUD-approved certification form provides notice to the tenant of the confidentiality of the form and the limits thereof.

(d) Retention of information.

Owners must retain all documentation relating to an individual's domestic violence, dating violence or stalking in a separate file that is kept in a separate secure location from other tenant files.

(e) VAWA Lease Addendum.

Owners must have tenants sign the VAWA lease addendum, form HUD-91067 (see Chapter 8 for requirements on issuance of modifications to the model lease).

NOTE: See the Glossary for definitions for domestic violence, dating violence, stalking and immediate family member.*

D. **Additional Owner Policies and Practices**

1. General. In addition to the required content, owners are encouraged to incorporate their own policies and practices regarding the selection of tenants into the tenant selection plan. See Figure 4-2 for a list of recommended topics. By incorporating all policies and procedures in one plan, owners, applicants, and tenants will have one point of reference. Further, owners will have a single document to which they can direct applicants and tenants when questioned about policies and fairness of treatment.

2. Notification of modification to the tenant selection plan. It is also good practice for owners to include a description of the process used to provide notification to applicants on the waiting list and other interested persons (potential applicants) of the implementation of any new or revised tenant selection plan or policies that may affect an application or tenancy.

E. **Modification of the Tenant Selection Plan**

Owners should review tenant selection plans at least annually to ensure that they reflect current operating practices, program priorities, and HUD requirements.

F. **Availability of the Tenant Selection Plan**

When requested, the owner must make the tenant selection plan available to the public.

4-5 Income-Targeting – Applicable Only to the Section 8 Project-Based Program Except Where Otherwise Noted

A. **Key Requirements**

For each project assisted under a contract for project-based Section 8 assistance, the owner must lease not less than 40% of the dwelling units (assisted under the contract) that become available for occupancy in any project fiscal year to extremely low-income families. The methodology for income-targeting must be described in the tenant selection plan. (For information and guidance about income limit exceptions, see paragraph 3-7.)

NOTE: Compliance with income targeting requires owners to count both move-ins and initial admissions to the Section 8 project based assistance program. For example, an initial certification processed to move a tenant from Section 236 assistance to Section 8 assistance is counted for income targeting.

NOTE: Income targeting does not apply to the Section 202 PAC, Section 202 PRAC, Section 811 PRAC, RAP, Rent Supplement, Section 221(d)(3) BMIR or Section 236 programs.

B. **Methods to Comply with Income-Targeting Requirements**

HUD does not prescribe a method for achieving compliance with the income-targeting requirement. Before determining a specific method to achieve income-targeting requirements, it is a good practice for owners to evaluate the expected admissions based upon the current waiting list.

1. First, owners should determine whether the composition of a property's current waiting list enables the owner to achieve the income-targeting requirement by simply following the standard waiting list order with no additional procedures. If the current waiting list includes a significant number of extremely low-income applicants, an owner may be able to meet the 40% target with no additional procedures.

   NOTE: In such cases, it is important that owners periodically review the composition of admissions to confirm that the 40% target will be met for that fiscal year. If an owner's periodic review reveals that admissions of extremely low-income applicants are below the 40% requirement, the owner may need to begin using additional procedures to ensure that the requirement is met by the end of the fiscal year. The owner's Tenant Selection Plan must clearly describe what method will be used and what admission statistics will trigger implementation of the special selection method.

2. If an owner determines that following the property's waiting list in standard chronological order may not (or will not) achieve the admissions necessary to meet the income-targeting requirement, then the owner must implement procedures that will ensure compliance.

   a. To aid in determining the tenant selection procedures that will ensure compliance, HUD recommends that owners examine the volume of unit turnover and applicant admissions for at least the past two years and, based on this information, estimate the likely number of admissions for the coming fiscal year.

   b. Owners may choose any of the following methods, or may develop another method that is consistent with applicable civil rights requirements and does not result in disparate treatment of applicants with respect to any of the protected bases (see Chapter 2). Regardless of the method implemented by the owner, that method must be described in the Tenant Selection Plan.

      (1) <u>Method 1 Admit only extremely low-income families until the 40% target is met</u>. In chronological order, owners select eligible applicants from the waiting list whose incomes are at or below the extremely low-income limit to fill the first 40% of expected vacancies in the property. Once this target has been reached, admit applicants in waiting list order.

(2) Method 2 Alternate between the first extremely low-income applicant on the waiting list and the applicant at the top of the waiting list. To implement this method, owners select the first extremely low-income applicant on the waiting list (which may mean "skipping over some applicants with higher incomes) for the available unit, and then select the next eligible applicant currently at the top of the waiting list (regardless of income level) for the next available unit. As subsequent units become available, tenant selection continues to alternate between the next extremely low-income applicant and the eligible applicant at the top of the waiting list until the 40% target is reached.

NOTE: It is possible that:

- Selection of the "next extremely low-income applicant" may result in selecting the applicant at the top of the waiting list; or
- Selection of the "eligible applicant at the top of the waiting list" may result in the selection of an extremely low-income family.

(3) Method 3 - Alternate between the first extremely low-income applicant on the waiting list and the applicant at the top of the waiting list in groups of 10. In chronological order, owners admit the first 4 extremely low-income families from the waiting list and then admit the next 6 families from the top of the waiting list, regardless of income. This procedure results in 40% or more of admissions being extremely low-income. After filling the first 10 available units, owners again admit the first 4 extremely low-income families on the waiting list and then the next 6 families currently at the top of the waiting list.

NOTE: For more information about meeting income-targeting requirements, and examples of selecting applicants properly from the waiting list, see paragraph 4-25 of this chapter.

4-6 Preferences

Assigning preferences to applicants who meet certain criteria is a method intended to provide housing opportunities to applicants based upon household circumstances.

A. Key Requirements

1. Applicants with preferences are selected from the waiting list and receive an opportunity for an available unit earlier than those who do not have a preference. Preferences affect only the order of applicants on the waiting list. They do not make anyone eligible who was not otherwise eligible,

and they do not change an owner's right to adopt and enforce tenant screening criteria.

2. Owners must inform all applicants about available preferences and give all applicants an opportunity to show that they qualify for available preferences.

3. If a property receives more than one type of subsidy, (e.g., insurance and assistance payments), the preference requirements of each program, if any, are applicable to the property.

Example – Properties That Receive More Than One Type of Subsidy

The owner of a 221(d)(3) BMIR property with Property Disposition Set-Aside must apply the statutory preference for displacement and has the option to apply owner-adopted preferences.

In a 236 property with a Loan Management Set-Aside contract, the owner must apply the HUD regulatory preferences and has the option to apply owner-adopted preferences.

4. Figure 4-3 below summarizes the preference requirements described in subparagraphs B through D below.

B. **Statutory, HUD, State, and Local Preferences**

Congress and HUD have established various types of preferences in an effort to provide housing to those most in need. HUD rules currently include four different kinds of preferences that apply to various programs. Owners must apply preferences to applicants based on the rules for the property subsidy type as well as any owner-adopted preferences. The following are types of preferences:

1. Statutory preferences — displacement. Owners of Section 221(d)(4), 221(d)(3), and 221(d)(3) BMIR properties must give preference to applicants who have been displaced by government action or a presidentially declared disaster.

2. HUD regulatory preferences.

   a. HUD regulations require that owners of Section 236 properties give preference to applicants who have been displaced by government action or a presidentially declared disaster.

   b. In Section 236 properties that also offer rental assistance through the RAP Program, owners must rank applicants according to the following criteria *[24 CFR 236.715]*.

NOTE: These ranking criteria are secondary to the preferences required above.

Figure 4-3: Summary of Preference Requirements by Property Type

Program	Statutory Preferences - Displacement	HUD Regulatory Preferences	Owner-Adopted Preferences
Section 221(d)(3) **Section 221(d)(3) BMIR** **Section 221(d)(4)**	✔ ✔ ✔		
Section 236		✔	
Section 8			
New Construction			✔
Substantial Rehabilitation			✔
State Housing Agency			✔
New Construction or Sub Rehab			✔
Rural Housing 515/8			✔
Property Disposition Set-Aside			✔
Section 202/8			✔
Loan Management Set-Aside (LMSA)			✔

(1) Applicants eligible for RAP assistance.

(2) Applicants eligible to pay less than market rent under the Section 236 program.

(3) Applicants with income sufficient to pay the market rent approved for the property. (See paragraph 3-8 for a discussion of the limitations on renting to over-income applicants. See Figure 4-4 for illustration.)

3. State and local preferences. Owners may apply preferences required by state or local law only if they are consistent with HUD and applicable civil rights requirements. For example, some states have laws that require owners to provide a preference for housing to military veterans. Owners must receive HUD approval in order to apply this locally legislated requirement. Owners must submit a written request to the HUD Field Office, describing the state or local laws requiring such preferences, requesting HUD concurrence on the preferences.

Figure 4-4: Example of Section 236 Ranking Preferences Based on Income and Rent

Clear River Apartments is a Section 236 property with RAP assistance. The basic rent is $350, and the market rent is $500.

Date of Application	Applicant Name	Estimated rent based upon income reported on application form.	Rank order for selection based on estimated rent (assuming no other preference)
6/15/2001	Joseph Jones	$372	3
8/1/2001	Marenka Salnikov	$500	5
8/15/2001	Donny Yee	$312	1
8/23/2001	Rebecca Green	$225	2
9/12/2001	Sastri Sharma	$360	4

C. Owner-Adopted Preferences

Owners are permitted to establish other preferences for assisted properties as long as they are subordinate to any program-specific preferences discussed in subparagraph B above, and comply with applicable fair housing and civil rights statutes. Some of these owner-adopted preferences require prior HUD approval (as noted below) and some do not. The types of preferences that may be implemented by owners to serve unique groups of needy applicants include:

1. Residency preferences. A residency preference provides applicants who live in a specific geographic area at the time of application a priority over nonresidents.

   a. Owners must never adopt a residency requirement (meaning the owner will not lease to any applicant who does not live in the defined jurisdiction or municipality).

b. A residency preference *must be developed, implemented, and executed in accordance with the non-discrimination and equal opportunity requirements listed at 24 CFR 5.105(a).*

c. HUD must approve residency preferences prior to use by the owner. HUD will approve residency preferences only if the preference does not result in discrimination or violate equal opportunity requirements.

d. When an owner adopts residency preferences, HUD requires that the owner consider the following as residents:

(1) Applicants who work in the jurisdiction;

(2) Applicants who have been hired to work in the jurisdiction; or

(3) Applicants who are expected to live in the jurisdiction as a result of planned employment.

NOTE: Planned employment means bona fide offer to work in a municipality.

e. The owner **may** treat graduates of, or active participants in, education and training programs located in a residency preference area as residents of the area if the education or training program is designed to prepare individuals for the job market.

f. For Section 8 properties, an owner's residency preference must be approved by HUD through a modification to the Affirmative Fair Housing Marketing Plan, in accordance with 24 CFR 108.

g. Owners may not base a residency preference on the length of time an applicant has lived or worked in the area.

h. If there are no eligible residents on the waiting list, owners cannot hold units open because of a residency preference. In this situation, owners must admit the next household on the waiting list.

2. Working families. Owners may adopt a preference in selecting families from the waiting list for those families in which the head of household or spouse is employed. Even if the owner adopts such a preference, however, discrimination against persons unable to work is prohibited. Owners must not deny the preference to households in which the head or spouse is 62 or older, or to a person with disabilities.

3. Disability. Owners may adopt a preference to select families that include a person with a disability. Owners may not create preferences for persons with a specific type of disability unless allowed in the controlling documents for the property. (See Chapter 3, Section 2.) Owners may not apply a preference for persons without disabilities.

4. Victims of Domestic Violence, *Dating Violence or Stalking*. Owners may adopt a preference for admission of families that include victims of domestic violence, *dating violence or stalking*.

5. Specific groups of single persons. Owners may adopt a preference for single persons who are elderly, displaced, homeless or persons with disabilities over other single persons.

D. Determining the Relative Weight of Owner-Adopted Preferences

Owners may decide to assign various importance to owner-adopted preferences. If the owner chooses to do so, a ranking, rating, or combination of preference circumstances must be identified in the Tenant Selection Plan and consistently used. For example, an owner may choose to provide the highest ranking to working families, though this ranking is subordinate to income targeting requirements and to statutory and regulatory preferences described in paragraphs 4-6 A and B above. Alternatively, an owner might choose to adopt a policy that provides top priority to an applicant who qualifies for the most preference categories (also known as combining preferences).

4-7 Screening for Suitability

Screening is used to help ensure that families admitted to a property will abide by the terms of the lease, pay rent on time, take care of the property and unit, and allow all residents to peacefully enjoy their homes. Information collected through the screening process enables owners to make informed and objective decisions to admit applicants who are most likely to comply with the terms of the lease. An effective screening policy will also ensure fair, consistent, and equal treatment of applicants. All screening criteria adopted by the owner must be described in the tenant selection plan and consistently applied to all applicants in a non-discriminatory fashion and in accordance with all applicable fair housing and civil rights laws.

A. Screening Versus Determining Eligibility

Screening for suitability of tenancy is not a determination of *eligibility* for the program.

1. Eligibility is a determination that an applicant family meets all of the criteria for the type of subsidy in the property. To be eligible a family must meet the income limits and provide specific information and documentation of other family information (i.e., SSNs, and citizenship information). Eligibility is discussed in detail in Chapter 3.

2. Screening is a determination that an otherwise eligible household has the ability to pay rent on time and to meet the requirements of the lease.

B. **Key Requirements**

1. Owners are permitted to establish and apply written screening criteria to determine whether applicants will be suitable tenants. If an owner's review of information about the applicant indicates that the applicant will not be a suitable tenant, the owner may reject the application for assistance or tenancy.

2. Owners must establish written screening criteria to prohibit the admission of certain individuals who have engaged in drug-related criminal behavior, or are subject to a State lifetime sex offender registration program, or are individuals whose abuse or pattern of abuse of alcohol interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents. Owners may choose to expand these requirements regarding prohibition of admission to certain applicants *[24 CFR part 5, subpart I & J]*.

3. *Owners must establish written procedures for using the EIV Existing Tenant Search. See D below.*

4. Screening criteria must be included in the tenant selection plan. (See paragraph 4-4.C and Figure 4-2.)

5. Owners must apply screening criteria uniformly to all applicants to prevent discrimination and avoid fair housing violations.

6. The screening of live-in aides at initial occupancy and the screening of persons or live-in aides to be added to the tenant household after initial occupancy involve similar screening activities. Both live-in aides and new additions to the tenant household must be screened for drug abuse and other criminal activity, including *State lifetime registration as a sex offender*, by applying the same criteria established for screening other applicants. In addition, owners may apply any other owner established applicant screening criteria to new household members in order to establish suitability for tenancy. Owner established screening criteria may also be applied to live-in aides, except for the criterion regarding the ability to pay rent on time because live-in aides are not responsible for rental payments.

7. Police officers and other security or management personnel that reside in subsidized units are subject to the same screening criteria as other applicants.

8. The costs of screening must not be charged to applicants. Such costs may be charged against the project operating account. A variation on this rule applies to cooperatives.

9. Certain types of screening are prohibited. See paragraph 4-8 below.

C. **Screening For Drug Abuse and Other Criminal Activity**

1. Tenant selection plans must contain screening criteria that include standards for prohibiting admission of those who have engaged in drug-related or criminal activity. The plan may, under certain circumstances, include additional provisions that deny admission to applicants for other drug and criminal activity.

2. Owners must establish standards that prohibit admission of:

   a. Any household containing a member(s) who was evicted in the last three years from federally assisted housing for drug-related criminal activity. The owner may, but is not required to, consider two exceptions to this provision:

      (1) The evicted household member has successfully completed an approved, supervised drug rehabilitation program; or

      (2) The circumstances leading to the eviction no longer exist (e.g., the household member no longer resides with the applicant household).

   b. A household in which any member is currently engaged in illegal use of drugs or for which the owner has reasonable cause to believe that a member's illegal use or pattern of illegal use of a drug may interfere with the health, safety, and right to peaceful enjoyment of the property by other residents;

   c. Any household member who is subject to a State sex offender lifetime registration requirement; and

   d. Any household member if there is reasonable cause to believe that member's behavior, from abuse or pattern of abuse of alcohol, may interfere with the health, safety, and right to peaceful enjoyment by other residents. The screening standards must be based on behavior, not the condition of alcoholism or alcohol abuse.

3. Owners may establish additional standards that prohibit admission if the owner determines that any household member is currently engaging in, or has engaged in, the following activities during a reasonable time before the admission decision:

   a. Drug-related criminal activity. The owner may include additional standards beyond the required standards that prohibit admission in the case of eviction from federally assisted housing for drug-related criminal activity and current drug use.

b. Violent criminal activity.

c. Other criminal activity that threatens the health, safety, and right to peaceful enjoyment of the property by other residents or the health and safety of the owner, employees, contractors, subcontractors, or agents of the owner.

NOTE:. If an owner's admission policy includes any of the activities above or similar restrictions that uses a standard regarding a household member's current or recent actions, the owner may define the length of time prior to the admission decision during which the applicant must not have engaged in the criminal activity. The owner shall ensure that the relevant reasonable time period is uniformly applied to all applicants in a non-discriminatory manner and in accordance with applicable fair housing and civil rights laws.

4. An owner's screening criteria also may include the following provisions:

a. Exclusion of culpable household members. An owner may require an applicant to exclude a household member when that member's past or current actions would prevent the household from being eligible.

b. Drug or alcohol rehabilitation. When screening applications, an owner may consider whether the appropriate household member has completed a supervised drug or alcohol rehabilitation program. The owner may require appropriate documentation of the successful completion of a rehabilitation program.

c. Length of mandatory prohibition. The owner may set a period longer than required by the regulation (as described in subparagraph C.2 above) that prohibits admission to a property for disqualifying behavior. For those behaviors that would result in denial for a reasonable time, the owner must define a reasonable period in the tenant selection plan.

d. Reconsideration of previously denied applicants. An owner may reconsider the application of a previously denied applicant if the owner has sufficient evidence that the members of the household are not and have not engaged in criminal activity for a reasonable period of time. The owner must define a reasonable period of time in the tenant selection plan. When the owner chooses to adopt this admission provision, the owner must require the household member to submit documentation to support the reconsideration of the decision which includes:

(1) A certification that states that she or he is not currently engaged in such criminal activity and has not engaged in such criminal activity during the specified period.

(2) Supporting information from such sources as a probation officer, a landlord, neighbors, social service agency worker or criminal record(s) that were verified by the owner.

e. Consideration of the circumstances relevant to a particular case. In developing optional screening criteria for a property, and applying the criteria to specific cases, owners may consider all the circumstances relevant to a particular household's case. Such considerations may not be applied to the required screening criteria described in subparagraph C.2 above. These types of circumstances include:

(1) The seriousness of the offense;

(2) The effect denying tenancy would have on the community or on the failure of the responsible entity to take action;

(3) The degree of participation in the offending activity by the household member;

(4) The effect denying tenancy would have on nonoffending household members;

(5) The demand for assisted housing by persons who will adhere to lease responsibilities;

(6) The extent to which the applicant household has taken responsibility and takes all reasonable steps to prevent or mitigate the offending action; and

(7) The effect of the offending action on the program's integrity.

D. ***Screening Using the EIV Existing Tenant Search**

Owners must establish procedures in their Tenant Selection Plan for using the EIV Existing Tenant Search to determine if the applicant or any member of the applicant's household are being assisted under a HUD rental assistance program at another location See Chapter 9, Enterprise Income Verification (EIV) for information on using the Existing Tenant Search.*

E**.** **Considerations In Developing Screening Criteria**

Specific screening criteria will vary from property to property. In developing screening criteria, owners may want to consider the following factors:

1. Length of the property's waiting list. An owner of a property that has a long waiting list may consider establishing relatively restrictive screening standards, whereas an owner of a property with little or no waiting list may want to have less restrictive standards. *Regardless of standards established, the owner must screen for State lifetime sex offender

registration in all states where the applicant, or members of the applicant's household, have resided or using a database such as the Dru Sjodin National Sex Offender Database that searches all of the individual state sex offender registries. This searchable database is located at http://www.nsopw.gov.* Setting standards involves balancing the need to fill vacancies with the long-term effect of accepting higher risk tenants. Thorough screening often makes the project more attractive to applicants, thereby decreasing vacancies and turnover.

2. Application and screening fees. Screening takes staff time and may require funds to pay for credit reports and other information.

Rental housing. Owners may not charge application fees or require applicants to reimburse them for the cost of screening, including screening for criminal history. Therefore, owners will want to carefully weigh the cost of various screening activities against the benefits. Screening costs may be charged as an operating expense against the property operating account.

a. Screening criteria for assisted units in cooperatives.

(1) Application fees. Cooperatives may require prospective members to pay application fees if such fees are permissible under state and local laws. The cooperative's board of directors must approve the application fee. While the fee must be reasonable in amount and consistently applied, cooperatives need not submit the fee for Field Office approval. The cooperative must treat the application fee as an earnest money deposit. The application fee is not intended to cover the administrative expenses the cooperative incurs in processing applications. If the applicant is accepted for membership, the cooperative must apply the application fee to the purchase of the membership. If the applicant is rejected by the cooperative, the cooperative must refund the full application fee. The cooperative may retain the application fee only if the applicant backs out of the purchase transaction. While rental projects may not collect application fees, cooperatives may do so because application fees are traditional for homeownership transactions, and admission to a cooperative requires completion of more complicated paperwork than does admission to a rental. Collection of an earnest money deposit will minimize instances in which the cooperative spends time and money processing the application and then the applicant backs out.

(2) Credit report fees. Cooperatives may charge applicants for the cost of credit reports. This fee is intended to cover the cooperative's out-of-pocket cost; these fees are not refundable and need not be applied to the applicant's purchase costs. Cooperatives are permitted to charge these costs to applicants because:

- Such charges are standard industry practice for homeownership;
- Costs of these reports for home purchase can be more expensive than those required for rental purposes; and
- During initial occupancy, HUD requires cooperatives to obtain credit reports on all applicants, and many cooperatives have continued that policy as memberships are resold in later years.

F. Permitted Screening Criteria Commonly Used by Owners

1. Overview. Owners are permitted to screen applicants for suitability to help them to determine whether to accept or deny an applicant's tenancy. Owners should consider at least developing screening criteria related to the following factors and may establish other criteria not specifically prohibited in paragraph 4-8 below. All screening criteria adopted by the owner must be described in the tenant selection plan and consistently applied to all applicants.

2. Screening for credit history. Examining an applicant's credit history is one of the most common screening activities. The purpose of reviewing an applicant's credit history is to determine how well applicants meet their financial obligations. A credit check can help demonstrate whether an applicant has the ability to pay rent on time.

   a. Owners may reject an applicant for a poor credit history, but a lack of credit history is not sufficient grounds to reject an applicant.

   b. As part of their written screening criteria, and in order to ensure that all applicants are treated fairly, owners should describe the general criteria they will use for distinguishing between an acceptable and unacceptable credit rating. Owners are most often interested in an applicant's credit history related to rent and utility payments. A requirement for applicants to have a perfect credit rating is generally too strict a standard.

   c. Owners may determine how far back to consider an applicant's credit history. Owners generally focus on credit activity for the past three to five years. It is a good management practice to give priority to current activity over older activity.

d. Owners may have to justify the basis for a determination to deny tenancy because of the applicant's credit rating, so there should be a sound basis for the rejection.

3. Minimum Income Requirement. Section 236 and Section 221(d)(3) BMIR applicants who receive no other form of assistance, such as Section 8, may be screened for the ability to pay the Section 236 basic rent or the BMIR rent. Owners may establish a reasonable minimum income requirement to assess the applicant's ability to pay the rent. In the Section 8, RAP, and Rent Supplement programs, owners may **not** establish a minimum income requirement for applicants. (See paragraph 4-8.A.)

4. Screening for rental history. In addition to determining whether applicants are likely to meet their financial obligations as tenants and pay rent on time, owners are also interested in whether applicants have the ability to meet the requirements of tenancy.

   a. Owners must not reject an applicant for lack of a rental history but may reject an applicant for a poor rental history.

   b. As part of their written screening criteria, and in order to ensure that all applicants are treated fairly, owners should describe the general criteria they will use for distinguishing between acceptable and unacceptable rental history.

5. Screening for housekeeping habits. Owners may visit the applicant's current dwelling to assess housekeeping habits.

   a. As part of their written screening criteria, and in order to ensure that all applicants are treated fairly, owners should describe the general criteria they will use for distinguishing between acceptable and unacceptable housekeeping practices.

   b. Owners must establish reasonable standards which can be consistently applied to all families. Messy living quarters are not the same as safety and health hazards.

   c. In defining the home visit standards, the owner should establish a geographic radius within which home visits are made, and outside of which home visits are not made. It is impractical to establish a policy requiring home visits for all applicants, which might require the owner to visit units many miles from the property. For example, an owner may determine that 50 miles is the maximum distance that can be traveled to visit an applicant at home.

6. Consideration of extenuating circumstances in the screening process. Owners may consider extenuating circumstances in evaluating information obtained during the screening process to assist in determining the acceptability of an applicant for tenancy. If the applicant is a person

with disabilities, the owner must consider extenuating circumstances where this would be required as a matter of reasonable accommodation.

4-8 Prohibited Screening Criteria

Owners are prohibited from establishing any of the following types of screening criteria.

A. Criteria That Could Be Discriminatory

Owners must comply with all applicable federal, state or local fair housing and civil rights laws and with all applicable civil rights related program requirements.

1. Owners may not discriminate based on race, color, religion, sex, national origin, age, familial status, or disability.

2. Owners may not discriminate against segments of the population (e.g., welfare recipients, single parent households) or against individuals who are not members of the sponsoring organization of the property. Owners may not require a specific minimum income, except as allowed by paragraph 4-7 E.3 of this Handbook.

3. These prohibitions apply to (1) accepting and processing applications; (2) selecting tenants from among eligible applicants on the waiting list; (3) assigning units; (4) certifying and recertifying eligibility for assistance; and (5) all other aspects of continued occupancy.

4. Complaints alleging violations of these prohibitions must be referred to HUD's Regional Offices of Fair Housing and Equal Opportunity.

B. Criteria That Require Medical Evaluation or Treatment

1. Owners may not require applicants to undergo a physical exam or medical testing such as AIDS or TB testing as a condition of admission.

2. Owners may not require pregnant women to undergo medical testing to determine whether she is pregnant in order to assign a unit with the appropriate number of bedrooms.

3. Owners may uniformly require all applicants to provide evidence of an ability to meet the obligations of tenancy, but owners may not impose greater burdens on persons with disabilities. Persons with disabilities may meet the requirements of the lease with the assistance of others, including an assistance animal, a live-in aide, or with services provided by someone who does not live in the unit.

C. Criteria That Require Meals and Other Services

Owners may not require tenants to participate in a meals program that is not approved by HUD.

NOTE: 24 CFR, part 278, prohibits HUD from approving new mandatory meals programs after April 1, 1987.

D. **Criteria That Require Donation or Contribution**

Owners must not require a donation, contribution, membership fee, application fee, or processing fee as a condition of admission. Cooperative housing projects may charge a membership fee. Owners may not require any payments that are not described in the lease.

E. **Criteria That Inquire about Disabled Status**

It is unlawful for an owner to make an inquiry to determine whether an applicant, or any person associated with the applicant, has a disability or to make an inquiry about the nature or severity of a disability. However, in accordance with paragraph 4-29, an owner may request supporting documentation in order to verify whether an individual is a qualified individual with a disability when an applicant requests an accessible unit or a reasonable accommodation/modification and must adhere to the guidelines as set forth in 2-31 F. (Refer to Chapter 2 for more information on fair housing requirements.)

F. **Criteria Prohibited by State and Local laws**

Owners must adhere to state and local laws that prohibit certain screening criteria.

4-9 Rejecting Applicants and Denial of Rental Assistance

A. **Key Requirements**

1. Prohibition of discrimination in the denial of tenancy or rental assistance. Owners must not discriminate against an applicant based on race, color, religion, sex, national origin, familial status, or disability. (See Chapter 2 for additional information.)

2. *Prohibition of denying assistance to victims of domestic violence, dating violence or stalking (applicable to the Section 8 program only). The VAWA protects victims of domestic violence, dating violence or stalking, as well as their immediate family members, from being denied housing assistance if an incident of violence is reported and confirmed. An applicant's status as a victim of domestic violence, dating violence, or stalking is not a basis for denial of rental assistance or for denial of admission, if the applicant otherwise qualifies for assistance or admission. (See Chapter 4, Paragraph 4-4.C.9 and Chapter 6, Paragraph 6-5.G.1 for more information on the VAWA protections.)*

3. Prompt notification. Owners must promptly notify the applicant in writing of the denial of admission or assistance.

B. **Conditions under Which Owners May Reject Applicants**

An owner may reject an applicant if the applicant:

1. Is ineligible for occupancy in a particular unit or property (see Chapter 3, Sections 1 and 2 for eligibility requirements);

2. *Is unable to disclose and provide verification of SSNs for all household members, except for those household members who do not contend eligible immigration status or tenants who were 62 or older on January 31, 2010, whose initial determination of eligibility was begun before January 31, 2010. *

3. Does not sign and submit verification consent forms or the Authorization for Release of Information (forms HUD-9887 and HUD-9887-A);

4. Has household characteristics that are not appropriate for the specific type of unit available at the time, or has a family of a size not appropriate for the unit sizes that are available;

   NOTE: In such cases, the owner may deny the applicant admission to a specific unit, but the applicant may continue to wait for another unit. See the example below.

Example – Denial of Unit

An owner could deny an applicant family a particular unit and place the family on the waiting list if the only available unit is an accessible unit and the following is true: (a) the applicant household does not include an individual requiring the features of the unit, and (b) there are either tenants in the property or applicants on the waiting list who desire such a unit and who have a member of the household requiring the features of the unit.

NOTE: In some programs, eligibility is dependent on the head or spouse meeting particular eligibility criteria.

5. Includes family members who did not declare citizenship or noncitizenship status, or sign a statement electing not to contend noncitizen status (see paragraph 4-31). However, an owner should permit families to revise their application to exclude proposed family members who do not declare citizenship or eligible noncitizen status; or

6. Does not meet the owner's tenant screening criteria.

C. **Notification of Applicant Rejection**

1. Rejection notices must be in writing

2. The written rejection notice must include:

   a. The specifically stated reason(s) for the rejection;

   b. The applicant's right to respond to the owner in writing or request a meeting within 14 days to dispute the rejection. and

   c. That persons with disabilities have the right to request reasonable accommodations to participate in the informal hearing process.

D. **Owner Meetings with Applicants to Discuss Rejection Notices**

1. Any meeting with the applicant to discuss the applicant's rejection must be conducted by a member of the owner's staff who was not involved in the initial decision to deny admission or assistance.

2. Within 5 business days of the owner response or meeting, the owner must advise the applicant in writing of the final decision on eligibility.

Section 2: Marketing

4-10 Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 2: Marketing. The citations and their titles (or topics) are listed below.

Affirmative Fair Housing Marketing and Fair Housing Poster

1. *24 CFR 1.6 Compliance information for Title VI of the Civil Rights Act (for projects that receive Federal financial assistance): maintenance and submission to HUD of information on the extent to which members of minority racial and ethnic groups are beneficiaries of and participants in HUD assisted programs

2. 24 CFR 8.55 Compliance information for Section 504 of the Rehabilitation Act of 1973 (for projects that receive Federal financial assistance): maintenance and submission to HUD of information on the extent to which individuals with disabilities are beneficiaries of HUD assistance programs

3. 24 CFR 107.25 Nondiscrimination provisions in legal instruments (per Executive Order 11063)

4. 24 CFR 107.30 Recordkeeping requirements (per Executive Order 11063): maintenance of racial, religious, national origin, and sex data in connection with HUD programs and activities, including applicants for and occupants of multifamily housing*

5. 24 CFR 108.40 (Affirmative fair housing marketing compliance reviews)

6. 24 CFR, part 110 Fair Housing Poster

7. *24 CFR 121.2 Furnishing of data by program participants (per the Fair Housing Act): race, color, religion, sex, national origin, age, handicap, and family characteristics of persons and household applying for, participating in, or benefiting from HUD programs*

8. 24 CFR part 200, subpart M Affirmative Fair Housing Marketing Regulations

9. 24 CFR 880.601, 881.601, 883.701 (Responsibilities of owner/borrower)

10. 24 CFR 884.214, 886.121, 886.321 (Marketing)

11. 24 CFR 891.400, 891.600 (Responsibilities of the owner/borrower)

4-11 Summary of Key Requirements

A. Affirmative Fair Housing Marketing Requirements

Each multifamily property built or substantially rehabilitated since July 1972 must develop and carry out an Affirmative Fair Housing Marketing Plan (Form HUD-935.2A). Projects built or rehabilitated before February 1972 are not required to have a plan in the prescribed form, unless the plan is required by a housing assistance contract. However, Owners must affirmatively market their units to those least likely to apply.

B. Fair Housing Poster

Owners of HUD-subsidized multifamily housing must display the Equal Housing Opportunity poster (i.e., Fair Housing Poster) in accordance with HUD requirements.

4-12 Affirmative Fair Housing Marketing

This paragraph describes affirmative fair housing marketing activities and implementation of the Affirmative Fair Housing Marketing Plan (Form HUD-935.2A) approved for the property. It also discusses compliance and requirements for updating the Affirmative Fair Housing Marketing Plan.

A. Key Requirements

1. The marketing effort should attract a broad cross-section of the eligible population without regard to race, color, religion, sex, disability, familial status, or national origin.

2. Whenever additional applicants are needed to fill available units, advertising must be carried out in accordance with the HUD-approved Affirmative Fair Housing Marketing Plan, or, in cases where no Affirmative Fair Housing Marketing Plan is required, marketing must be conducted in an affirmative manner.

3. During compliance reviews, owners must be able to provide information documenting their compliance with affirmative fair housing marketing requirements and their approved plan.

B. **Affirmative Fair Housing Marketing Plan**

Owners must comply with the requirements of their HUD-approved Affirmative Fair Housing Marketing Plan, which is designed to promote equal housing choice for all prospective tenants regardless of race, color, religion, sex, disability, familial status, or national origin.

1. The purpose of the plan is to ensure that eligible families of similar income levels will have a similar range of housing opportunities.

2. The plan outlines marketing strategies the owner must use, including special efforts to attract persons who are least likely to apply because of such factors as the racial and ethnic composition of the neighborhood in which the property is located. Marketing should also seek to reach potential applicants outside the immediate neighborhood if marketing only within the neighborhood would create a disparate impact against certain classes (e.g., if the entire neighborhood includes no minorities).

3. Owners must monitor the results of the marketing effort and adjust their marketing techniques as necessary.

4. Owners may not require local residency as a prerequisite for admission. However, with HUD approval, owners may give preference to residents of the municipality in which the property is located. HUD will approve the use of local residency preferences only if such preferences are found to be consistent with nondiscrimination and equal opportunity requirements and the goals of the Affirmative Fair Housing Marketing Plan. See paragraph 4-6 C.1 for more information about residency preferences.

5. HUD does not require subsidized multifamily projects built prior to February 1972 to have an Affirmative Fair Housing Marketing Plan, unless the property has been substantially rehabilitated subsequent to February 1972 or the plan is required by a housing assistance contract. However, owners of such properties are required to affirmatively market their units to those least likely to apply.

C. **Special Marketing Requirements**

1. <u>All Section 8 units</u>. Owners must target their marketing and outreach activities to attract applicants with incomes below the very low-income limit. Owners must also target their marketing and outreach activities to attract applicants with incomes at or below the extremely low-income limit to achieve the income targeting requirements (see paragraph 4-5).

2. <u>New construction and substantial rehabilitation units NOT designed for disabled or elderly persons</u> (except previously HUD-owned properties).

Before marketing to other prospective tenants, owners must market to nonelderly families, including those with disabilities, who are:

a. Least likely to apply as identified in the Affirmative Fair Housing Marketing Plan; and

b. Expected to reside in the community because of their current or planned employment.

3. Section 202 PRAC and Section 811 PRAC properties - Supportive Housing for the Elderly and Supportive Housing for Persons with Disabilities.

a. Owners must commence and continue diligent marketing activities not later than 90 days before the anticipated date of availability of the first unit or occupancy of the group home. Marketing activities must include the provision of notices on the availability of housing under the program to operators of temporary housing for the homeless in the same housing market.

b. At the time of PRAC execution, the owner must submit to HUD a list of leased and unleased assisted units (or, in the case of a group home, leased and unleased residential spaces) with a justification for the unleased units or residential spaces in order to qualify for vacancy payments for these units or spaces.

D. Advertising

When a property is initially leased, or when available units cannot be filled from applicants on a waiting list, or no waiting list exists; the owner must advertise to attract eligible applicants in the market area who are least likely to apply. Advertising must be directed to all potential applicants regardless of race, color, religion, sex, disability, familial status, or national origin.

1. An affirmative marketing program must be in effect for each multifamily project throughout the life of the mortgage. Such a program typically involves publicizing the availability of housing opportunities to all persons, regardless of race, color, religion, sex, disability, familial status, or national origin, in the media most likely to be used by the applicants, including minority publications or other minority outlets that are available in the housing market area.

2. Owners must target advertising to groups other than the typical population of the neighborhood in which the property is located, reaching out to applicants who are least likely to apply because they are not the predominant racial or ethnic group in the neighborhood.

3. All advertising must include either the HUD-approved Equal Housing Opportunity logo, slogan, or statement. All advertising depicting persons should depict members of all eligible protected classes including individuals from both majority and minority groups.

4. The owner's responsibility to market projects to those least likely to apply includes marketing to the LEP population in the community.

E. **Records**

During compliance reviews, owners must be able to provide documentation that marketing activities for the property have been consistent with affirmative fair housing marketing requirements and the approved plan for the property. Useful records for this purpose include copies of media and marketing materials, records of marketing activities conducted, and documentation of any special marketing activities conducted in accordance with the property's plan.

F. **Updating the Marketing Plan**

1. The approved Affirmative Fair Housing Marketing Plan must be followed. It is the owner's blueprint for marketing activity.

2. Owners must review their Affirmative Fair Housing Marketing Plan every five years or when the local Community Development jurisdiction's Consolidated Plan is updated.

3. When reviewing the plan, the owner should look at the current demographics of the market area to determine if there have been demographic changes in the population in terms of race, ethnicity, religion, persons with disabilities and/or large families. The owner will then determine if the population least likely to apply for the housing is still the population identified in the Affirmative Fair Housing Marketing Plan, whether current advertising sources still exist, whether the advertising and publicity cited in the current Affirmative Fair Housing Marketing Plan are still the most applicable or whether advertising sources should be changed or expanded. Even if the demographics of the community have not changed, the owner should determine if the outreach currently being performed is reaching those it is intended to reach as measured by project occupancy. If not, the Affirmative Fair Housing Marketing Plan should be updated.

4. The revised plan must be submitted to HUD for approval. HUD or the contract administrator will review whether affirmative marketing is actually being performed in accordance with the Affirmative Fair Housing Marketing Plan during an on-site monitoring review.

5. If based on their review the owner determines the Affirmative Fair Housing Marketing Plan does not need to be revised, they should maintain a file documenting what was reviewed, what was found as a result of the review, and why no change is required. HUD or the contract administrator may review this documentation during a monitoring review.

G. **Fair Housing Poster**

1. Owners must post and maintain the required Equal Housing Opportunity poster.

a. Owners may obtain copies of the poster from their HUD Field Office.

b. Owners may use a facsimile of the poster if the facsimile and lettering are equivalent in size and legibility to the poster available from HUD.

2. The Fair Housing Poster must be prominently displayed so it is readily apparent to all persons seeking housing.

Section 3: Waiting List Management

4-13 Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 3: Waiting List Management. The citations and their titles (or topics) are listed below.

A. **Taking Applications for Occupancy**

1. 24 CFR 5.659 Family Information and Verification

2. 24 CFR 880.603, 881.601, 883.701, 884.214, 886.121, 886.321, 891.410, 891.610, 891.750 (Selection and admission of tenants)

B. **Creating and Maintaining Waiting Lists**

1. 24 CFR 5.655 Owner Preferences in Selection for a Project or Unit

2. 24 CFR 880.603, 881.601, 883.701, 884.214, 886.121 and 132, 886.321 and 329, 891.410, 891.610, 891.750 (Tenant selection and admission)

C. ***Social Security Number (SSN) Requirements**

1. 24 CFR 5.216 Disclosure and Verification of Social Security and Employer Identification Numbers

2. 24 CFR 5.218 Penalties for failing to disclose and verify Social Security and Employer Identification Numbers*

D. **Record-Keeping**

1. 24 CFR 880.603, 881.601, 883.701, 884.214, 886.321, 886.329, 891.410, 891.610, 891.750 (Selection and admission of tenants)

2. 24 CFR, part 1 Nondiscrimination in Federally Assisted Programs.

4-14 Taking Applications for Occupancy

A. Key Requirements

1. Application. Anyone who wishes to be admitted to an assisted property or placed on a property's waiting list must complete an application. In addition to providing applicants the opportunity to complete applications at the project site, owners may also send out and receive applications by mail. Owners shall accommodate persons with disabilities who, as a result of their disabilities, cannot utilize the owner's preferred application process by providing alternative methods of taking applications.

2. Applicant certification. The application must include a signature from the applicant certifying the accuracy and completeness of information provided. See the discussion in Chapter 5, Section 3 for information about the Privacy Act and disclosure requirements.

3. *Supplemental Information to Application for Assistance. The application must include as an attachment, form HUD-92006, Supplement to Application for Federally Assisted Housing. See D below for instructions on use of this form.*

4. The applicant provides self-certification of their race and ethnicity for data collection by using form HUD-27061-H (Exhibit 4-3). Completing this form is optional and there is no penalty for not completing it. Owners should not complete the form on behalf of the tenant. When the applicant chooses not to self certify race or ethnicity, a notation that the applicant chose not to provide the race and ethnicity certification *may* be placed in their file.

B. Contents of Application

1. Although HUD does not prescribe an application format, a written application form used to initiate verification of eligibility factors should include the following data:

   a. Household characteristics name, sex, age, disability status (only where necessary to establish eligibility) of each household member, need for an accessible unit, and race/ethnicity of head of household;

   b. General household contact information address, phone number;

   c. Identification of the approved preferences, if HUD approval is required, for which the household qualifies (only if preferences are used at the property);

   d. Source(s) and estimate(s) of household's anticipated annual income and assets;

e. Citizenship declaration (see Exhibit 3-5) and verification consent forms (see Exhibit 3-6). (This is not required for 221(d)(3) BMIR (without Section 8 or any other assistance), 202 (without Section 8), 202 PAC, 202 PRAC, and 811 PRAC properties that have no other subsidy);

f. Marketing information to understand how the applicant heard about the property; and

g. Screening information prior landlords, credit, and drug and criminal history, consistent with the property's tenant selection policies.

2. *The owner's application must request the following information from applicants.

a. Whether the applicant or any member of the applicant's household, is subject to State lifetime sex offender registration in any state.

b. Listing of states where the applicant and members of the applicant's household have resided.

c. Disclosure of SSNs for the applicant and for all members of the applicant's household, except those household members who do not contend eligible immigration status.

d. Information from applicants who were age 62 or older as of January 31, 2010, and who do not have a SSN, if they were receiving HUD rental assistance at another location on January 31, 2010. This information is needed in order for the owner to verify whether the applicant qualifies for the exemption from disclosing and providing verification of a SSN.

3. The owner must include as an attachment to the application form HUD-92006, Supplement and Optional Contact Information for HUD-Assisted Housing Applicants, Supplement to Application for Federally Assisted Housing.*

C. Types of Applications

Owners may choose to use a "full" application form, requiring all the detailed information needed to make a determination of eligibility, or a shorter pre-application form.

1. If an applicant will be placed on a waiting list, as opposed to being immediately offered a unit, the owner may use a pre-application (brief form of application), which provides the minimum information needed to determine if the applicant should be put on the waiting list.

2. If only a preliminary application has been completed, a full application should be completed at the time a unit is available so that the owner has enough information to determine the applicant's eligibility completely.

D. ***Supplement to Application for Federally Assisted Housing**

Section 644 of the Housing and Community Development Act of 1992 requires owners to provide applicants, as a part of their application for housing, the option to include information on an individual or organization that may be contacted to assist in providing any delivery of services or special care to applicants who become tenants and to assist with resolving any tenancy issues arising during tenancy.

1. At time of application:

a. Owners must provide applicants the opportunity to complete the information on form HUD-92006, Supplement to Application for Federally Assisted Housing. This form gives applicants the option to identify an individual or organization that the owner may contact and the reason(s) the individual or organization may be contacted. The applicants, if they choose to provide the additional contact information, must complete, sign and date the form.

b. Owners **cannot** require that applicants provide the contact information, as providing contact information is optional on the part of the applicant. Those applicants who choose not to provide the contact information should check the box indicating that they choose not to provide the contact information and sign and date the form.

c. Owners should provide applicants the opportunity at time of admission to update, remove or change contact information provided at the time of application, particularly if a long period of time has elapsed between the time of application and actual admission.

d. If the applicant chooses to have more than one contact person or organization, the applicant must make clear to the owner the reason each person or organization may be contacted. The owner should accommodate the applicant by allowing them to complete a form HUD-92006 for each contact and indicate the reason the owner may contact the individual or organization.

For example, the applicant may choose to have a relative as a contact for emergency purposes and an advocacy organization for assistance for tenancy purposes.

2. After admission:

a. Owners should provide tenants who were not provided the opportunity to provide contact information at the time of

application and admission, the option to complete form HUD-92006 and provide contact information at the time of their annual recertification.

b. Owners **cannot** require tenants who have not provided contact information to provide the contact information, as providing this information is optional on the part of the individual or family.

c. Tenants may request to update, remove or change the information provided on form HUD-92006 at any time and owners must honor this request.

d. Owners should provide tenants who have provided contact information using form HUD-92006 the opportunity to update, remove or change the information at the time of annual recertification to ensure that current information is on file. This includes allowing tenants who originally chose not to provide contact information the opportunity to provide contact information if they request to do so. Remember, providing contact information is optional on the part of applicants and tenants.

3. Owners use of the contact information.

Owners will contact the individual or organization provided only for the use or uses indicated by the applicant or tenant on form HUD-92006. This contact information will assist the owner in providing the delivery of services or special care to the tenant and assist in any tenancy issues arising during the term of tenancy of the tenant.

4. Retention and confidentiality of contact information.

a. If the applicant does not become a tenant, the owner will retain the form HUD-92006 with the application for three years. (See Paragraph 4-22.B)

b. If the applicant becomes a tenant, the owner will retain the form HUD-92006 with the application for the term of tenancy plus three years. (See Paragraph 4-22.C)

c. Owners must keep the contact information confidential. Owners are allowed to release the information for the stated statutory purpose only: To assist the owners in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants.*

4-15 Matching Applicants on the Waiting List to Available Units

A. Overview

Once unit size and preference order is determined, owners must select applicants from the waiting list in chronological order to fill vacancies. The owner

then determines eligibility (if that has not already been done), performs tenant screening (see Section 4 of this chapter), and decides whether the applicant can be housed based on income-targeting requirements.

B. **Nondiscrimination When Matching Applicants to Available Units**

Although an owner may establish preferences to admit households with specific characteristics from the waiting list, the owner must never base applicant selection or denial of assistance upon:

1. Membership in a socio-economic class (e.g., welfare recipients, single parent households) or lack of membership in the sponsoring organization;

2. Familial status;

3. Race, color, religion, sex, or national origin of household members;

4. Whether the household has a member with a specific disability (unless restricted by program statute);

5. Family size (However, if the family size requires a unit size that does not exist in the property, the family must be denied assistance. See paragraph 4-9.); and

6. Age (unless restricted by program statute).

C. **Matching Family Characteristics with Available Units**

In selecting a family to occupy a particular unit, the owner may match certain family characteristics with the type of unit available.

1. Matching families to units according to family size and number of bedrooms is not only acceptable but also necessary to comply with occupancy standards and local codes.

2. Owners must first offer units with special accessibility features to families that include persons with disabilities requiring such features.

D. **Section 8 Units: Extremely Low-Income Targeting Requirements and Tenant Selection**

1. When an extremely low-income applicant is needed to achieve targeting requirements, and the next applicant on the waiting list has income above the extremely low-income limit, that applicant must be returned to the waiting list. When the owner is ready to house an applicant with income above the extremely low-income limit, this applicant can be served.

2. A notation must be made on the waiting list indicating why this applicant has been returned to the list rather than housed or withdrawn. The owner will then look for the first extremely low-income applicant on the list needing the appropriate bedroom size and qualifying for the top-ranked preference, if preferences are used by the project.

E. Restrictions on Applicant Selection Based on Income

Owners may not select families for unit/property occupancy in an order inconsistent with the waiting list in order to house relatively higher-income families. However, an owner may select a family for occupancy of a property or unit based on its extremely low-income status in order to satisfy income-targeting requirements. (See paragraph 4-5 on income-targeting for details.)

F. Matching Single Persons to Units

Single persons are eligible families (if they meet all eligibility criteria for the property). However, single persons may not be placed on the two-bedroom waiting list or occupy a unit with two or more bedrooms except a person with a disability who needs the larger unit as a reasonable accommodation or an elderly person who has a verifiable need for a larger unit. Also a displaced person may be placed on the waiting lists for two-bedroom or larger units if no one-bedroom units are available. See paragraph 3-23.G for more information about assigning units larger than required.

4-16 Creating and Maintaining Waiting Lists

A. Key Requirements

1. Receiving and recording the application. Upon receipt of an application for tenancy or assistance, the owner must indicate on the application the date and time received. This may be accomplished by either using a date and time stamp or by writing and initialing the date and time received. The owner must then either process the applicant for admission, place the applicant on the waiting list or, based on a preliminary eligibility determination, reject the applicant. Examples of applicants who might be rejected based upon a preliminary eligibility determination include a 35-year old individual applying for a unit in a Section 202 PRAC property, a household of eight applying to a property with only efficiency and one-bedroom units, and an applicant with income that is $7,000 over the income limit.

2. Preferences. Owners must collect information about the preferences for which the applicant qualifies so that they are able to select applicants from the waiting list in accordance with preferences established for the property. (See paragraph 4-6 for additional information about preferences.)

3. Providing notice. The owner must provide notice of closing of the waiting list.

B. **Opening and Closing the Waiting List**

Owners should monitor the vacancies in their properties and their waiting lists regularly to ensure that there are enough applicants to fill the vacancies. Furthermore, owners should monitor their waiting list to make sure that they do not become so long that the wait for a unit becomes excessive.

1. Closing waiting lists.

   a. The waiting list may be closed for one or more unit sizes when the average wait is excessive (e.g., one year or more).

   b. When the owner closes the list, the owner must advise potential applicants that the waiting list is closed and refuse to take additional applications.

   c. When the owner decides to no longer accept applications, the owner must also publish a notice to that effect in a publication likely to be read by potential applicants. The notice must state the reasons for the owner's refusal to accept additional applications.

2. Opening waiting lists.

   a. When the owner agrees to accept applications again, the notice of this action must be announced in a publication likely to be read by potential applicants in the same manner (if possible, in the same publications) as the notification that the waiting list was closed. The notifications should be extensive, and the rules for applying and the order in which applications will be processed should be stated.

   b. Advertisements should include where and when to apply and should conform to the advertising and outreach activities described in the Affirmative Fair Housing Marketing Plan.

C. **Determining an Applicant's Preliminary Eligibility**

1. Owners should make a preliminary eligibility determination before putting a household on the waiting list.

   a. The owner reviews the application to ensure that there are no obvious factors that would make the applicant ineligible.

   b. If a preliminary screening indicates that a family is eligible for tenancy, but units of appropriate size are not vacant, the owner must place the family on the waiting list for the property and notify the family when a suitable unit becomes available. A final eligibility determination is made at the time the unit is available. (See discussion of unit size determinations in paragraph 3-23.)

c. Using this system, the owner avoids performing the eligibility determination twice before admitting the applicant to the property, but the result may be that applicants placed on the waiting list may ultimately be found to be ineligible.

2. *If the preliminary screening indicates that a family is eligible for tenancy but SSNs have not been disclosed and verification of the SSN provided for the applicant and all of the applicant's household members, the owner must place the family on the waiting list and notify the family when a suitable unit becomes available. However, the applicant must disclose and provide verification of a SSN for all household members before they can be admitted. See Chapter 3, Paragraph 3-9 for more information on disclosing and verifying SSNs.*

3. Alternatively, owners may choose to place applicants on the waiting list after making a more in-depth eligibility determination. If a property's waiting list is short, this approach can be a good practice to help place applicants quickly when they reach the top of the waiting list. However, if an applicant remains on the waiting list for an extended period of time, the owner will need to complete another full determination once the applicant reaches the top of the list.

4. If an applicant is otherwise eligible for tenancy but no appropriate size unit exists in the property, the owner must reject the application. (See paragraph 4-9 for more information about rejecting applicants.)

5. Applicants who are obviously not eligible for tenancy must be rejected. (See paragraph 4-9.)

D. **Creating Waiting Lists**

To ensure that applicants are appropriately and fairly selected for the next available unit, it is essential for owners to maintain waiting lists with appropriate information taken from the application for tenancy.

1. Plan of list maintenance. In order to ensure that all applicants are treated fairly, the tenant selection plan must describe how the waiting list is maintained.

2. Updates of waiting list. Keeping the waiting list as up-to-date as possible will help reduce errors and minimize the administrative resources expended on processing information regarding applicants who are ineligible or no longer interested in residing in the property.

   a. Owners may periodically update their waiting lists.

   b. Owners may require applicants to contact the property every six months in order to stay on the waiting lists.

3. Data included on the waiting list. The waiting list must include the following data taken from the application:

a. Date and time the applicant submitted an application;

b. Name of head of household;

c. Annual income level (used to estimate levels for income-targeting, i.e., extremely low-income, very low-income, and low-income) (See discussion of income limits in paragraph 3-6);

d. Identification of the need for an accessible unit, including the need for accessible features;

e. Preference status; and

f. Unit size.

NOTE: See Figure 4-5 for a sample waiting list format.

4. Excluding data from the waiting list. While additional information, such as race/ethnicity, gender, and family size is collected on pre-applications and applications and retained in property files, it is good practice to avoid including these types of data on the property waiting list. This information

is not directly relevant to tenant selection and might result in discrimination against some applicants.

5. Applicant presence on multiple waiting lists. An applicant may be on multiple waiting lists (or waiting for more than one unit size). Based upon the application dates and times and qualification for preferences (if used), placement on these multiple lists may vary.

Figure 4-5: Sample Waiting List Format

Date of Application	Time of Application	Head of Household	Unit Size	Income Level			Need for Accessible Unit		Comment/ Contact	Removed/ Rejected Date	Move-in Date	Preference Type
				ELI	VLI	LI	Y	N				
12/3/01	10:30 AM	Mary Tate	2	X				X				Working family preference; Elderly preference
12/4/01	1:00 PM	Hiroshi Kihara	2		X		X					

4-17 Placing Families with Disabled Family Members

A. An owner must not skip over a family that has reached the top of the list and has indicated a need for certain unit accommodations because of a disability. If separate waiting lists are used for persons with disabilities, they must also be placed on the general waiting list and given the option of the next available unit if they come to the top of the list.

B. The family must be given the opportunity to benefit from the program and decide for itself, in compliance with Section 504, whether a unit meets the needs of the family, based on size, location, or facilities. This means that the owner must notify the household whenever any unit becomes available, without regard to unit accessibility.

C. The applicant may decide to accept a standard unit, particularly when units meeting the household's needs are in short supply. The family may accept the unit and request some modification to the unit as a reasonable accommodation. (See further discussion of Section 504 requirements in Chapter 2, Section 3, Subsections 4 and 5.)

D. Families who have a member who needs the accessibility feature of the unit take priority to occupy accessible units over families with no disabled family members.

NOTE: See paragraph 2-32 for additional information on assigning accessible units.

4-18 Documenting Changes to Waiting Lists

A. **Overview**

Whenever a change is made in the waiting list, an action is taken, or an activity specific to an applicant occurs, a notation must be made on the waiting list.

B. **Providing an Auditable Record of Changes to Waiting Lists**

The goal of the annotation is to provide an auditable record of applicant additions, selections, withdrawals, and rejections. Independent reviewers looking at the waiting list should be able to:

1. Find an applicant on the waiting list;

2. Readily confirm that an applicant was housed at the appropriate time based on unit size needs, preferences, and income-targeting; and

3. Trace various actions taken with respect to a family's application for tenancy.

C. **Maintaining Documentation of the Waiting Lists**

Owners must develop a method to maintain documentation of the waiting list composition, application status, and actions taken.

1. The method adopted by an owner will vary based upon the level of automation used at the property.

2. Owners should periodically analyze their waiting list policies and documentation procedures to determine whether an independent party reviewing the list and its supporting documentation could follow the actions taken, applicable preferences, and reasons why certain individuals may have been selected ahead of others on the waiting list. If not, the owner must make the waiting list format and associated practices more transparent.

D. **Maintaining Records of Manually Recorded Waiting Lists**

An owner may keep a manual property waiting list.

1. Manually maintained waiting lists must be maintained as a permanent record.

   a. The list must not be rewritten.

   b. The list must be maintained in a manner that cannot easily be altered.

   c. The list must be kept in a manner that can be audited.

2. The manual waiting list must provide an easily viewable record of the date and time of application, and date and time of selection from the waiting list.

E. **Maintaining Records for Electronic Waiting Lists**

Owners may maintain an electronic waiting list (instead of a manual property waiting list).

1. Electronic waiting lists must have a mechanism for maintaining the date and time of each applicant's placement on or selection from the waiting list and a way to document changes made to the list. The following are examples of methods that owners might use to track inputs to the electronic waiting list and changes to it.

   a. Use a data backup function to record the time and date of entry of new applications and changes to existing records in the electronic waiting list.

   b. Print a record of the appearance of the waiting list as often as necessary (at least monthly) to show each applicant's placement on and selection from the list. The time and the date of the printout should appear on the report. The owner can file this information in the tenant file and in a central waiting list selection file.

c. Whenever status changes occur, such as changes in family composition and unit size, the change should be recorded with an explanation, and the re-sorted list should be printed.

2. To the extent possible, the owner should use electronic safeguards, such as assigning waiting list password access only to individuals responsible for maintaining the system. Ideally, a system should record the user name and the time, date, and action entered whenever a record is changed or entered in the electronic waiting list.

4-19 Updating Waiting List Information

A. The owner should update the waiting lists annually or semi-annually to ensure that applicant information is current and that any names that should no longer be on the list are removed.

B. If the household composition changes, the owner must update the waiting list information and decide whether the household needs the same or a different unit size. The owner's written policy will determine if the family maintains the original application date or if the place on the waiting list is based on the date of the new determination of family composition.

C. The owner must establish occupancy standards as part of the property's tenant selection plan and consistently apply those standards in assigning unit size to applicants. (See paragraph 3-23 for more information about occupancy standards.)

Example - Applicant Change in Household Composition

The Chiu family applied to the Dogwood Apartments project on 5/12/01. They have been assigned to the two-bedroom waiting list. The family includes Liang and Jun Chiu and a 3-year-old daughter. On 2/21/02, Jun Chiu gives birth to twins. The family notifies Dogwood of this change in family composition on 2/25/02. The family is now in need of a three-bedroom unit.

The owner's policy in the tenant selection plan for the property allows a family to have as many as two-persons per bedroom, but permits larger units based on the age differences between children and the relationships of adults.

Because the family size now results in more than two persons per bedroom in a two-bedroom unit, the owner must now move the family to the three-bedroom waiting list, with an application date of 5/12/01. The owner's written policy allows the applicant to retain the original application date.

If there are no three-bedroom units in the property, the family must be notified that they are not eligible for the property and removed from further consideration on the waiting list. This action must be documented on the waiting list, and proper written notification must be provided to the family.

D. If the applicant contact information changes, such as the address or phone number, the owner must note the new information and the date it was received

on the application submitted by the family and must ensure that the waiting list (either manual or electronic) is accurately updated.

4-20 Removing Names from the Waiting List

The owner must document removal of any names from the waiting list with the time and date of the removal.

A. The tenant selection plan must include a written policy that describes when applicant names will be removed from the waiting list. Examples of applicant removal policies an owner may adopt are:

1. The applicant no longer meets the eligibility requirements for the property or program;
2. The applicant fails to respond to a written notice for an eligibility interview;
3. The applicant is offered and rejects two units in the property (or any number of unit offers as specified in the owner's written policies);
4. *The applicant fails to provide SSNs for all household members.*
5. Mail sent to the applicant's address is returned as undeliverable; or
6. The unit that is needed using family size as the basis changes, and no appropriate size unit exists in the property.

B. The owner must periodically print out electronic waiting lists or preserve backup copies showing how the waiting list appeared before and after the removal of each name.

4-21 Reinstating Applicants to the Waiting List

If an applicant is removed from the waiting list, and subsequently the owner determines that an error was made in removing the applicant (e.g., the incorrect address was used in sending mail to the applicant, the applicant did not respond to information or updates because of a disability), the applicant must be reinstated at the original place on the waiting list.

4-22 Record-Keeping

A. The owner must retain current applications as long as their status on the waiting list is active.

B. Once the applicant is taken off the waiting list, the owner must retain the application, *form HUD-92006 completed by the applicant*, initial rejection notice, applicant reply, copy of the owner’s final response, and all documentation supporting the reason for removal from the list for three years.

C. When an applicant moves in and begins to receive assistance, the application *and form HUD-92006 completed by the applicant* must be maintained in the tenant file for the duration of the tenancy and for three years after the tenant leaves the property.

D. All files must be kept secure so that personal information remains confidential.

E. The applicant's or tenant's file should be available for review by the applicant or tenant upon request or by a third party who provides signed authorization for access from the applicant or tenant. *EIV income data found in the tenant's file has additional disclosure requirements (see paragraph 9-18).*

F. The owner must dispose of applicant and tenant files and records in a manner that will prevent any unauthorized access to personal information, e.g., burn, pulverize, shred, etc.

G. Owners must keep records and submit reports and information as required by HUD to enable HUD and the owner to ascertain whether the owner has complied, or is complying with, nondiscrimination requirements. (See Chapter 2.)

Section 4: Selecting Tenants from the Waiting List

4-23 General

A. Once an owner has solicited applications and developed a waiting list for applicants for whom no unit is immediately available, the owner must select applicants from the waiting list and offer units in the order required by HUD rules and owner policies. This section describes options for the owner and provides guidance on how to carry out these activities.

B. When a unit becomes vacant, the owner must select the next applicant from the waiting list based on the unit size available, preferences established for the property, income-targeting policies and requirements, *disclosure and verification of SSN(s)* and screening policies applied by the owner. The owner will select the first name on the waiting list for the appropriate unit size (or list of names for units reserved for disabled applicants) and make a final determination of eligibility and suitability for tenancy, using the criteria described in Chapter 3, Sections 1 and 2, and the procedures in this section.

4-24 Applicant Interviews

A. When an appropriate unit will be available in the near future, the owner must interview an applicant and obtain current information about the family's circumstances. For documents that an owner may ask applicants to bring to the interview, see Exhibit 4-1.

B. At the interview, the owner must:

1. Confirm and update all information provided on the application. If a pre-application was submitted, complete a full application form and confirm and update the information.

2. Explain program requirements, *including use of the information contained in the EIV system*, verification procedures, and penalties for false information. The penalties include eviction, loss of assistance, fines up to $10,000, and imprisonment up to five years.

3. Obtain family income and composition information and other data needed to verify eligibility and compute the tenant's share of the rent. (See Chapter 5.)

4. Review the financial information on the application and specifically ask the tenant whether any member of the household:

   a. Receives any of the types of income listed in Chapter 5, Section 1 (e.g., self-employment income, unemployment compensation, income maintenance payments). If it appears likely that an applicant is receiving a form of income not reported on the application, ask the applicant about that source of income and document the applicant's response in the file; and

   b. Has any assets. (See paragraph 5-7 for a description of assets.)

5. Ask the head of household, spouse, or co-head, and household members age 18 and over to sign the release of information consent portion of the Authorization for Release of Information (Forms HUD 9887 and 9887-A) and any other necessary verification requests.

6. Obtain declaration of citizenship (see Exhibit 3-5) and verification consent forms (see Exhibit 3-6) for verification from all household members as appropriate.

7. Inform the applicant of the screening requirements used by the owner, *including use of the Existing Tenant Search in EIV for determining if the applicant, or a member of the applicant's family, is receiving HUD's rental assistance at another location.* (If the owner performs screening activities, a consent to check landlord or credit history should also be obtained).

8. Require the head of household, spouse, or co-head to give a written certification as to whether any family member did/did not dispose of any assets for less than fair market value during the two years preceding the effective date of the certification/recertification.

   a. The certification must include a list of all assets disposed of for less than fair market value, the dates disposed of, the amount received, and the asset's market value at the time of disposition.

   b. HUD does not prescribe a form for this certification. It may be part of an application form or a separate form.

      NOTE: Owners need not obtain this information if the family is being considered only for a unit in a BMIR project without rental

assistance because the disposal of assets does not affect income and rent calculations for BMIR tenants who do not receive rental assistance.

9. *Require disclosure and verification of SSNs for all household members, except those who do not contend eligible immigration status, and tenants age 62 or older as of January 31, 2010, whose initial determination of eligibility was begun before January 31, 2010, and provide verification of the complete and accurate SSN assigned to them. (See paragraph 3-9 for more information on SSN disclosure and verification requirements.)*

10. Advise the family that HUD will compare the information supplied with information federal, state, or local agencies have on the family's income and household composition. *This will include the employment and income information received from SSA's and HHS' NDNH databases through HUD's Computer Matching Agreements with these agencies.*

11. Tell the family that a final decision on eligibility cannot be made until all verifications are complete.

12. Provide each *applicant* with a copy of the appropriate HUD fact sheet, which describes how the tenant's rent is calculated.

13. *Provide each household with copies of the *EIV & You* and the *Resident Rights and Responsibilities* brochures.*

14. Inform the family that federal laws prohibit the owner from discriminating against individuals with disabilities. In summary, owners have responsibilities for making reasonable accommodations in policies, providing auxiliary aids, making units and facilities accessible, and permitting disabled persons to use assistance animals when they may provide the tenant with equal housing opportunities.

15. Inform all applicants of housing for the elderly or disabled about the rules on owning pets. (See paragraph 6-10.)

C. Generally, owners may not require tenants to participate in congregate meals or other services. However, in properties for the elderly or disabled for which HUD approved a mandatory meals program before April 1, 1987, the owner must inform all applicants about:

1. <u>The requirement to execute a meals contract</u>. A meal contract is a separate contract incorporated as part of the lease that states in part:

   a. Substantial failure by a tenant to comply with the mandatory meals agreement will be a violation of the lease and will subject the tenant to eviction procedures in accordance with the lease;

   b. The number of meals required to be purchased;

   c. The duration of the meals agreement;

d. The charges for the meals at the time the agreement is signed; and

e. The exemptions from purchasing meals and the requirements to obtain these exemptions.

2. Exemptions from purchasing meals may be made due to:

a. Medical conditions;

b. A paying job that keeps the tenant away from the property at meal time;

c. Other absence from the property;

d. Permanent immobility; and/or

e. Discretionary exemptions, such as dietary practices, financial reasons, or religious reasons.

4-25 Applying Income Targeting Requirements in Section 8 Properties

A. HUD does not prescribe a method to ensure compliance with income-targeting. Sample steps that an owner may want to follow are listed in Figure 4-6.

Figure 4-6: Sample Steps Owners May Use to Implement Income-Targeting

Step 1: Estimate annual turnover for the property based on turnover history.

Step 2: Analyze the waiting list by income category, looking particularly at the top of the list, that is, those applicants who are likely to be offered units during the coming year.

Step 3: Take no action if at least 40% of the applicants on the waiting list who are expected to be offered units during the year have incomes at or below the extremely low-income limit. Applicants may be admitted in order, and compliance with the income-targeting rules will likely be achieved. Monitor quarterly to confirm compliance.

Step 4: If at least 40% of the applicants who are expected to be offered units in the next year do not have incomes at or below the extremely low-income limit, then the property must establish tenant selection procedures to ensure that the 40% requirement is met. Owners should also consider increasing their efforts to market to extremely low-income applicants to ensure that a sufficient number of applicants on the waiting list meet the income-targeting requirements.

See the discussion and examples following this figure for methodologies designed to achieve the income targeting requirements.

B. Owners may not select families for unit/property occupancy in an order inconsistent with the waiting list in order to house relatively higher-income

families. However, an owner may select a family for occupancy of a property or unit based on its extremely low-income status in order to satisfy income-targeting requirements. (See paragraph 4-5 for an explanation of the income-targeting requirement.)

C. Regardless of the method chosen to comply with the income-targeting rule, the results should be monitored quarterly and adjusted if necessary. The selected method must be stated in the property's tenant selection plan.

NOTE: Tracking initial admissions to the Section 8 project based assistance program is important to ensure accurate tracking. For example, an initial certification processed to move a tenant from Section 236 assistance to Section 8 assistance is counted for income targeting.

Example

A 100 unit Section 236 property with 50 Section 8 subsidy units is 100% occupied and has very little turnover. A Section 8 tenant moves out of the property. The manager would like to give the Section 8 assistance to a Section 236 very low-income family who qualifies for Section 8 assistance but must be sure that income targeting requirements will be met. If the owner determines that the income targeting requirement cannot be met by initially certifying a low-income tenant, the owner must fill the vacancy with an extremely low-income family from the waiting list.

D. Occupancy records must be kept so that auditors and those performing management reviews can monitor for compliance with the income-targeting requirement. Reviewers will check the tenant selection plan for a written description of the process and then review the admissions to ensure that the process was followed and the results are in compliance. Both move-in and initial admissions records must be maintained for auditing purposes.

E. If an owner actively markets to extremely low-income families but is unable to attract a sufficient number to lease 40% of available units during the year to extremely low-income families, the owner may rent to other eligible families after a reasonable marketing period.

F. To market adequately the owner must, at a minimum, advertise in the locality and conduct outreach to local organizations serving the extremely low-income population for no less than 30 days. If, after that period of time (with documentation of the marketing efforts), the owner is unable to attract eligible extremely low-income applicants, the owner may admit other eligible families. The owner must continue to advertise to extremely low-income applicants. Both the initial and ongoing marketing must be in compliance with the Affirmative Fair Housing Marketing Plan.

G. The owner must maintain records that demonstrate to HUD's satisfaction that all reasonable steps were taken to fill these units with extremely low-income tenants.

H. Whatever method is used by owners to meet the income targeting requirement for Section 8 properties, they must periodically monitor actual admissions to ensure that at least 40% of admissions are extremely low-income families.

1. If an owner chooses to follow the waiting list chronologically and through monitoring determines that the income-targeting goal will not be met, a specific targeting methodology may be implemented during the year. (See Example 1 Income-Targeting Method below.) In such circumstances, the owner must clearly document in property records the date of any revision to the property's income targeting procedures. In addition, the owner must make the revised methodology very clear to any applicants who are selected from the waiting list after the change in methodology.

2. If an owner uses a method other than the standard waiting list order, and the monitoring results show that more than 40% of admissions are extremely low-income families, the owner may revise the tenant selection procedure to follow the waiting list in chronological order for the remainder of the year. Again, if the method is changed mid-year, documentation must be kept indicating the reason and date of such change.

3. An example of an admissions log is shown below. An owner can use this type of log to monitor the percentage of extremely low-income admissions to a property during the year. In the example below, assume that the owner's methodology is to alternate between the first extremely low-income applicant on the waiting list and the eligible applicant at the top of the waiting list.

I. Owners of properties with project-based Section 8 must comply with TRACS income-reporting requirements that will permit HUD to maintain the data necessary to monitor compliance with income-targeting requirements.

Example 1 – Income-Targeting Method

Methodology: Select (at minimum) an extremely low-income applicant to be admitted to every other vacant unit.

Happy Acres: 110 units contains both efficiencies and 1-bedroom units
Section 8 New Construction Property
HAP Effective Date: 11/15/81
Anticipated annual turnover: 10%, or 11 units

Waiting List

Efficiency	1-Bedroom
Alice Johnson (VLI)	Phil Jones (VLI)
Aiko Kihara (ELI)	Maria Rodriguez (ELI)
Tina Purcell (ELI)	Elsa Anderson (ELI)
Rita White (VLI)	Bill Rogers (VLI)
Betty Harvey (VLI)	Uja Gupta (VLI)
Jean Miller (ELI)	Robert Johnson (VLI)
Randy Lopez (ELI)	Sam Sorenson (ELI)

Analysis to determine whether a method other than following the waiting list in chronological order is needed:

- 5 applicants with ELI must be admitted to the property

- Of the top 14 applicants from the waiting list, seven (50%) have extremely low-incomes. It appears that by following the waiting list in chronological order, the property will meet the 40% requirement.

- However, if the 11 vacancies occur in a mix of five efficiencies and six 1-bedroom units, then the percentage of those admitted with extremely low-incomes will be only 36% (4 units) following the order of the waiting list.

- The owner may decide to monitor admission carefully and change policies mid-year if the targeting goal is not being achieved, or may develop another method to ensure compliance. Monitoring is essential.

Owner Policy on Admissions: This owner has decided to follow the waiting list in chronological order. The Tenant Selection Plan states that: "Applicants will be selected based on waiting list order. Each quarter, the percentage of extremely low-income admissions for the year to date will be examined. An alternate tenant selection method will be implemented if extremely low-income admissions are:

- Less than 30% after the first quarter of the fiscal year.
- Less than 35% after the second quarter of the fiscal year.
- Less than 40% after the third quarter of the fiscal year.

This policy will ensure that, regardless of which bedroom size units become available, the owner will meet the income targeting requirements.

Example 2 – Income-Targeting Method

Methodology: Admit extremely low-income families to the first 40% of expected vacancies and then admit eligible applicants from the top of the list regardless of income.

Friendship Heights: 80 units - contains both efficiencies and 1-bedroom units

Section 8 New Construction Property

HAP Effective Date: 3/27/80

Anticipated annual turnover: 10%, or 8 units

Waiting List

Efficiency	1-Bedroom
Alice Johnson (VLI)	Phil Jones (VLI)
Aiko Kihara (ELI)	Maria Rodriguez (ELI)
James Johnson (VLI)	Elsa Anderson (ELI)
Rita White (VLI)	Aretha Samuels (ELI)
Betty Harvey (VLI)	Uja Gupta (VLI)
Jean Miller (ELI)	Robert Johnson (VLI)
Randy Lopez (ELI)	Sam Sorenson (ELI)

Analysis to determine whether a method other than following the waiting list in chronological order is needed: In this property, following the waiting list may not achieve the required results, depending on where the vacancies occur.

- Four admissions must be extremely low-income applicants to achieve the targeting goal.
- If there are five vacancies in the efficiencies and three in the 1-bedrooms, and the list is followed in chronological order, the owner will not achieve 40% ELI admissions. In order to comply, the owner will have to skip some of the applicants with higher incomes.

Owner policy on admissions: The owner chooses to meet the target based on expected vacancies first, and then use the waiting list in chronological order. The Tenant Selection plan states that: "Extremely low-income applicants will be selected from the waiting list first to occupy 40% of the number of units expected to be filled during the year. Subsequently, families will be selected from the top of the waiting list, regardless of income." (I.e., if 6 vacant units are projected, the owner selects 3 extremely low-income families from the list first, then goes to the top of the list for eligible families regardless of income).

Example Admissions Log to Track Income-Targeting Progress				
A: Type of Admission - Based Upon Targeting Methodology	**B: Family Name**	**C: Extremely Low-Income (check if family is ELI)**	**D: Very Low- or Low-Income (check if family is LI or VLI)**	**E: Percentage of Total Admissions That Are Extremely Low-Income***
Extremely Low Income (ELI)	Aiko Kihara	X		
Top of Waiting List (TOL)	Alice Johnson		X	
ELI	Tina Purcell	X		
TOL	Rita White		X	
ELI	Jean Miller	X		
TOL	Betty Harvey		X	
ELI	Randy Lopez	X		
Total		4	3	57%

***NOTE:** The percentage in Column E is calculated by dividing the number of extremely low-income families admitted (Column C) by the total number of families admitted (Column C plus Column D).

4-26 Verification of Preferences

A. Key Requirements

Preferences claimed by applicants must be verified. Owners may:

1. Verify qualifications for preferences at the time the application is submitted if the tenant is placed on the waiting list; or

2. Verify qualifications for preferences when a unit becomes available.

B. Acceptable Verification Methods

1. Verification of displacement. The applicant must provide documentation of government displacement or displacement as a result of a presidentially declared disaster. Acceptable documentation includes

copies of local government condemnation or displacement notices or government notices indicating that an applicant is eligible for disaster relief benefits. If these documents are not available, the owner may accept a letter (on appropriate letterhead) from a government organization confirming that the applicant is being displaced by government action or a presidentially declared disaster. If written documents cannot be obtained, the owner may verify the displacement by phone with the local government office, or a disaster relief office, and make a notation in the file as to the date of the oral verification.

2. Verification of military status. The applicant may provide a current military identification card or a letter on appropriate letterhead confirming current military status. The owner must collect the documentation for the head of household, spouse, or co-head.

3. Verification of income (to determine ranking status for a Section 236 project with RAP assistance). The owner must verify the family income as described in Chapter 5, Section 3, so the type of subsidy for which the family is eligible can be determined.

4. Verification of other preferences.

   a. State and local preferences. Verification will depend on the type of preference that is adopted. For example, a preference for veterans may be verified with any of the following:

      (1) A letter from the Veterans Administration (VA);

      (2) A document indicating that the applicant receives VA benefits; or

      (3) Military discharge documents.

   b. Residency preferences. Documentation of the residential address within the municipality may be obtained from copies of utility bills (electricity or gas), lease agreements, or other documents that include a residential address and the name of the head of household, co-head, or spouse. Persons who are planning to live in the municipality as a result of current or planned employment may provide a letter from a current or future employer or a current work identification badge with the office address.

   c. Working families. Documentation of employment may include a letter from an employer or payroll check stubs.

   d. Disability. Documentation of disability must confirm only the existence of a disability and not the nature or extent of the disability. Verification of disability may be provided by form or letter, from a physician, psychologist, clinical social worker, or other licensed health care professional. In addition, verification of disability may also be provided by documentation verifying receipt

of Social Security disability payments (i.e., award letter indicating disability payments are provided).

e. Age. Documentation of age is used to confirm that applicants claiming an elderly preference are 62 years of age or older. Acceptable documentation may include birth certificates or social security or military documents that show the applicant's birth date.

4-27 Implementing Screening Reviews

A. Timing for Conducting Screening Reviews

All screening activities should occur prior to approval of tenancy. Screening generally occurs at the same time as, or immediately following, the full eligibility review but may occur earlier.

B. Screening for Credit History

1. Owners may reject an applicant for a poor credit history, but owners must not reject an applicant for lack of a credit history.

2. There are two primary sources that owners use to determine credit history.

   a. Previous landlords. It is good practice to contact the applicant's previous landlords to determine if the applicant paid rent on time.

   b. Credit report companies. There are a number of private companies that can provide owners with a credit report on an applicant. These private companies charge a fee for this service. Owners may use such services but may not pass on these fees to the applicant. At an additional cost, some companies can provide additional information by searching public databases for criminal records. Owners must be consistent in the use of credit reporting services.

C. Screening for Rental History

1. The most common method for assessing rental history is to ask for comments from the applicant's current and former landlords. When collecting information from landlords, it is important to collect objective information. Figure 4-7 provides examples of objective questions that are appropriate to ask. It also includes examples of inappropriate or subjective questions that should not be asked.

2. Information that an owner may learn from a landlord that may be grounds for rejecting an applicant includes:

   a. Failure to cooperate with recertification procedures;

   b. Violations of house rules;

c. Violations of the lease;

Figure 4-7: Questions for Current and Former Landlords

Objective/Acceptable Questions
• Was the tenant ever late with a rent payment? If yes, when and how many times was the tenant late? • Did other lease violations occur? If so, what were they? How frequently did each of the other lease violations occur? • Was the tenant ever cited for disturbing behavior? How often? • Did the tenant violate house rules? What rules were violated, and how many times did violations occur? • Was the tenant evicted?
Inappropriate Questions
• Did the tenant's boyfriend/girlfriend visit often? • Did the tenant make lots of complaints to the owner? • What is the tenant's reputation?

d. History of disruptive behavior;

e. Poor housekeeping practices;

f. Previous evictions for lease violations;

g. Termination of assistance for fraud; or

h. Conviction for the illegal manufacture, distribution, or use of controlled substances.

3. Owners may want to consider relying more heavily on former landlord references than on current landlord references. A current landlord may be tempted to provide a good reference for a bad tenant so that the tenant will voluntarily leave his/her property. Former landlords do not have this reason to provide misleading information, and, therefore, may provide more accurate references.

D. **Screening for Housekeeping**

1. Poor housekeeping habits might be described as those that create an unsafe or unhealthy environment, e.g., an uncontrolled accumulation of trash, which has led to roach infestation or poses a health danger to other residents.

2. If visiting an applicant's current home is part of the owner's screening practices, the owner must visit the homes of all applicants unless the owner has established a geographic radius within which home visits are made (see paragraph 4-7 E.5).

3. If an applicant is living with someone else, and the housekeeping is out of control of the applicant, the owner must not deny admission to the applicant. The owner should evaluate only the living quarters over which the applicant has control.

E. **Screening for Drug Abuse and Other Criminal Activity**

1. HUD requires that owners develop tenant selection plans that contain prohibitions against the admission of applicants who are engaging or have engaged in drug abuse or criminal activity. The specific requirements for developing the plan are found in paragraph 4-7 C.

2. Owners must require every adult member of an applicant household to sign a consent form allowing all relevant criminal information to be released.

3. Owners are not required to conduct a background check on applicants applying for an unassisted unit or tenants living in an unassisted unit in a project-based property. Owners may conduct background checks on applicants for unassisted units if they wish.

4. In order to meet the screening requirements, owners may need to obtain access to criminal records. Owners may choose from several sources to obtain the screening information:

   a. *An owner may use the local Public Housing Authority (PHA) to conduct the appropriate check of an applicant's criminal conviction history and to check if the applicant or any members of the applicant's household are subject to a State lifetime sex offender registration and to make the screening determination.*

   b. The owner may use alternative sources, including private credit and screening services, to check available databases storing criminal history.

5. *If the owner selects a PHA to obtain criminal conviction records, the PHA will use the criminal records and State sex offender registration record(s) received from the law enforcement agency along with the owner's screening criteria to determine, on behalf of the owner, the suitability of

the applicant for tenancy. If the owner uses the PHA to conduct the criminal background check, procedures to be used include:*

a. Owners may request that the PHA in the jurisdiction of the property obtain criminal conviction records *and State sex offender registration record(s)* for screening purposes. The request must include a copy of the signed consent form(s) and the project standards for prohibiting admission.

b. The PHA, upon receipt of the owner's request, will request criminal conviction records *and State sex offender registration record(s)* from the law enforcement agency.

c. The law enforcement agency must promptly release a certified copy of the record. National Crime Information Center (NCIC) records are provided in accordance with NCIC procedures.

d. The PHA must determine whether criminal action by a household member, as shown by the conviction records *and State sex offender registration records*, may be a basis for screening out the applicant and notify the owner making the request.

e. The PHA may charge the owner a reasonable fee for processing requests and may also require the owner to reimburse the PHA fees charged by law enforcement agencies.

f. The PHA is required to maintain the criminal records *and State sex offender records* in a confidential manner and may not disclose the contents to the owner.

g. *Owners must retain documentation in the tenant file showing the date, type and results of the criminal background check, including the State lifetime sex offender registration check, performed by the PHA.*

6. The owner may deny admission to an applicant using his/her standard for admission screening if the criminal background check indicates the applicant provided false information. *The owner must deny admission if the State sex offender registration record indicates the applicant provided false information.* If the determination is made by either the PHA or owner to deny admission to the applicant, the entity making the determination must:

a. Notify the applicant of the proposed denial of admission.

b. Provide the subject of the record and the applicant with a copy of the information the action is based upon.

c. Provide the applicant with an opportunity to dispute the accuracy and relevance of the information obtained from any law enforcement agency.

7. If the owner uses alternative sources to screen for criminal activities, the owner may consider the following when identifying potential information sources:

   a. Obtain information from each city, county, and/or state where the applicant was a resident;

   b. Attempt to obtain information that includes an applicant's arrest record, in addition to the conviction record *and State sex offender registration record*; and

   c. Establish guidelines for "reasonable cause to believe" when screening for illegal drug use and abuse of alcohol that interferes with other residents' health, safety, and right to peaceful enjoyment of the property.

4-28 Ensuring That Screening Is Performed Consistently

A. Procedures

While owners have discretion in establishing screening criteria, they must apply the criteria consistently to all applicants. To ensure that applicants are treated consistently during the screening process, good practice suggests that owners should:

1. Use consistent staffing. Have one or a limited number of staff conduct the screening to reduce inconsistencies that occur, because employees may interpret policies and procedures differently.

2. Provide instructions. Develop step-by-step instructions for staff who are conducting screening activities to help to ensure consistency.

3. Use standard forms. Whenever possible, use standard forms to document fair practices and to increase the likelihood that each applicant will receive the same consideration.

4. Use objective criteria. For example, when interviewing an applicant's former landlord about rent payment and rental history, the owner should ask fact-based questions. Owners must avoid subjective questions that ask for opinions or do not directly relate to the tenant's ability to meet the requirements of the lease. (See Figure 4-7 for examples of appropriate and inappropriate questions.)

5. Follow a formal, written process for collecting information. Owners must not take into consideration informal information or gossip about an applicant. Such information may be discriminatory and will affect applicants inconsistently since the owner does not collect it for all applicants.

B. **Extenuating Circumstances**

An owner may have a policy to consider extenuating circumstances that would allow acceptance of an applicant whom the owner would normally reject, but an owner must not have a reverse policy to consider extenuating circumstances to reject an applicant who was determined to be eligible. If the applicant is a person with disabilities, the owner must consider extenuating circumstances where this would be required as a matter of reasonable accommodation (see Chapter 2, Subsection 4 for information on Reasonable Accommodation).

Example – Extenuating Circumstances

Through the screening process, an owner learns that Asad Bhatt was evicted from his last apartment for nonpayment of rent. The owner rejects Asad Bhatt's application and informs him of the reason for the rejection. Asad explains that his failure to pay rent on time resulted from the need to purchase expensive medications for his seriously ill wife. His wife is now well, and his medical expenses have been paid. Asad asks for reconsideration of his application, because he believes he will be able to pay rent on time.

If the owner has a policy of considering extenuating circumstances for any tenant, the owner would be required to consider the extenuating circumstances applicable to Asad. In evaluating whether to accept Asad as a tenant, the owner may verify that Asad paid rent on time prior to his wife's illness and that medical expenses have been paid. If the owner learns from a landlord reference that Asad's rent had been chronically late prior to his wife's illness, the owner may deny admission to Asad in accordance with the owner's written screening procedures. If the owner does not have a policy of considering extenuating circumstances, the owner may not consider such circumstances as described by Asad.

4-29 Verifying the Need for Accessible Units

When an applicant requests an accessible unit or a unit preference, such as a first floor unit, the owner may conduct inquiries to:

A. Verify that the applicant is qualified for the unit, which is only available to persons with a disability or to persons with a particular type of disability. For example, an applicant with a physical disability who uses a wheelchair may not be eligible for a unit that is specifically designed and intended for a person with a visual disability.

B. Verify that the applicant needs the features of the unit as an accommodation to his or her disability. For example, an individual with a psychiatric disability (assuming no physical disability) requests a unit with features designed to be accessible for individuals with mobility disabilities. In this situation, there is no relation between the individual's psychiatric disability and the need for an accessible unit. Although an alternate accommodation may be required to accommodate the applicant's psychiatric disability, the applicant would not be entitled to the accessible unit requested.

NOTE: Owners may not request information about an applicant's type of disability but may identify an applicant's need for the features of accessible units or for a reasonable accommodation.

C. Verify that the applicant is qualified to receive a priority on the waiting list available to persons with a disability or to persons with a particular type of disability. If the owner gives a priority to a class of persons, and an applicant indicates that he or she is qualified for the priority placement on the waiting list, the owner may screen to verify that the applicant qualifies for the priority placement.

4-30 Addressing Requests for Reasonable Accommodations

For guidance on reviewing requests for reasonable accommodations, refer to Chapter 2, Section 3, subsection 4.

Example – Reasonable Accommodation

As part of the screening process and before admission to the property, the owner of Poplar Court requires all applicants to come to a session to review the house rules. The owner holds these sessions on the last Monday of each month. An applicant, Karen Jackson, has a disability and requests a reasonable accommodation so that she can attend a session on a different day of the week because she has physical therapy on Mondays. Rescheduling the interview for Karen would be a reasonable accommodation.

4-31 Denial of Assistance to Noncitizens

This paragraph describes the conditions under which owners must deny assistance to noncitizens and the DHS appeals process that may be initiated by a family to challenge a denial. Owners should follow the HUD requirements provided within this paragraph to ensure that only U.S. citizens and eligible noncitizens receive federal housing assistance. This entire paragraph contains key regulatory requirements. Optional owner policies are noted in the text.

NOTE: See Chapters 3, 7, and 8 for other citizenship and eligible immigration status requirements. (Restriction on assistance to noncitizens is addressed in paragraph 3-12, changes in subsidy are addressed in paragraph 7-11, and termination of assistance is addressed in paragraph 8-7.)

A. **Applicability**

As stated in paragraph 3-12, the restriction on assistance to noncitizens applies to all properties covered by this handbook, <u>except</u> the following:

1. Section 221(d)(3) BMIR properties;

2. Section 202 PAC;

3. Section 202 PRAC; and

4. Section 811 PRAC.

5. Section 202 projects with units not receiving assistance under the Rent Supplement or Section 8 programs.

B. **Offering and Continuing Assistance**

An owner cannot deny assistance to applicants who submitted their immigration documentation in a timely manner, but for whom the DHS verification or appeals process has not been completed.

1. If a unit is available, the family has come to the top of the waiting list, and at least one member of the family has submitted the required documentation in a timely manner and has been determined to be eligible, the owner must offer the family a unit, providing subsidy to those family members whose documents were received on time.

2. However, until the owner has received and verified the immigration status of any remaining noncitizen family members, the owner must provide prorated assistance based on those family members who submitted their immigration documentation in a timely manner. See the Example DHS Verification Process Delayed in Paragraph 3-12 K.

C. **Events Triggering Denial of Assistance**

An owner must deny assistance to an applicant upon the occurrence of any of the following:

1. The applicant fails to submit evidence of citizenship (i.e., the declaration) and eligible immigration status by the date specified by the owner.

2. The applicant submits evidence of citizenship and eligible immigration status on a timely basis, but DHS primary and secondary documentation does not verify eligible immigration status of a family member; and

   a. The family does not pursue a DHS appeal or informal hearing rights as provided in this section, or

   b. The family pursues a DHS appeal and informal hearing, but the final decision is against the family member.

D. **Required Notice**

The notice of denial or termination of assistance must advise the applicant family that:

1. The owner will deny or terminate rental assistance and give reasons for this action;

2. The family may be eligible for proration of assistance;

3. Tenants but not applicants may be eligible to obtain relief under the provisions for preservation of families (i.e., they may be eligible for a temporary deferral of denial of assistance).

4. The family has a right to request an appeal to the DHS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal;

5. The family has a right to request an informal hearing with the owner either upon completion of the DHS appeal or in lieu of the DHS appeal (the family can take advantage of two types of appeal); and

6. For applicants, the notice of denial must advise that if they have failed the primary and secondary verification and submitted an appeal to the DHS, but the DHS process has not been concluded, the applicant will receive assistance in a timely manner. (If the DHS decision is negative, the family's assistance may then be terminated.) However, once the DHS appeal process is complete, and the family receives a negative decision on the DHS appeal, the owner may delay assistance while providing the family with an opportunity for an informal meeting to appeal the decision.

E. **DHS Appeal Process**

1. Submission of appeal request. When the owner receives notification from the DHS that secondary verification has failed to confirm eligible immigration status, the owner must notify the family of this result. The family has 30 days from the date of the owner's notification to request an appeal of the DHS results. The family must make the request in writing directly to the DHS and must provide the owner with a copy of the written request for appeal and proof of mailing.

2. Documentation to be submitted as part of appeal to DHS. If the family has additional documentation or written explanation to support this appeal, the family must submit it directly to the DHS office. This material must include a copy of the DHS document verification request, Form DHS G-845S (used by the owner to process the secondary verification request), or any other form specified by the DHS, and a cover letter stating that the family is requesting an appeal of the DHS immigration status verification results. (See Exhibit 4-2, DHS Documentation Verification Request Form.)

3. When decision will be issued by DHS. The DHS will issue a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. The notice will be sent to the family, and a copy will be sent to the owner. If, for any reason, the DHS is unable to issue a decision within 30 days, the DHS will inform the family and owner of the reason for the delay.

4. Notification of DHS decision and of informal hearing procedures. When the owner receives a copy of the DHS decision, the owner must notify the family of its right to request an informal hearing on the owner's ineligibility determination.

5. No delay, denial, reduction, or termination of assistance until completion of DHS appeal process. Until any appeal made to the DHS is resolved, owners must not delay, deny, reduce, or terminate assistance on the basis of immigration status.

6. When request for informal hearing is to be made. If the DHS decision will cause the applicant to be denied, or if the family chooses not to appeal to DHS, the family may request that the owner provide an informal hearing. The request for a hearing must be made either within 30 days of receiving the notice from the owner denying assistance, or within 30 days of receiving the DHS appeal decision.

7. Retention of documents. The owner must retain for a minimum of 5 years the following documents that may have been submitted to the owner by the family, or provided to the owner as part of the DHS appeal or the informal hearing process:

   a. The application for financial assistance;

   b. The form completed by the family for income re-examination;

   c. Photocopies of any original documents (front and back), including original DHS documents;

   d. The signed verification consent form;

   e. The DHS verification results;

   f. The request for an DHS appeal;

   g. The final DHS determination;

   h. The request for an informal hearing; and

   i. The final informal hearing decision.

Chapter 4 Exhibits

4-1. Sample List of Records and Documents Owners May Ask Applicants to Bring to the Certification or Recertification Interview

http://portal.hud.gov/hudportal/documents/huddoc?id=43503e4-1HSGH.pdf

4-2. DHS Document Verification Request Form

http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=149500df1a96b110VgnVCM1000004718190aRCRD&vgnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD

4-3. Form HUD-27061-H, *Race and Ethnic Data Reporting Form*

http://www.hud.gov/offices/adm/hudclips/forms/files/27061-h.pdf

Exhibit 4-1: Sample List of Records and Documents That Owners May Ask Applicants to Bring to the Certification or Recertification Interview

Records of Earned Income

- Paycheck stub
- W-2 forms
- Income tax return (state and/or federal)
- Wage tax receipts

Records of Other Income

- Pensions and annuities latest check stub from issuing institution
- Social Security current award letter, *benefit letter or Proof of Income Letter*
- Unemployment compensation determination letter Form 2000, Form UC 30, or latest check stub
- SSI award letter, *Proof of Income Letter*
- TANF award letter, recent check stub
- Worker's compensation Form DOL 203, recent check stub
- Alimony copy of court order
- Child support copy of court order
- Education scholarships/stipends award letter
- Trade union benefits recent check stub
- Other public assistance award letter
- Income from assets credit union/bank/S&L statements, etc.

Asset Information

- Bank statements
- Stock/bond certificates
- Mortgage note
- Income tax return
- Certificates of deposit

Records of Family Circumstances/Family Composition/Allowances

- Work permit
- Statement of disability
- Social security record
- Adoption papers
- Income tax returns
- Legal documents showing formal adoption being pursued
- Birth certificates
- Copies of medical bills
- Social security cards/alternative documents
- Payment receipts for dependent care, child care, etc.

Race and Ethnic Data Reporting Form

U.S. Department of Housing and Urban Development
Office of Housing

OMB Approval No. 2502-0204
(Exp. 03/31/2014)

Name of Property **Project No.** **Address of Property**

Name of Owner/Managing Agent **Type of Assistance or Program Title:**

Name of Head of Household **Name of Household Member**

Date (mm/dd/yyyy)**:** _____

Ethnic Categories*	**Select One**
Hispanic or Latino	
Not-Hispanic or Latino	
Racial Categories*	**Select All that Apply**
American Indian or Alaska Native	
Asian	
Black or African American	
Native Hawaiian or Other Pacific Islander	
White	
Other	

***Definitions of these categories may be found on the reverse side.**

There is no penalty for persons who do not complete the form.

Signature **Date**

Public reporting burden for this collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This information is required to obtain benefits and voluntary. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.
This information is authorized by the U.S. Housing Act of 1937 as amended, the Housing and Urban Rural Recovery Act of 1983 and Housing and Community Development Technical Amendments of 1984. This information is needed to be incompliance with OMB-mandated changes to Ethnicity and Race categories for recording the 50059 Data Requirements to HUD. Owners/agents must offer the opportunity to the head and co-head of each household to "self certify' during the application interview or lease signing. In-place tenants must complete the format as part of their next interim or annual re-certification. This process will allow the owner/agent to collect the needed information on all members of the household. Completed documents should be stapled together for each household and placed in the household's file. Parents or guardians are to complete the self-certification for children under the age of 18. Once system development funds are provide and the appropriate system upgrades have been implemented, owners/agents will be required to report the race and ethnicity data electronically to the TRACS (Tenant Rental Assistance Certification System). This information is considered non-sensitive and does no require any special protection.

form HUD-27061-H (9/2003)

Instructions for the Race and Ethnic Data Reporting (Form HUD-27061-H)

A. General Instructions:

This form is to be completed by individuals wishing to be served (applicants) and those that are currently served (tenants) in housing assisted by the Department of Housing and Urban Development.

Owner and agents are required to offer the applicant/tenant the option to complete the form. The form is to be completed at initial application or at lease signing. In-place tenants must also be offered the opportunity to complete the form as part of the next interim or annual recertification. Once the form is completed it need not be completed again unless the head of household or household composition changes. There is no penalty for persons who do not complete the form. However, the owner or agent may place a note in the tenant file stating the applicant/tenant refused to complete the form. **Parents or guardians are to complete the form for children under the age of 18.**

The Office of Housing has been given permission to use this form for gathering race and ethnic data in assisted housing programs. Completed documents for the entire household should be stapled together and placed in the household's file.

1. The two ethnic categories you should choose from are defined below. You should check one of the two categories.

1. **Hispanic or Latino.** A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term "Spanish origin" can be used in addition to "Hispanic" or "Latino."
2. **Not Hispanic or Latino.** A person not of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

2. The five racial categories to choose from are defined below: You should check as many as apply to you.

1. **American Indian or Alaska Native.** A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.
2. **Asian.** A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam
3. **Black or African American.** A person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black" or "African American."
4. **Native Hawaiian or Other Pacific Islander.** A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
5. **White.** A person having origins in any of the original peoples of Europe, the Middle East or North Africa.

CHAPTER 5. DETERMINING INCOME AND CALCULATING RENT

5-1 Introduction

A. Owners must determine the amount of a family's income before the family is allowed to move into assisted housing and at least annually thereafter. The amount of assistance paid on behalf of the family is calculated using the family's annual income less allowable deductions. HUD program regulations specify the types and amounts of income and deductions to be included in the calculation of annual and adjusted income.

B. Although the definitions of annual and adjusted income used for the programs covered in this handbook have some similarities with rules used by the U.S. Internal Revenue Service (IRS), the tax rules are different from the HUD program rules.

C. The most frequent errors encountered in reviews of annual and adjusted income determinations in tenant files fall in three categories:

1. Applicants and tenants failing to fully disclose income information;

2. Errors in identifying required income exclusions; and

3. Incorrect calculations of deductions, often the result of failure to obtain third-party verification.

Careful interviewing and thorough verification can minimize the occurrence of these errors.

D. Chapter 5 is organized as follows:

- **Section 1: Determining Annual Income** discusses the requirements regarding annual income and the procedure for calculating a family's annual income when determining eligibility. This section also includes guidance on determining income from assets.

- **Section 2: Determining Adjusted Income** describes the procedures and requirements for determining adjusted income based on allowable deductions.

- **Section 3: Verification** presents the requirements for verifying information provided by applicants and tenants related to their eligibility.

- **Section 4: Calculating Tenant Rent** discusses the methods for calculating the tenant's portion of rent under the different programs covered by this handbook.

5-2 Key Terms

A. There are a number of technical terms used in this chapter that have very specific definitions established by federal statute or regulations, or by HUD. These terms are listed in Figure 5-1 and their definitions can be found in the Glossary to this handbook. It is important to be familiar with these definitions when reading this chapter.

B. The terms disability and persons with disabilities are used in two contexts for civil rights protections, and for program eligibility purposes. Each use has specific definitions.

1. When used in context of protection from discrimination or improving the accessibility of housing, the civil rights-related definitions apply.

2. When used in the context of eligibility under multifamily subsidized housing programs, the program eligibility definitions apply.

NOTE: See the Glossary for specific definitions and paragraph 2-23 for an explanation of this difference.

Figure 5-1: Key Terms

• Adjusted income	• Live-in aide
• Annual income	• Low-income family
• Assets	• Market rent
• Assistance payment	• Minimum rent
• Assisted rent	• Operating rent
• Assisted tenant	• Project Assistance Contract (PAC)
• Basic rent	• PRAC Operating Rent
• Co-head of household	• Project Rental Assistance Contract (PRAC)
• Contract rent	• Project assistance payment
• Dependent	• Project rental assistance payment
• *Enterprise Income Verification (EIV)*	• Tenant rent
• Extremely low-income family	• Total tenant payment
• Foster adult	• Unearned income
• Foster children	• Utility allowance
• Full-time student	• Utility reimbursement
• Gross rent	• Very low-income family
• Hardship exemption	• Welfare assistance
• Head of household	• Welfare rent
• Housing assistance payment (HAP)	
• Income limit	

Section 1: Determining Annual Income

5-3 Key Regulations

This paragraph identifies the key regulatory citation pertaining to Section 1: Determining Annual Income. The citation and its title are listed below.

- *24 CFR 5.233 Mandated Use of HUD's Enterprise Income Verification (EIV) System*
- 24 CFR 5.609 Annual Income

5-4 Key Requirements

A. Annual income is the amount of income that is used to determine a family's eligibility for assistance. Annual income is defined as follows:

1. All amounts, monetary or not, that go to or are received on behalf of the family head, spouse or co-head (even if the family member is temporarily absent), or any other family member; or

2. All amounts anticipated to be received from a source outside the family during the 12-month period following admission or annual recertification effective date.

B. Annual income includes all amounts that are not specifically excluded by regulation. Exhibit 5-1, Income Inclusions and Exclusions, provides a list of income inclusions and exclusions published in the regulations and *Federal Register* notices.

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

5-5 Methods for Projecting and Calculating Annual Income

A. The requirements for determining whether a family is eligible for assistance, and the amount of rent the family will pay, require the owner to project or estimate the annual income that the family expects to receive. There are several ways to make this projection. The following are acceptable methods for calculating the annual income anticipated for the coming year:

1. Generally the owner must use current circumstances to anticipate income. The owner calculates projected annual income by annualizing *current* income. Income that may not last for a full 12 months (e.g., unemployment compensation) should be calculated assuming current circumstances will last a full 12 months. If changes occur later in the year, an interim recertification can be conducted to change the family's rent.

2. If information is available on changes expected to occur during the year, use that information to determine the total *anticipated* income from all known sources during the year.

3. *Using EIV:

   (a) The owner must not use the quarterly wage income reported on the EIV Income Report for calculating the tenant's annual income from employment. The owner must confirm with the tenant that the information in EIV is correct. If the tenant agrees that the employment information reported in EIV is correct, the owner must:

      (1) Use the Income Report as third party verification of the tenant's employment; and

      (2) Use tenant provided documents for calculating the tenant's annual income, e.g. 4-6 current, consecutive check stubs.

Example 1: EIV shows that John is working at Jack's Restaurant and John agrees that he is working there. John has brought in his four most current, consecutive check stubs. The owner must use the EIV Income Report as third party verification that John is employed at Jack's Restaurant and use the gross pay shown on the check stubs provided by the tenant for determining John's annual income. John is paid weekly.

Check stubs gross pay 1) $120; 2) $145; 3) $125; 4) $130 total gross pay = $520

$520 / 4 = $130 average gross pay per week

$130 x 52 weeks = $6,760 gross annual income

Example 2: EIV shows Sally works at Beauty World and Sally agrees that she is working there. Sally has brought in a payroll summary report prepared by her employer which shows that Sally works 30 hours per week and earns $12.50 per hour. The owner must use the EIV Income Report as third party verification that Sally is employed at Beauty World and use the payroll summary report prepared by Beauty World for determining Sally's annual income.

30 hours x 52 weeks = 1,560 hours per year

$12.50 per hour x 1,560 hours = $19,500 gross annual income

b. The owner must not use the quarterly unemployment compensation benefits reported on the EIV Income Report for calculating the tenant's annual income from unemployment. The owner must confirm with the tenant that the unemployment information in EIV is correct. If the tenant agrees that he/she is receiving unemployment compensation benefits as reported in EIV, the owner must:

(1) Use the Income Report as third party verification that the tenant is receiving unemployment; and

(2) Use tenant provided documents for calculating annual income, e.g. unemployment monetary benefit notice.

Example: Peter has brought in the unemployment benefit notice he received showing he is being paid weekly unemployment benefits of $175. The owner will use the EIV Income Report as third party verification that Peter is receiving unemployment benefits and the unemployment benefit notice for determining Peter's annual income.

$175 per week x 52 weeks = $9,100.00 gross annual income

NOTE: If Peter's unemployment is terminated during the annual recertification period, Peter should report this to the owner along with documentation supporting the date of termination of the benefits. The owner will then prepare an interim recertification removing the unemployment income. If Peter is unable to provide documentation verifying termination of unemployment compensation benefits, the owner must verify the termination directly with the state workforce agency (SWA) source.

c. If the tenant agrees with the social security benefit information on the EIV Income Report, the owner must use the EIV Income Report as third party verification, receiving social security benefits and also for calculating the tenant's annual income.

Example: The Income Report shows that Joe Smith is receiving gross social security benefits of $980.40 per month. Joe agrees that this is the amount he is receiving. The owner will use the Income Report as third-party verification that Joe is receiving social security benefits and for calculating Joe's annual income.

$980.40 x 12 months = $11,764.80 (rounded to $11,765) gross annual income.

d. If the tenant disputes the employment and income information in EIV, the owner must obtain third party verification from the source.*

B. Once all sources of income are known and verified, owners must convert reported income to an annual figure. Convert periodic wages to annual income by multiplying:

1. Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);

2. Weekly wages by 52;

3. Bi-weekly wages (paid every other week) by 26;

4. Semi-monthly wages (paid twice each month) by 24; and

5. Monthly wages by 12.

To annualize other than full-time income, multiply the wages by the actual number of hours or weeks the person is expected to work.

Example – Anticipated Increase in Hourly Rate

February 1	Certification effective date
$7.50/hour	Current hourly rate
$8.00/hour	New rate to be effective March 15

(40 hours per week x 52 weeks = 2,080 hours per year)

February 1 through March 15 =	6 weeks
6 weeks x 40 hours =	240 hours
2,080 hours minus 240 hours =	1,840 hours

(check: 240 hours + 1,840 hours = 2,080 hours)

Annual Income is calculated as follows:

240 hours x $7.50 =	$1,800	
$1,840 hours x $8.00 =	$14,720	
Annual Income		$16,520

(See **Appendix 8** for an explanation of the correct approach to rounding numbers.)

C. Some circumstances present more than the usual challenges to estimating anticipated income. Examples of challenging situations include a family that has sporadic work or seasonal income or a tenant who is self-employed. In all instances, owners are expected to make a reasonable judgment as to the most reliable approach to estimating what the tenant will receive during the year. In many of these challenging situations, midyear or interim recertifications may be

required to reflect changing circumstances. Some examples of approaches to more complex situations are provided below.

Examples – Irregular Employment Income

Seasonal work. Clyde Kunkel is a roofer. He works from April through September. He does not work in rain or windstorms. His employer is able to provide information showing the total number of regular and overtime hours Clyde worked during the past three years. To calculate Clyde's anticipated income, use the average number of regular hours over the past three years times his current regular pay rate, and the average overtime hours times his current overtime rate.

Sporadic work. Justine Cowan is not always well enough to work full-time. When she is well, she works as a typist with a temporary agency. Last year was a good year and she worked a total of nearly six months. This year, however, she has more medical problems and does not know when or how much she will be able to work. Because she is not working at the time of her recertification, it will be best to exclude her employment income and remind her that she must return for an interim recertification when she resumes work.

Examples – Irregular Employment Income

Sporadic work. Sam Daniels receives social security disability. He reports that he works as a handyman periodically. He cannot remember when or how often he worked last year: he says it was a couple of times. Sam's earnings appear to fit into the category of nonrecurring, sporadic income that is not included in annual income. Tell Sam that his earnings are not being included in annual income this year, but he must report to the owner any regular work or steady jobs he takes.

Self-employment income. Mary James sells beauty products door-to-door on consignment. She makes most of her money in the months prior to Christmas but has some income throughout the year. She has no formal records of her income other than a copy of the IRS Form 1040 she files each year. With no other information available, the owner will use the income reflected on Mary's copy of her form 1040 as her annual income.

5-6 Calculating Income—Elements of Annual Income

A. Income of Adults and Dependents

1. Figure 5-2 summarizes whose income is counted.

2. Adults. Count the annual income of the head, spouse or co-head, and other adult members of the family. In addition, persons under the age of 18 who have entered into a lease under state law are treated as adults, and their annual income must also be counted. These persons will be either the head, spouse, or co-head; they are sometimes referred to as emancipated minors.

   NOTE: If an emancipated minor is residing with a family as a member other than the head, spouse, or co-head, the individual would be considered a dependent and his or her income handled in accordance with subparagraph 3 below.

3. Dependents. A dependent is a family member who is under 18 years of age, is disabled, or is a full-time student

   The head of the family, spouse, co-head, foster child, or live-in aide are never dependents. Some income received on behalf of family dependents is counted and some is not.

   a. *Earned* income of minors (family members under 18) is not counted.

   b. Benefits or other *unearned* income of minors is counted.

Figure 5-2: Whose Income is Counted?

Members	**Employment Income**	**Other Income** (including income from assets)
Head	Yes	Yes
Spouse	Yes	Yes
Co-head	Yes	Yes
Other adult (including foster adult)	Yes	Yes
Dependents		
-Child under 18	No	Yes
Full-time student over 18	See Note	Yes
Foster child under 18	No	Yes
Nonmembers		
Live-in aide	No	No

NOTE: The earned income of a full-time student 18 years old or older who is a dependent is excluded to the extent that it exceeds $480.

c. When more than one family shares custody of a child, and both families live in assisted housing, only one family at a time can claim the dependent deduction. The family that counts the dependent deduction also counts the unearned income of the child. The other family claims neither the dependent deduction nor the unearned income of the child.

d. For full-time students, who are 18 years of age or older *and* are dependents, a small amount of their earned income will be counted. Count only earned income up to a maximum of $480 per year for full-time students, age 18 or older, who are not the head of the family; spouse or co-head.*If the earned income is less than $480 annually, count all of the income. If the earned income exceeds $480 annually,* count $480 and exclude the amount that exceeds $480.

e. The income of full-time students 18 years of age or older who are members of the household but away at school is counted the same as the income for other full-time students. The income of minors who are members of the household but away at school is counted as the income for other minors.

f. All income of a full-time student, 18 years of age or older, is counted if that person is the head of the family, spouse, or co-head.

g. Payments received by the family for the care of foster children or foster adults are *not* counted. This rule applies only to payments made through the official foster care relationships with local welfare agencies.

h. Adoption assistance payments in excess of $480 are not counted.

B. **Income of Temporarily Absent Family Members**

1. Owners must count all income of family members approved to reside in the unit, even if some members are temporarily absent.

2. If the owner determines that an absent person is no longer a family member, the individual must be removed from the lease and the HUD-50059.

3. A temporarily absent individual on active military duty must be removed from the family, and his or her income must not be counted unless that person is the head of the family, spouse, or co-head.

a. However, if the spouse or a dependent of the person on active military duty resides in the unit, that person's income must be counted in full, even if the military member is not the head, or spouse of the head of the family.

b. The income of the head, spouse, or co-head will be counted even if that person is temporarily absent for active military duty.

Examples – Income of Temporarily Absent Family Members

- John Chouse works as an accountant. However, he suffers from a disability that periodically requires lengthy stays at a rehabilitation center. When he is confined to the rehabilitation center, he receives disability payments equaling 80% of his usual income.

  During the time he is not in the unit, he will continue to be considered a family member. The owner will conduct an interim recertification. Even though he is not currently in the unit, his total disability income will be counted as part of the family's annual income.

- Mirna Martinez accepts temporary employment in another location and needs a portion of her income to cover living expenses in the new location. The full amount of the income must be included in annual income.

- Charlotte Paul is on active military duty. Her permanent residence is her parents' assisted unit where her husband and children live. Charlotte is not currently exposed to hostile fire. Therefore, because her spouse and children are in the assisted unit, her military pay must be included in annual income. (If her dependents or spouse were not in the unit, she would not be considered a family member and her income would not be included in annual income.)

C. **Deployment of Military Personnel to Active Duty**

Owners are encouraged to be as lenient as responsibly possible to support affected households in situations where persons are called to active duty in the Armed Forces. Specific actions that owners should undertake to support military households include, but are not limited to:

1. Allow a guardian to move into the assisted unit on a temporary basis to provide care for any dependents the military person leaves in the unit. Income of the guardian temporarily living in the unit for this purpose is not counted as income.

2. Allow a tenant living in an assisted unit to provide care for any dependents of persons called to active duty in the Armed Forces on a temporary basis, as long as the head and/or co-head of household continues to serve in active duty. Income of the child (e.g., SSI benefits, military benefits) is not counted as income of the person providing the care.

3. Exclude from annual income special pay received by a household member serving in the Armed Services who is exposed to hostile fire (see Exhibit 5-1).

4. Give consideration for any case involving delayed payment of tenant rent. Determine whether it is appropriate to accept a late payment.

5. Allow the assistance payment and the lease to remain in effect for a reasonable period of time (depending on the length of deployment)

beyond that required by the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. §§ 501-591, even though the adult members of the military family are temporarily absent from the assisted unit.

D. **Income of Permanently Confined Family Members**

1. An individual permanently confined to a nursing home or hospital may not be named as family head, spouse, or co-head but may continue as a family member at the family's discretion. The family's decision on whether or not to include the permanently confined family member as a family member determines if that person's income will be counted.

   a. *Include* the individual as a family member and the income and allowable deductions related to the medical care of the permanently confined individual are counted; or

   b. *Exclude* the individual as a family member and the income and allowances based on the medical care of the permanently confined individual are not counted.

   If the family elects to include the permanently confined member, the individual is listed on the HUD-50059 as an adult who is not the head, spouse, or co-head, even when the permanently confined family member is married to the person who is or will become the head of the family. The owner should consider extenuating circumstances that may prevent the confined member from being able to sign the HUD-50059. If the owner determines the confined member is unable to sign the HUD-50059,he owner must document the file why the signature was not obtained. If the family elects not to include the permanently confined member, the individual would not be listed on the HUD-50059.

E. **Educational Scholarships or Grants**

All forms of student financial assistance (grants, scholarships, educational entitlements, work study programs, and financial aid packages) are excluded from annual income except for students receiving Section 8 assistance. This is true whether the assistance is paid to the student or directly to the educational institution

For students receiving Section 8 assistance, all financial assistance a student receives (1) under the Higher Education Act of 1965, (2) from private sources, or (3) from an institution of higher education that is in excess of amounts received for tuition is included in annual income except if the student is over the age of 23 with dependent children or the student is living with his or her parents who are receiving Section 8 assistance. See Paragraph 3-13 for further information on eligibility of students to receive Section 8 assistance and the Glossary for the definition of Student Financial Assistance.

F. Alimony or Child Support

Owners must count alimony or child support amounts awarded by the court unless the applicant certifies that payments are not being made *and* that he or she has taken all reasonable legal actions to collect amounts due, including filing with the appropriate courts or agencies responsible for enforcing payment.

1. The owner may accept printouts from the court or agency responsible for enforcing support payments, or other evidence indicating the frequency and amount of support payments actually received.

2. Child support paid to the custodial parent through a State child support enforcement or welfare agency may be included in the family's monthly welfare check and may be designated in different ways. In some states these payments are not identified as separate from the welfare grant. In these states, it is important to determine which portion is child support and not to count it twice. In other states, the payment may be listed as child support or as pass-through payments. These amounts must be counted as annual income.

3. When no documentation of child support, divorce, or separation is available, either because there was no marriage or for another reason, the owner may require the family to sign a certification stating the amount of child support received.

G. Regular Cash Contributions and Gifts

1. Owners must count as income any regular contributions and gifts from persons not living in the unit. These sources may include rent and utility payments paid on behalf of the family, and other cash or noncash contributions provided on a regular basis.

Examples – Regular Cash Contributions

- The father of a young single parent pays her monthly utility bills. On average he provides $100 each month. The $100 per month must be included in the family's annual income.

- The daughter of an elderly tenant pays her mother's $175 share of rent each month. The $175 value must be included in the tenant's annual income.

2. Groceries and/or contributions paid directly to the childcare provider by persons not living in the unit are excluded from annual income.

3. Temporary, nonrecurring, or sporadic income (including gifts) is not counted.

H. Income from a Business

When calculating annual income, owners must include the net income from operation of a business or profession including self-employment income. Net income is gross income less business expenses, interest on loans, and depreciation computed on a straight-line basis.

1. In addition to net income, owners must count any salaries or other amounts distributed to family members from the business, and cash or assets withdrawn by family members, except when the withdrawal is a reimbursement of cash or assets invested in the business.

2. When calculating net income, owners must not deduct principal payments on loans, interest on loans for business expansion or capital improvements, other expenses for business expansion, or outlays for capital improvements.

3. If the net income from a business is negative, it must be counted as zero income. A negative amount must not be used to offset other family income.

I. Periodic Social Security Payments

Count the gross amount, before deductions for Medicare, etc., of periodic Social Security payments. Include payments received by adults on behalf of individuals under the age of 18 or by individuals under the age of 18 for their own support. *See Section J below regarding adjustments for overpayment of benefits and Section O for calculating the income for tenants in ICF/MR or ICF/DD projects and assisted living units in elderly projects.*

> ***Example:** Mary's gross social security benefit is $700 per month. The owner calculates annual income by annualizing the gross monthly social security benefit amount.
>
> $700 per month x 12 months = $8,400 gross annual income.*

J. Adjustments for Prior Overpayment of Benefits

If an agency is reducing a family's benefits to adjust for a prior overpayment (e.g., social security, SSI, TANF, or unemployment benefits), count the amount that is actually provided after the adjustment.

Example – Adjustment for Prior Overpayment of Benefits

Lee Park's social security payment of $250 per month is being reduced by $25 per month for a period of six months to make up for a prior overpayment. Count his social security income as $225 per month for the next six months and as $250 per month for the remaining six months.

K. Public Assistance Income in As-Paid Localities

1. Special calculations of public assistance income are required for as-paid state, county, or local public assistance programs. An as-paid system is one:

   a. In which the family receives an amount from a public agency specifically for shelter and utilities; and

   b. In which the amount is adjusted based upon the actual amount the family pays for shelter and utilities.

2. The public assistance amount specifically designated for rent and utilities is called the welfare rent.

3. To determine annual income for public assistance recipients in as-paid localities, include the following:

   a. The amount of the family's grant for other than shelter and utilities; and

   b. The maximum amount the welfare department can pay for shelter and utilities for a family of that size (i.e., the welfare rent). This may be different from the amount the family is actually receiving.

4. Each as-paid locality works somewhat differently, and many are subject to court-ordered modifications to the basic policy. Owners should discuss how the rules are applied with the HUD Field Office.

Example – Welfare Income in "As Paid" Localities

At application, a family's welfare grant is $300, which includes $125 for basic needs and $175 for shelter and utilities (based upon where the family is now living). However, the maximum the welfare agency could allow for shelter and utilities for this size family is $190.

Count the following as income:

$125	Amount family receives for basic needs
$190	Maximum for shelter and utilities
$315	Monthly public assistance income

L. Periodic Payments from Long-Term Care Insurance, Pensions, Annuities, and Disability or Death Benefits

1. The full amount of periodic payments from annuities, insurance policies, retirement funds, pensions, and disability or death benefits is included in annual income. (See subparagraph O below for information on the withdrawal of cash or assets from an investment.) Payments such as Black Lung Sick Benefits, Veterans Disability, and Dependent Indemnity Compensation for the Widow of a Killed in Action Serviceman are examples of such periodic payments.

2. Withdrawals from retirement savings accounts such as Individual Retirement Accounts and 401K accounts that are not periodic payments do not fall in this category and are not counted in annual income (see paragraph 5.6.L.3).

Example – Withdrawals from IRAs or 401K Accounts

Isaac Freeman retired recently. He has an IRA account but is not receiving periodic payments from it because his pension is adequate for his routine expenses. However, he has withdrawn $2,000 for a trip with his children. The withdrawal is not a periodic payment and is not counted as income.

3. If the tenant is receiving long-term care insurance payments, any payments in excess of $180 per day must be counted toward the gross annual income. (**NOTE:** Payment of long-term care insurance premiums are an eligible medical expense see paragraph 5-10 D.8.k.)

4. Federal Government/Uniformed Services pension funds paid to a former spouse.

Federal Government/Uniformed Services pension funds paid directly to an applicant's/tenant's former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation are not counted as annual income. The state court has, in the settlement of the parties' marital assets, determined the extent to which each party shares in the ownership of the pension. That portion of the pension that is ordered by the court (and authorized by the Office of Personnel Management (OPM), to be paid to the applicant's/tenant's former spouse is no longer an asset of the applicant/tenant and therefore is not counted as income. However, any pension funds authorized by OPM, pursuant to a court order to be paid to the former spouse of a Federal government employee, is counted as income for a tenant/applicant receiving such funds.

Example: Joan Carson is a retired Federal government employee receiving a retirement pension. She is also the recipient of Section 8 housing assistance and involved in a divorce proceeding. In settling the assets of the marriage between Mrs. Carson and her former husband, the court ordered that one half of her pension be paid directly to her former husband in the amount of $20,000. The court provided OPM with clear, specific and express instructions acceptable for OPM to process the payment to Mrs. Carson's former husband. OPM authorized the payment of pension benefits to Mrs. Carson's former husband in the amount of $20,000. The $20,000 represents an asset disposed of as a result of a court decree. At the interim reexamination of her income, Mrs. Carson indicated a change in her income due to the court ordered payment of pension benefits to her former husband. The PHA requested that Mrs. Carson provide a copy of her statement from OPM evidencing the payment of pension benefits to her (her statement reflected the line item payment to her former husband due to the court order). That portion of the pension paid to her former husband no longer belongs to Mrs. Carson and is not counted as income.

The OPM is responsible for handling court orders (any judgments or property settlements issued by or approved by any court of any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, The Northern Mariana Islands, or the Virgin Islands in connection with the divorce, annulment of marriage, or legal separation of a Federal government employee or retiree) affecting current and retired Federal government employees. See 5 C.F.R. § 838.103. OPM must comply with court orders, decrees, or court-approved property settlement agreements in connection with divorces, annulments of marriage, or legal separations of employees that award a portion of the former Federal government employee's retirement benefits. Id. at § 838.101(a)(1). State courts ordering a judgment or property settlement in connection with divorce, annulment of marriage, or legal separation have the responsibility of issuing clear, specific, and express instructions to OPM with regards to providing benefits to former spouses. Id. at § 838.122. In response to instructions from state courts, OPM will authorize payments to the former spouses. Id. at § 838.121. Once the payments have been authorized by OPM, the reduced pension amount paid to the retired

Federal employee (the tenant/applicant) will be reflected in the tenant's/applicant's statement from OPM. Former spouses of Federal government employees receiving court ordered pension benefits are provided a Form-1099 reflecting pension benefits received from the retired Federal government employee. In verifying the income of tenants/applicants, owners should require that tenants/applicants provide any copies of statements from OPM verifying pension benefits (including any reductions pursuant to a court order, decree or court-approved property settlement agreement), and any evidence of survivor benefits, pensions or annuities received from retired Federal government employees including, but not limited to, a Form-1099. (See Paragraph 5-7.G.5 for more information on the treatment of income from Federal government pensions.)

5. Other State, local government, social security or private pensions paid to a former spouse.

   Other state, local government, social security or private pension funds paid directly to an applicant's/tenant's former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation are also not counted as annual income and should be handled in the same manner as 4, above. The decree and copies of statements should be obtained in order to verify the net amount of the pension that should be applied in order to determine eligibility and calculate rent.

M. **Income from Training Programs**

1. Amounts received under HUD-funded training programs are excluded from annual income.

2. Incremental earnings and benefits received by any family member due to participation in qualifying state or local employment training programs are excluded. Income from training programs not affiliated with a local government, and income from the training of a family member resident to serve on the management staff, is also excluded.

   a. Excluded income must be received under employment training programs with clearly defined goals and objectives and for a specific, limited time period. The initial enrollment must not exceed one year, although income earned during extensions for additional specific time periods may also be eligible for exclusion

   b. Training income may be excluded only for the period during which the family member participates in the employment training program.

   c. Exclusions include stipends, wages, transportation or child care payments, or reimbursements.

   d. Income received as compensation for employment is excluded only if the employment is a component of a job training program.

Once training is completed, the employment income becomes income that is counted.

e. Amounts received during the training period from sources that are unrelated to the job training program, such as welfare benefits, social security payments, or other employment, are not excluded.

2. Owners may ask to use project funds or funds from the Residual Receipts account to underwrite all or a portion of the cost of developing, maintaining, and managing a job training program for project residents if funds are available.

a. The Field Office will make the determination if the job training program may be approved, and if project funds are sufficient to fund the job training program and maintain the physical and financial integrity of the project. Job training programs may be either on-site at the project or off-site. For example, job training programs that have partnerships with local colleges, community based organizations, or local business, may have in-house job training programs designed for project residents.

b. Funds that an owner may choose to use to underwrite a job training program may include Section 8 funds, Community Development Block Grant funds, or housing authority funds. These funds may be used to cover the costs of various components of a job training program, including course materials, computer software, computer hardware, or personnel costs. Also, contractors and subcontractors, in connection with work performed under a Flexible Subsidy contract, may elect to hire project residents to perform certain skills required under the contract. If the employment of the project residents was pursuant to an apprenticeship program, this could constitute a training program using HUD funds, and income received by the tenants in the apprenticeship program will qualify as an exclusion from income.

N. Resident Services Stipends

Resident services stipends are generally modest amounts of money received by residents for performing services such as hall monitoring, fire patrol, lawn maintenance, and resident management.

1. If the resident stipend exceeds $200 per month, owners must include the entire amount in annual income.

2. If the resident stipend is $200 or less per month, owners must exclude the resident services stipend from annual income.

O. **Income Received by a Resident of an Intermediate Care Facility for the Mentally Retarded or for the Developmentally Disabled (ICF/MR or ICF/DD) and Assisted Living Units in Elderly Projects**

1. An intermediate care facility is a group home for mentally retarded or developmentally disabled individuals (ICF/MR or ICF/DD). The term intermediate care facility is one used by state mental health departments for group homes serving these residents.

2. Assisted living units are units in projects developed for elderly residents with project-based assistance that have been converted to assisted living units.

3. The local agency responsible for Medicaid provides funds directly to group home operators and assisted living providers for services.

4. Annual income at an ICF/MR, ICF/DD, or assisted living unit must include:

   a. The SSI payment a tenant receives or the facility receives on behalf of the tenant; plus

   b. All other income the tenant receives from sources other than SSI that are not excluded from income by HUD regulations (see Exhibit 5-1). Examples of other sources of income include wages, pensions, income from sheltered workshops, income from a trust, or other interest income.

   c. The personal allowance of an individual residing in an ICF/MR or ICF/DD is not included in annual income. If the owner is unable to determine the actual amount of the personal allowance, use $30.

5. Annual income does not include the enhanced benefit portion of the SSI that is provided to pay for services. In some instances, a resident's SSI income may be reduced between annual recertifications if the resident's earnings exceed a specified amount. If this happens, the resident may request an interim recertification.

P. **Withdrawal of Cash or Assets from an Investment**

The withdrawal of cash or assets from an investment received as periodic payments should be counted as income. Lump sum receipts from pension and retirement funds are counted as assets. If benefits are received through periodic payments, do not count any remaining amounts in the account as an asset. See Paragraph 5-7 for guidance on calculating income from an asset.

Q. **Lump Sum Payments Counted as Income**

1. Generally, lump sum amounts received by a family, such as inheritances, insurance settlements, or proceeds from sale of property are considered assets, not income.

2. When social security or SSI benefit income is paid in a lump sum as a result of deferred periodic payments, that amount is *excluded* from annual income.

3. *For Section 8 tenants only, any deferred Department of Veterans Affairs (VA) disability benefits that are received in a lump sum or in prospective monthly amounts are *excluded* from annual income.*

4. Settlement payments from claim disputes over welfare, unemployment, or similar benefits may be counted as assets, but lump sum payments caused by *delays in processing* periodic payments for unemployment or welfare assistance are included as income.

   How lump sum payments for delayed start of benefits are counted depends upon the following:

   a. When the family reports the change;

   b. When an interim re-examination is conducted; and

   c. Whether the family's income increases or decreases as a result.

   A lump sum payment resulting from delayed benefit income may be treated in either of the two ways illustrated in the example shown in Figure 5-3.

5. Lottery winnings paid in one payment are treated as assets. Lottery winnings *paid in periodic payments* must be counted as income.

Figure 5-3: Treatment of Delayed Benefit Payments Received in a Lump Sum

Family member loses his/her job on October 19 and applies for unemployment benefits. The family receives a lump sum payment of $700 in December to cover the period from 10/20 to 12/5 and begins to receive $100 a week effective 12/6.

Option A: The owner processes one interim re-examination immediately effective 11/1 and a second interim after unemployment benefits are known.

	10/1	11/1	12/1	1/1	2/1
Monthly gross income	800	*0	*0	492**	492**
Monthly allowances (three minors x 480 / 12 months)	120	-	-	120	120
Monthly adjusted income	680	0	0	372	372
Total tenant payment (TTP)	204	25	25	25***	112***

* The family's income is calculated at $0/month beginning November 1, continuing until benefits actually begin and new income is calculated. TTP is set at the minimum rent.

** Family's actual income for 1/1 is $100/week x 52 weeks $5,200 / 12 $433.

However, because the family's TTP was calculated at zero income for the months of November and December (the period eventually covered by the $700 lump sum payment), the annual income to be used in calculating monthly gross income should be as follows:

$100/week benefit x 52 weeks = $5,200 + $700 lump sum payment = $5,900 annual gross income/ 12 = $492.

*** Increased rent does not start until 2/1 in order to give the family notice of rent increase.

Option B: The owner processes one interim re-examination after unemployment benefits are known.

	10/1	11/1	12/1	1/1	2/1
Monthly gross income	800	0/800*	0/800*	433*	433*
Monthly allowances (three minors x 480 / 12 Months)	120	120	120	120	120
Monthly adjusted income	680	0/680	0/680	313	313
Total tenant payment	204	204*	204*	94	94
Recalculated TTP	-	94***	94*	94	94
Rent credit (204 94=)	-	110	110	-	-

* Family's actual income for 11/1 and 12/1 is zero, but because the owner does not process an interim re-examination, the family's TTP continues to be calculated using $800 as monthly gross income. Beginning 1/1, monthly gross income is known to be $100/week, or $433/month.

** The lump sum payment is taken into account by making the recertification retroactive to 11/1. Annual income is calculated as $5,200 / 12 = $433 monthly gross income.

*** TTP for November and December recalculated as $433 monthly gross income and $313 monthly adjusted income x .30 = 94 with credit or refund to family of $110/month for each of these two months for difference between TTP paid of $204 and recalculated TTP of $94.

R. Exclusions from Income

1. Regulations for the multifamily subsidized housing programs covered by this handbook specifically exclude certain types of income from annual income. However, many of the items listed as exclusions from annual income under HUD requirements are items that the IRS includes as taxable income. Therefore, it is important for owners to focus specifically on the HUD program requirements regarding annual income.

2. Among the items that are excluded from annual income is the value of food provided through:

   a. The Meals on Wheels program, food stamps, or other programs that provide food for the needy;

   b. Groceries provided by persons not living in the household; and

   c. Amounts received under the School Lunch Act and the Child Nutrition Act of 1966, including reduced lunches and food under the Special Supplemental Food Program for Women, Infants and Children (WIC).

Examples – Income Exclusions

- The Value of Food Provided through the Meals on Wheels Program or Other Programs Providing Food for the Needy. Jack Love receives a hot lunch each day during the week in the community room and an evening meal in his apartment. One meal is provided through the Meals on Wheels program. A local church provides the other. The value of the meals he receives is not counted as income.
- Groceries provided by persons not living in the household. Carrie Sue Colby's mother purchases and delivers groceries each week for Carrie Sue and her two year old. The value of these groceries is not counted as income despite the fact that these are a regular contribution or gift.
- Amounts Received Under WIC or the School Lunch Act. Lydia Jeffries' two children receive a free breakfast and reduced priced lunches at school every day through the Special Supplemental Food Program for Women, Infants and Children (WIC). The value of this food is not counted as income.

3. Some additional examples of income that are excluded from the calculation of annual income follow.

Examples – Income Exclusions

- Resident service stipends. Rich Fuller receives $50 a month for distributing flyers for management. This amount is excluded from annual income.

- Deferred periodic payments of social security benefits. Germain Johnson received $32,000 in deferred social security benefits following a lengthy eligibility dispute. This delayed payment of social security benefits is treated as an asset, not as income.

- Income from training programs. Jennifer Jones is participating in a qualified state-supported employment training program every afternoon to learn improved computer skills. Each morning, she continues her regular job as a typist. The $250 a week she receives as a part-time typist is included in annual income. The $150 a week she receives for participation in the training program is excluded in annual income.

- Earned Income Tax Credit refund payments. Mary Frances Jackson is eligible for an earned income tax credit. She receives payments from her employer each quarter because of the tax credit. These payments are excluded in annual income.

5-7 Calculating Income from Assets

Annual income includes amounts derived from assets to which family members have access.

A. What is Considered an Asset?

1. Assets are items of value that may be turned into cash. A savings account is a cash asset. The bank pays interest on the asset. The interest is the *income* from that asset.

2. Some tenants have assets that are not earning interest. A quantity of money under a mattress is an asset: it is a thing of value that could be used to the benefit of the tenant, but under the mattress it is not producing income.

3. Some belongings of value are not considered assets. Necessary personal property is not counted as an asset. Exhibit 5-2 summarizes the items that are considered assets and those that are not.

B. Determining Income from Assets

Note: For families receiving only BMIR assistance, it is not necessary to determine whether family assets exceed $5,000. The rule for imputing income from assets does not apply to the BMIR program.

1. The calculation to determine the amount of income from assets to include in annual income considers both of the following:

   a. The total cash value of the family's assets; and

   b. The amount of income those assets are earning or could earn.

2. The rule for calculating income from assets differs depending on whether the total cash value of family assets is $5,000 or less, or is more than $5,000.

C. **Determining the Total Cash Value of Family Assets**

1. To comply with the rule for determining the amount of income from assets, it is necessary to first determine whether the total cash value of family assets exceeds $5,000.

   a. The cash value of an asset is the market value less reasonable expenses that would be incurred in selling or converting the asset to cash, such as the following:

      (1) Penalties for premature withdrawal;

      (2) Broker and legal fees; and

      (3) Settlement costs for real estate transactions.

      The cash value is the amount the family could actually receive in cash, if the family converted an asset to cash.

Example – Calculating the Cash Value of an Asset

A family has a certificate of deposit (CD) in the amount of $5,000 paying interest at 4%. The penalty for early withdrawal is three months of interest.

$5,000 x 0.04 = $200 in annual income

$200/12 months = $16.67 interest per month

$16.67 x 3 months = $50.01

$5,000 - $50 = $4,950 cash value of CD

   b. It is essential to note that a family is not required to convert an asset to cash. Determining the cash value of the asset is done simply as a calculation by the owner because it is a required step when determining income from assets under program requirements.

D. **Assets Owned Jointly**

1. If assets are owned by more than one person, prorate the assets according to the percentage of ownership. If no percentage is specified or provided by a state or local law, prorate the assets evenly among all owners.

2. If an asset is not effectively owned by an individual, do not count it as an asset. An asset is not effectively owned when the asset is held in an individual's name, but (a) the asset and any income it earns accrue to the benefit of someone else who is not a member of the family, and (b) that other person is responsible for income taxes incurred on income generated by the assets.

3. Determining which individuals have ownership of an asset requires collecting as much information as is available and making the best judgment possible based on that information.

Example – Determining the Cash Value of an Asset

The cash value of an asset is the amount a family would receive if the family turned a noncash asset into cash.

The cash value is the market value—or the amount another person would pay to acquire the asset—less the cost to turn the asset into cash.

If a family owns real estate, it may be necessary to consider the family's equity in the property as well as the expense to sell the property.

To determine the family's equity, subtract amounts owed on the property from its market value:

	Market value
-	Mortgage amount owed
	Equity in the property

Calculate the cash value by subtracting the expense of selling the property:

	Equity
-	Expense of selling
	Cash Value

Juanita Player owns a rental house. The market value is $100,000. She owes $60,000. The cost to dispose of this house would be $8,000. The owner would determine the cash value as follows:

Market Value	$100,000
Mortgage amount	- $60,000
	40,000
Cost of disposing of the asset (real estate commission, and other costs of sale)	- $8,000
Cash Value	**$32,000**

a. In some instances, but not all, knowing whose social security number is connected with the asset may help in identifying ownership. Owners should be aware that there are many situations in which a social security number connected with an asset does not indicate ownership and other situations where there is ownership without connection to a social security number.

b. Determining who has contributed to an asset or who is paying taxes on the asset may assist in identifying ownership.

Examples – Jointly Owned Assets

- Helen Wright is an assisted-housing tenant. She and her daughter, Elsie Duncan, have a joint savings account. Mother and daughter both contribute to the account. They have used the account for trips together and to cover emergency needs for either of them. Assume in this example that state law does not specify ownership. Even though either Helen Wright or Elsie Duncan could withdraw the entire asset for her own use, count Helen's ownership as 50% of the account.
- Jean Boucher's name is on her mother's savings account to ensure that she can access the funds for her mother's care. The account is not effectively owned by Jean and should not be counted as her asset.

E. **Calculating Income from Assets When Assets Total $5,000 or Less**

If the total cash value of all the family's assets is $5,000 or less, the actual income the family receives from assets is the amount that is included in annual income as income from assets.

F. **Calculating Income from Assets When Assets Exceed $5,000**

1. When net family assets are more than $5,000, annual income includes the greater of the following:

   a. Actual income from assets; or

   b. A percentage of the value of family assets based upon the current passbook savings rate as established by HUD. This is called *imputed* income from assets. The passbook rate is currently set at 2%.

2. To begin this calculation, first add the cash value of all assets. Multiply the total cash value of all assets by .02. The product is the imputed income from assets. Then, add the actual income from all assets. The greater of the imputed income from assets or the actual income from assets is included in the calculation of annual income.

Example – Use Actual Income from Assets When Total Net Family Assets are $5,000 or Less

Type of Asset	Cash Value	Actual Yearly Income
Certificate of Deposit $1,000 withdrawal fee $50 interest @ 4%	$950	$40
Savings Account $500 interest @ 2.5%	$500	$13
Stock $300 Not paying dividends	$300	$0
Total	$1,750	$53

The total cash value of the family's assets is $1,750. Therefore, the amount that is added to annual income as income from assets is the actual income earned or $53.

Example – Imputed Income from Assets

Imputed means attributed or assigned. Imputing income from assets is assigning an amount of income solely for the sake of the annual income calculation. The imputed income is not real income.

For example, money under a mattress is not earning income. If the money were put in a savings account it would earn interest. Imputed income from such an asset is the interest the money would earn if it were put in a savings account.

A family with cash under a mattress is not required to put the cash in a savings account; but when the owner is calculating income for a family with more than $5,000 in assets, the owner must assign an amount that cash would earn if it were in a savings account.

Example – Determining Income from Assets When Net Family Assets Exceed $5,000

Type of Asset	Cash Value	Actual Yearly Income
Checking Account (non-interest bearing)	$455	$0
Savings Account (interest at 2.5%)	$6,000	$150
Stocks (not paying dividends this year)	$3,000	$0
Total	$9,455	$150

Total cash value of assets is greater than $5,000. Therefore, it is necessary to compare the actual income from assets to the imputed income from assets.

The total cash value of assets ($9,455) is multiplied by 2% to determine the imputed income from assets.

.02 x $9,455 = $189

$189 is greater than the actual income from assets ($150).

In this case, therefore, the owner will add $189 to the annual income calculation as income from assets.

G. **Calculating Income from Assets - Specific Types of Assets**

1. Trusts.

a. Explanation of trusts.

(1) A trust is a legal arrangement generally regulated by state law in which one party (the creator or grantor) transfers property to a second party (the trustee) who holds the property for the benefit of one or more third parties (the beneficiaries). A trust can contain cash or other liquid assets or real or personal property that could be turned into cash. Generally, the assets are invested for the benefit of the beneficiaries.

(2) Trusts may be revocable or nonrevocable. A revocable trust is a trust that the creator of the trust may amend or end (revoke). When there is a revocable trust, the creator has access to the funds in the trust account. When the creator sets up a nonrevocable trust, the creator has no access to the funds in the account.

(3) The beneficiary frequently will be unable to touch any of the trust funds until a specified date or event (e.g., the

beneficiary's 21st birthday or the grantor's death). In some instances, the beneficiary may receive the regular investment income from the trust but not be able to withdraw any of the principal.

(4) The beneficiary and the grantor may be members of the same family. A parent or grandparent may have placed funds in trust to a child. If the trust is revocable, the funds may be accessible to the parent or grandparent but not to the child.

b. How to treat trusts.

(1) The basis for determining how to treat trusts relies on information about who has access to either the principal in the account or the income from the account.

(2) Revocable trusts. If any member of the tenant family has the right to withdraw the funds in the account, the trust is considered to be an asset and is treated as any other asset. The cash value of the trust (the amount the family member would receive if he or she withdrew all that could be withdrawn) is added to total net assets. The actual income received is added to actual income from assets.

Example – A Trust Accessible to Family Members

Assez Charaf lives alone. He has placed $20,000 in trust to his grandson to be available to the grandson upon the death of Assez. The trust is revocable, that is, Assez has control of the principal and interest in the account and can amend the trust or remove the funds at any time. In calculating Assez's income, the owner will add the $20,000 to Assez's net family assets and the actual income received on the trust to actual income from assets.

(3) Nonrevocable trusts. If no family member has access to either the principal or income of the trust at the current time, the trust is not included in the calculation of income from assets or in annual income.

If only the income (and none of the principal) from the trust is currently available to a family member, the income is counted in annual income, but the trust is not included in the calculation of income from assets.

(4) Nonrevocable trust as an asset disposed of for less than fair market value. If a tenant sets up a nonrevocable trust for the benefit of another person while residing in assisted

housing, the trust is considered an asset disposed of for less than fair market value (see subparagraph G.6 below).

– If the trust has been set up so income from the trust is regularly reinvested in the trust and is not paid back to the creator, the trust is calculated as any other asset disposed of for less than fair market value for two years and not taken into consideration thereafter.

Example – Nonrevocable Trust As an Asset Disposed of for Less Than Fair Market Value

Sarah Gordy placed $100,000 in a nonrevocable trust for her grandson. Last year, the trust produced $8,000, which was reinvested into the trust.

The trust is treated as an asset disposed of for less than fair market value for two years. (See paragraph 5.7 G.6.) No actual income from the trust is included in Sarah's annual income, but the value of the asset when it was given away, $100,000, is included in net family assets for two years from the date the trust was established.

– Nonrevocable trust distributing income. When a tenant places an asset in a nonrevocable trust but continues to receive income from the trust, the income is added to annual income *and* the trust is counted as an asset disposed of for less than market value for two years. Following the two-year period, the owner will count only the actual income distributed from the trust to the tenant.

Example – Nonrevocable Trust Distributing Income to the Creator/Tenant

Reggie Bouchard has established a nonrevocable trust in the amount of $35,000 that no one in the tenant family controls. Income from the trust is paid to Reggie. Last year, he received $3,500.

The owner will count Reggie's actual anticipated income from the trust in next year's annual income.

Because the asset was disposed of for less than fair market value (see paragraph 5.7 G.6), the value of the asset given away, $35,000, is counted as an asset disposed of for less than fair market value for two years.

(5) Payment of principal from a trust. The beneficiary of a trust may receive funds from the trust in different ways. A beneficiary may receive the full value of a trust at one time. In that instance the funds would be considered a lump sum receipt and would be treated as an asset. A trust set up to provide support for a person with disabilities may pay only income from the trust on a periodic basis. Occasionally, however, a beneficiary may be given a portion of the trust principal on a periodic basis. When the principal is paid out on a periodic basis, those payments are considered regular income or gifts and are counted in annual income.

Example – Payment of Principal Amounts from a Trust

Jared Leland receives funds from a nonrevocable trust established by his parents for his support. Last year he received $18,000 from the trust. The attorney managing the trust reported that $3,500 of the funds distributed was interest income and $14,500 was from principal. Jared receives a payment of $1,500 each month (an amount that includes both principal and interest from the trust).

The owner will count the entire $18,000 Jared received as annual income.

c. Special needs trusts.

A special needs trust is a trust that may be created under some state laws, often by family members for disabled persons who are not able to make financial decisions for themselves. Generally, the assets within the trust are not accessible to the beneficiary.

(1) If the beneficiary does not have access to income from the trust, then it is not counted as part of income.

(2) If income from the trust is paid to the beneficiary regularly, those payments are counted as income.

Example – Special Needs Trust

Daryl Rockland is a 55-year-old person with disabilities, living with his elderly parents. The parents have established a special-needs trust to provide income for their son after they are gone. The trust is not revocable; neither the parents nor the son currently have access to the principal or interest. In calculating the income of the Rocklands, the owner will disregard the trust.

2. Annuities.

a. Annuity facts and terms.

(1) An annuity is a contract sold by an insurance company designed to provide payments, usually to a retired person, at specified intervals. Fixed annuities guarantee a certain payment amount, while variable annuities do not, but have the potential for greater returns.

– A hybrid annuity (also called a combination annuity) combines the features of a fixed annuity and a variable annuity.

– A deferred annuity is an annuity that delays income payments until the holder chooses to receive them. An immediate annuity is one that begins payments immediately upon purchase.

– A life annuity continues to pay out as long as the owner is alive. A single-life annuity provides income benefits for only one person. A joint life annuity is issued on two individuals, and payments continue in whole or in part as long as either individual is alive.

(2) Generally, a person who holds an annuity from which he or she is not yet receiving payments will also be earning income. In most instances, a fixed annuity will be earning interest at a specified fixed rate similar to interest earned by a CD. A variable annuity will earn (or lose) based on market fluctuations, as in a mutual fund.

(3) Most annuities charge surrender or withdrawal fees. In addition, early withdrawal usually results in tax penalties.

(4) Depending on the type of annuity and the current status of the annuity, the owner will need to ask different questions of the verification source, which will normally be the applicant or tenant's insurance broker.

b. Income after the holder begins receiving payments.

(1) When verifying an annuity, owners should ask the verification source whether the holder of the annuity has the right to withdraw the balance of the annuity. For annuities without this right, the annuity is not treated as an asset.

(2) Generally, when the holder has begun receiving annuity payments, the holder can no longer convert it to a lump sum of cash. In this situation, the holder will receive regular payments from the annuity that will be treated as regular income, and no calculations of income from assets will be made.

c. Calculations when an annuity is considered an asset.

(1) When an applicant or tenant has the option of withdrawing the balance in an annuity, the annuity will be treated like any other asset. It will be necessary to determine the cash value of the annuity in addition to determining the actual income earned.

(2) In most instances, an annuity from which payments have not yet been made is earning income on the balance in the annuity. A fixed annuity will earn income at a fixed rate in the same manner that a CD earns income. A variable annuity will earn (or lose) based on current market conditions, as with a mutual fund.

(3) The owner will need to verify with the insurance agent or other appropriate source:

– The right of the holder to withdraw the balance (even if penalties are involved).

– The basis on which the annuity may be expected to grow during the coming year.

– The surrender or early withdrawal penalty fee.

– The tax rate and the tax penalty that would apply if the family withdrew the annuity.

(4) The cash value will be the full value of the annuity, less the surrender (or withdrawal) penalty, and less any taxes and tax penalties that would be due.

(5) The actual income is the balance in the annuity times the percentage (either fixed or variable) at which the annuity is expected to grow over the coming year. (This money will be reinvested into the annuity, but it is still considered actual income.)

(6) The imputed income from the asset is calculated only after the cash value of all family assets has been determined.

Imputed income from assets is calculated on the total cash value of all family assets.

3. Lump sum receipts counted as assets.

a. Commonly, when a family receives a large amount of money, a lump sum payment, the family will put the money in a checking or savings account, or will purchase stocks or bonds or a CD. Owners must count lump sum payments received by a tenant as assets. Examples of lump sum payments include the following:

(1) Inheritances;

(2) Capital gains;

(3) Lottery winnings paid in one payment;

(4) Cash from the sale of assets;

(5) Insurance settlements (including health and accident insurance, workers compensation, and personal and property losses); and

(6) Any other amounts that are received in one-time lump sum payments.

Example – Calculating the Cash Value of an Annuity

Rodrigo Ramirez, site manager at Fernwood Forrest, has interviewed Barbara Barstow, an applicant who reports holding an annuity from which she will not receive payments for another 15 years when she turns 65. The applicant could not provide any more detail on the annuity but did report the name, address, and phone number of her insurance agent.

Rodrigo called the insurance agent and faxed a copy of the applicant's approval for release of information. As a result, Rodrigo learned that the annuity is a fixed annuity, with a current value of $20,400 earning interest at an annual rate of 4.5%. The applicant could withdraw the current balance in the account but would pay a surrender penalty of $3,000. If the annuity is withdrawn, then the applicant will owe $1,200 in tax penalties.

In this example, the important information for calculating cash value is the current value, $20,400; the surrender fee, $3,000; and the tax penalties, $1,200. If the applicant withdrew the cash from the annuity, after paying the surrender fee and tax penalty, then the amount of cash received would be $16,200.

The cash value, $16,200, is recorded as an asset.

Rodrigo will also calculate the actual anticipated income on this asset: $20,400 x .045 = $918.

b. A lump sum payment is counted as an asset only as long as the family continues to possess it. If the family uses the money for something that is not an asset—a car or a vacation or education—the lump sum must not be counted.

c. It is possible that a lump sum or an asset purchased with a lump sum payment may result in enough income to require the family to report the increased income before the next regularly scheduled annual recertification. But this requirement to report an increase in income before the next annual recertification would not apply if the income from the asset was not measurable by the tenant (e.g., gems, stamp collection).

Examples – Lump Sum Additions to Family Assets (One-Time Payment)

- JoAnne Wettig won $500 in the lottery and received it in one payment. Do not count the $500 as income. At JoAnne's next annual recertification, she will report all of her assets.

- Mia LaRue, a tenant in a Section 8 property, won $75,000 in one payment in the lottery. She buys a car with some of the money, and puts the remaining amount of $24,000 in the bank. Mia receives her first bank statement and notices that the income on this asset is $205 per month. She must report this increase in income because the family has experienced a cumulative increase in income of more than $200 per month. (See paragraph 7-10 A.4 on rules for reporting interim increases in income.) The owner must perform an interim recertification and count the greater of the actual or imputed income on this asset (since the net family assets are greater than $5,000).

4. Balances held in retirement accounts.

a. Balances held in retirement accounts are counted as assets if the money is accessible to the family member. For individuals still employed, accessible amounts are counted even if withdrawal would result in a penalty. However, amounts that would be accessible only if the person retired are not counted.

b. IRA, Keogh, and similar retirement savings accounts are counted as assets, even though withdrawal would result in a penalty, *unless benefits are being received through periodic payments.*

c. Include contributions to company retirement/pension funds:

(1) While an individual is employed, count only amounts the family can withdraw without retiring or terminating employment.

(2) After retiring or terminating employment, count as an asset any amount the employee elects to receive as a lump sum.

d. Include in *annual income* any retirement benefits received through periodic payments. *Do not count any remaining amounts in the account as an asset.*

Examples – Balances Held in an IRA or 401K Retirement Account

- Jed Dozier's 401K account balance is $35,000. He is able to terminate his participation in the retirement plan without quitting his job, but if he did so he would lose a part of his employer's contribution and would pay a penalty fee. The total cash he could withdraw, $18,000, is the amount that is counted as an asset.

5. Federal Government/Uniformed Services Pensions

In instances where the applicant/tenant is a retired Federal Government/Uniformed Services employee receiving a pension that is determined by a state court in a divorce, annulment of marriage, or legal separation proceeding to be a marital asset and the court provides OPM with the appropriate instructions to authorize OPM to provide payment of a portion of the retiree's pension to a former spouse, that portion to be paid directly to the former spouse is not counted as income for the applicant/tenant. However, where the tenant/applicant is the former spouse of a retired Federal Government/Uniformed Services employee, any amounts received pursuant to a court ordered settlement in connection with a divorce, annulment of marriage, or legal separation are reflected on a Form-1099 and is counted as income for the applicant/tenant. (See Paragraph 5-6.K.4 for more information on Federal Government/Uniformed Services pension funds paid to a former spouse.)

6. Other state, local government, social security or private pensions.

Other state, local government, social security or private pensions where pensions are reduced due to a court ordered settlement in connection with a divorce, annulment of marriage, or legal separation and paid directly to the former spouse are not counted as income for the applicant/tenant and should be handled in the same manner as 5, above.

7. Mortgage or deed of trust.

a. Occasionally, when an individual sells a piece of real estate, the seller may loan money to the purchaser through a mortgage or deed of trust. This may be referred to as a contract sale.

b. A mortgage or deed of trust held by a family member is included as an asset. Payments on this type of asset are often received as one combined payment that includes interest and principal. The value of the asset is the unpaid principal as of the effective date of the certification. Each year this balance will decline as more principal is paid off. The interest portion of the payment is counted as actual income from an asset.

8. Assets disposed of for less than fair market value. Applicants and tenants must declare whether an asset has been disposed of for less than fair market value at each certification and recertification. Owners must count assets disposed of for less than fair market value during the two years preceding certification or recertification. The amount counted as an asset is the difference between the cash value and the amount actually received. (This provision does not apply to families receiving only BMIR assistance.)

a. Any asset that is disposed of for less than its full value is counted, including cash gifts as well as property. To determine the amount that has been given away, owners must compare the cash value of the asset to any amount received in compensation.

b. However, the rule applies only when the fair market value of all assets given away during the past two years exceeds the gross amount received by more than $1,000.

Examples – Assets of More or Less Than $1,000 Disposed of for Less Than Fair Market Value

- During the past two years, Alexis Turner donated $300 to the local food bank, $150 to a camp program, and $200 to her church. The total amount she disposed of for less than fair market value is $650. Since the total is less than $1,000, the donations are not treated as assets disposed of for less than fair market value.
- Jackson Jones gave each of his three children $500. Because the total exceeds $1,000, the gifts are treated as assets disposed of for less than fair market value.

c. When the two-year period expires, the income assigned to the disposed asset also expires. If the two-year period ends in the middle of a recertification year, the tenant may request an interim recertification to remove the disposed asset(s). However, if the owner elects to only include the income for a partial remaining year as shown in the example below, an interim recertification should not be conducted.

Example – Asset Disposed of for Less Than Fair Market Value

Margot Lundberg's recertification will be effective January 1. On that date, it will be 18 months since she sold her house to her daughter for $60,000 less than its value. The owner will count income on the $60,000 for only six months. (After six months, the two-year limit on assets disposed of for less than fair market value will have expired.)

d. Assets disposed of for less than fair market value as a result of foreclosure, bankruptcy, divorces, or separation, are *not* counted.

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

f. Applicants and tenants must sign a self-verification form at their initial certification and each annual recertification identifying all assets that have been disposed of for less than fair market value or certifying that no assets have been disposed of for less than fair market value.

g. Owners need to verify the tenant self certification only if the information does not appear to agree with other information reported by the tenant/applicant.

Examples – Asset Disposed of for Less Than Market Value

(1) An applicant sold her home to her daughter for $10,000. The home was valued at $89,000 and had no loans secured against it. Broker fees and settlement costs are estimated at $1,800.

$89,000	Market value
- 1,800	Fees
$87,200	Cash value
- 10,000	Sales price to daughter
$77,200	Asset disposed of for less than fair market value

In this example, the asset disposed of for less than fair market value is $77,200. That amount is counted as the resident's asset for two years from the date the sale took place.

(The $10,000 received from the daughter may currently be in a savings account or other asset or may have been spent. The $10,000 will be counted as an asset if the applicant has not spent the money.)

(2) A resident contributed $10,000 to her grandson's college tuition and gave her two granddaughters $4,000 each to save for college.

$10,000	College tuition gift
+ 8,000	Gift to granddaughters
$18,000	Asset disposed of for less than fair market value

The $18,000 disposed of for less than fair market value is counted as the tenant's asset for two years from the date each asset was given away.

Section 2: Determining Adjusted Income

Section 2 does not apply to families applying for or occupying 221(d)(3) BMIR units without additional subsidy.

5-8 Key Regulations

This paragraph identifies the key regulatory citation pertaining to Section 2: Determining Adjusted Income. The citation and its topic are listed below.

- 24 CFR 5.611 Adjusted Income

5-9 Key Requirements for Determining Adjusted Income

A. There are five possible deductions that may be subtracted from annual income based on allowable family expenses and family characteristics. The remainder, after these deductions are subtracted, is called adjusted income. Adjusted income is generally the amount upon which rent is based. See Section 4 of this chapter for information about specific rent calculation methods. This section focuses on the calculation of annual adjusted income. Before rent is calculated, annual adjusted income is converted to monthly adjusted income.

B. Of the five possible deductions, three are available to any assisted family, and two are permitted only for elderly or disabled families.

1. The three types of deductions available to any assisted family are:

   a. A deduction for dependents;

   b. A child care deduction; and

   c. A disability assistance deduction.

2. The two types of deductions permitted only for families in which the head, spouse, or co-head is elderly or disabled are:

   a. An elderly/disabled family deduction; and

   b. A deduction for unreimbursed medical expenses.

   NOTE: A family may not designate a family member as head or co-head solely to become eligible for these additional benefits. The remaining member of a family listed in paragraph 5-9 B.2 who is not 62 or older or a person with disabilities is not eligible for these allowances.

5-10 Calculating Adjusted Income

A. **Dependent Deduction**

1. A family receives a deduction of $480 for each family member *(except foster children and foster adults)* who is:

   a. Under 18 years of age;

   b. A person with disabilities; or

   c. A full-time student of any age.

   It is not necessary for a member of the family to have legal custody of a dependent in order to receive the dependent deduction.

2. Some family members may never qualify as dependents regardless of age, disability, or student status.

a. The head of the family, the spouse, and the co-head may never qualify as dependents.

b. A foster child, *foster adult*, an unborn child, a child who has not yet joined the family or a live-in aide may never be counted as a dependent.

3. A full-time student is one who is carrying a full-time subject load at an institution with a degree or certificate program. A full-time load is defined by the institution where the student is enrolled.

4. When more than one family shares custody of a child and both live in assisted housing, only one family at a time can claim the dependent deduction for that child. The family with primary custody or with custody at the time of the initial certification or annual recertification receives the deduction. If there is a dispute about which family should claim the dependent deduction, the owner should refer to available documents such as copies of court orders or an IRS return showing which family has claimed the child for income tax purposes.

B. **Child Care Deduction**

1. Anticipated expenses for the care of children under age 13 (including foster children) may be deducted from annual income if all of the following are true:

a. The care is necessary to enable a family member to work, seek employment, or further his/her education (academic or vocational).

b. The family has determined there is no adult family member capable of providing care during the hours care is needed.

c. The expenses are not paid to a family member living in the unit.

d. The amount deducted reflects reasonable charges for child care.

e. The expense is not reimbursed by an agency or individual outside the family.

f. Child care expenses incurred to permit a family member to work must not exceed the amount earned by the family member made available to work during the hours for which child care is paid.

2. When child care enables a family member to work or go to school, the rule limiting the deduction to the amount earned by the family member made available to work applies only to child care expenses incurred while the individual is at work. While that family member is at school or looking for work, the expense for child care is not limited.

Example – Child Care Deduction
Separate Expenses for Time at Work and Time at School

Bernice and Ernest have two children. Both parents work, but Bernice works only part-time and goes to school half time. She pays $4.00 an hour for eight hours of child care a day. For four of those hours, she is at work; for four of them she attends school. She receives no reimbursement for her child care expense.

Her annual expense for child care during the hours she works is $4,000. Her annual expense for the hours she is at school is also $4,000. She earns $6,000 a year. Ernest earns $18,000.

The rule requires that Bernice's child care expense while she is working not exceed the amount she is earning while at work. In this case, that is not a problem. Bernice earns $6,000 during the time she is paying $4,000. Therefore, her deduction for the hours while she is working is $4,000.

Bernice's expense while she is at school is not compared to her earnings. Her expense during those hours is $4,000, and her deduction for those hours will also be $4,000.

Bernice's total child care deduction is $8,000 ($4,000 $4,000). The total deduction exceeds the amount of Bernice's total earnings, but the amount she pays during the hours she works does not exceed her earnings.

If Bernice's child care costs for the hours while she works were greater than her earnings, she would not be able to deduct all of her child care costs.

Bernice is paying a total of $8,000 in child care expenses. Of that expense, payments of $4,000 cover the hours while she is in school; payments of $4,000 cover the hours she works. If Bernice were earning $3,500, her total child care deduction for the hours she works would be capped at the amount of money she earns. In this case, the total deduction would be $7,500 ($4,000 for expenses while she is in school plus $3,500 of the amount she pays while she is working.)

3. Child care attributable to the work of a full-time student (except for head, spouse, co-head) is limited to not more than $480, since the employment income of full-time students in excess of $480 is not counted in the annual income calculation. Child care payments on behalf of a minor who is not living in the applicant's household cannot be deducted.

4. Child care expenses incurred by two assisted households with split custody can be split between the two households when the custody and expense is documented for each household and the documentation demonstrates that the total expense claimed by the two households does not exceed the cost for the actual time the child spends in care.

C. Deduction for Disability Assistance Expense

1. Families are entitled to a deduction for unreimbursed, anticipated costs for attendant care and auxiliary apparatus for each family member who is a person with disabilities, to the extent these expenses are reasonable and necessary to enable any family member 18 years of age or older who may or may not be the member who is a person with disabilities to be employed.

Examples – Eligible Disability Assistance Expenses

The payments made on a motorized wheelchair for the 42-year-old son of the head of the family enable the son to leave the house and go to work each day on his own. Prior to the purchase of the motorized wheelchair, the son was unable to make the commute to work. These payments are an eligible disability assistance expense.

Payments to a care attendant to stay with a disabled 16-year-old child allow the child's mother to go to work every day. These payments are an eligible disability assistance expense.

2. This deduction is equal to the amount by which the cost of the care attendant or auxiliary apparatus exceeds 3 of the family's annual income. However, the deduction may not exceed the earned income received by the family member or members who are enabled to work by the attendant care or auxiliary apparatus.

3. If the disability assistance enables more than one person to be employed, the owner must consider the combined incomes of those persons. For example, if an auxiliary apparatus enables a person with a disability to be employed and frees another person to be employed, the allowance cannot exceed the combined incomes of those two people.

Example – Calculating a Deduction for Disability Assistance Expenses

Head's earned income	$14,500
Spouse's earned income	+$12,700
Total income	$27,200
Care expenses for disabled 15-year-old	$3,850
Calculation:	$3,850
(3% of annual income)	- $816
Allowable disability assistance expenses	$3,034

(**NOTE:** $3,034 is not greater than amount earned by spouse, who is enabled to work.)

4. Auxiliary apparatus includes items such as wheelchairs, ramps, adaptations to vehicles, or special equipment to enable a sight-impaired person to read or type, but only if these items are directly related to permitting the disabled person or other family member to work.

   a. Include payments on a specially-equipped van to the extent they exceed the payments that would be required on a car purchased for transportation of a person who does not have a disability.

   b. The cost of maintenance and upkeep of an auxiliary apparatus is considered a disability assistance expense (e.g., the veterinarian costs and food costs of a service animal; the cost of maintaining the equipment that is added to a car, but not the cost of maintaining the car).

   c. If the apparatus is <u>not</u> used exclusively by the person with a disability, the owner must prorate the total cost and allow a specific amount for disability assistance.

5. In addition to anticipated, ongoing expenses, one-time nonrecurring expenses of a current resident for auxiliary apparatus may be included in the calculation of the disability assistance expense deduction after the expense is incurred. These expenses may be added to the family's total disability assistance expense either at the time the expense occurs through an interim recertification or in the rent calculation during the following annual recertification.

6. Attendant care includes but is not limited to reasonable expenses for home medical care, nursing services, housekeeping and errand services, interpreters for hearing-impaired, and readers for persons with visual disabilities.

Example – Calculating a Deduction When Disability Assistance Expenses Exceed Related Earnings

Kenisha Prior, an individual with disabilities, lives with her mother Grace Prior. Her mother works full time. Kenisha works part time at the library. She requires a motorized wheelchair and special transportation to get to her job.

Grace Prior s Income	$24,000
Kenisha Prior's Income	+ 5,000
Total income	$29,000
Disability Assistance Expense	$8,000
(3% of annual income)	- $870
	$7,130

The $7,130 exceeds the amount Kenisha earns. The disability assistance deduction, therefore, is limited to the amount earned by the person made available to work or, in this case, $5,000.

7. When the same provider takes care of children and a disabled person over age 12, the owner must prorate the total cost and allocate a specific cost to attendant care. The sum of both child care and disability assistance expenses cannot exceed the employment income of the family member enabled to work.

Example – Calculating Child Care and Disability Assistance Deductions

Head's earned income	$8,300
Spouse's earned income	+ $6,700
Total income	$15,000

The family has two children: a 10-year-old son and a 15-year-old son who is disabled. One care provider, who charges $120 per week, cares for both sons. The care provider reports that the cost for caring for the 10-year-old is $50 a week and the cost of care for the child with disabilities is $70 a week.

Child care expense	$50 x 52 = $2,600
Total disability assistance expense	$70 x 52 = $3,640

Total disability assistance expense ($3,640) less 3% of annual income ($450) = $3,190

Child care deduction	$2,600
Disability assistance deduction	+$3,190
Total deductions	$5,790

Total deductions when compared to earnings must not exceed employment earnings of $6,700.

D. Medical Expense Deduction

1. The medical expense deduction is permitted only for families in which the head, spouse, or co-head is at least 62 years old or is a person with disabilities (elderly or disabled families).

2. If the family is eligible for a medical expense deduction, owners must include the unreimbursed medical expenses of all family members, including the expenses of nonelderly adults or children living in the family.

3. Medical expenses include all expenses the family anticipates to incur during the 12 months following certification/recertification that are not reimbursed by an outside source, such as insurance.

4. The owner may use the ongoing expenses the family paid in the 12 months preceding the certification/recertification to estimate anticipated medical expenses.

5. The medical expense deduction is that portion of total medical expenses that exceeds 3% of annual income.

Example – Calculating the Medical Expense Deduction

Age of head	64	Annual income	$12,000
Age of spouse	58	Total medical expenses	$1,500
		Sample Calculation	
		Annual income	$12,000
			x .03
		3% of annual income	$ 360
		Total medical expenses	$1,500
			- $360
		Allowable medical expenses	$ 1,140

6. In addition to anticipated expenses, past one-time nonrecurring medical expenses that have been paid in full may be included in the calculation of the medical expense deduction for current tenants at an initial, interim or annual recertification. Past one-time nonrecurring medical expenses that have been paid in full are not applicable when calculating anticipated medical expenses at move-in. If the tenant is under a payment plan, the expense would be counted as anticipated

   a. There are two options for addressing one-time medical expenses. These expenses may be added to the family's total medical expenses either: (1) at the time the expense occurs, through an interim recertification, or (2) at the upcoming annual recertification

      NOTE: If the one-time expense is added at an interim recertification, it cannot be added to expenses at the annual recertification.

   b. The following example illustrates the two options. Tenants may use either option.

The following example illustrates the two options. Tenants may use either option.
Example – One-Time, Nonrecurring Medical Expenses

Maria and Gustav Crumpler had a total of $2,932 in medical expenses last year (Year 1). Of this amount, $932 covered Gustav's gall bladder surgery; $2,000 was for routine costs that are expected to re-occur in the coming year. The entire amount may be included in the Crumpler's medical costs for the coming year (Year 2) despite the fact that the gall bladder surgery is a past event that is not likely to re-occur.

If, during the coming year (Year 2), the Crumplers experience additional one-time medical costs not anticipated at the annual recertification, they may request an interim recertification or wait for their next annual recertification (during Year 3) and ask for the unanticipated expenses to be included in the medical expense calculation for the following year.

The owner may wish to explain to residents that including past one-time medical expenses in an annual recertification rather than in an interim recertification will result in a rent reduction for a larger number of months.

For example, let us assume Maria has unanticipated dental surgery during Year 2 at a cost of $3,550 six months after the annual recertification. The Crumpler's current TTP is $560; their annual income is $25,000.

Annual income	$25,000
Less elderly household deduction	- $400
Less allowable medical deduction ($2,932 less 3% of $25,000)	- $2,182
Adjusted annual income	$22,418
Adjusted monthly income	$1,868
TTP	$560

If the Crumplers request an interim recertification, the $3,550 additional cost will lower their rent for 6 months; if they wait for their annual recertification, the cost of the dental surgery will affect their rent for 12 months.

Annual income	$25,000
Less elderly household deduction	- $400
Less allowable medical deduction ($6,482 less 3% of $25,000)	- $5,732
Adjusted annual income	$18,868
Adjusted monthly income	$1,572
TTP	$472

At the Crumplers' current annual income, the large dental bill reduces rent by $88.

OPTION #1: If the Year 2 rent is adjusted through an interim recertification, the Crumplers will save 6 months times $88 or $528.

OPTION #2: If the Crumplers wait until their annual recertification, the large bill will affect their rent for the 12 months of Year 3, and they will save twice as much, or $1,056.

7. When a family is making regular payments over time on a bill for a past one-time medical expense, those payments are included in anticipated medical expenses. However, if a family has received a deduction for the full amount of a medical bill it is paying over time, the family cannot continue to count that bill even if the bill has not yet been paid.

Example – Medical Expense Paid over a Period of Time

Ursula and Sebastian Grant did not have insurance to cover Sebastian's operation four years ago. They have been paying $105 a month toward the $5,040 debt. Each year that amount ($105 x 12 months or $1,260) has been included in their total medical expenses. A review of their file indicates that a total of $5,040 has been added to total medical expenses over the four-year period. However, the Grants bring a current invoice to their annual recertification interview. Over the four-year period they have missed five payments and still owe $525. Although they still owe this amount, the bill cannot be included in their current medical expenses because the expense has already been deducted.

8. Not all elderly or disabled applicants or participants are aware that their unreimbursed expenses for medical care are included in the calculation of adjusted income for elderly or disabled families. For that reason, it is important for owners to ask enough questions to obtain complete information about allowable medical expenses. The following list highlights some of the most common expenses that may be deducted. A list of examples of eligible medical expenses may be found in Exhibit 5-3.

   a. Services of doctors and health care professionals;

   b. Services of health care facilities;

   c. Medical insurance premiums or costs of an HMO;

   d. Prescription/nonprescription medicines that have been prescribed by a physician;

   e. Transportation to treatment;

   f. Dental expenses;

   g. Eyeglasses, hearing aids, batteries;

   h. Live-in or periodic medical assistance such as nursing services, or costs for an assistance animal and its upkeep;

   i. Monthly payments on accumulated medical bills;

   j. Medical care of a permanently institutionalized family member *if* his or her income is included in annual income; and

k. Long-term care insurance premiums. The family member paying a long-term care insurance premium must sign a certification (see Sample Certification for Qualified Long-Term Care Insurance Expenses in Exhibit 5-4) that states the insurance is guaranteed renewable, does not provide a cash surrender value, will not cover expenses covered under Medicare, and restricts the use of refunds. The certification must be maintained in the family's occupancy file. (Paragraph 5-6 L.3 describes situations in which long-term care insurance payments must be included in annual income.)

9. Special calculation for families eligible for disability assistance and medical expense deductions. If an elderly family has both unreimbursed medical expenses and disability assistance expenses, a special calculation is required to ensure that the family's 3 of income expenditure is applied only one time. Because the deduction for disability assistance expenses is limited by the amount earned by the person enabled to work, the disability deduction must be calculated before the medical deduction is calculated.

a. When a family has unreimbursed disability assistance expenses that are less than 3% of annual income, the family will receive no deduction for disability assistance expense. However, the deduction for medical expenses will be equal to the amount by which the sum of both disability and medical expenses exceeds 3% of annual income.

b. If the disability assistance expense exceeds the amount earned by the person who was enabled to work, the deduction for disability assistance will be capped at the amount earned by that individual. When the family is also eligible for a medical expense deduction, however, the 3% may have been exhausted in the first calculation, and it then will not be applied to medical expenses.

c. When a family has both disability assistance expenses and medical expenses, it is important to review the collected expenses to be sure no expense has been inadvertently included in both categories.

E. Elderly Family Deduction

An elderly or disabled family is any family in which the head, spouse, or co-head (or the sole member) is at least 62 years of age or a person with disabilities. Each elderly or disabled family receives a $400 family deduction. Because this is a family deduction each family receives only one deduction, even if both the head and spouse are elderly or disabled.

Example – Special Calculation for Families Who Are Eligible for Disability Assistance and Medical Expense Deductions

The following is basic information on the family:

Head (retired/disabled)—SS/pension income	$16,000
Spouse (employed)—employment income	+ $4,000
Total Annual Income	$20,000
Total disability assistance expenses	$500
Total medical expenses	$1,000

Step 1: Determine if the disability assistance expenses exceed 3% of the family's total annual income.

Total disability assistance expenses	$500
Minus 3% of total annual income	-$600
	($100)

No portion of the disability expenses exceeds 3% of the annual income; therefore, the disability assistance deduction is $0.

Step 2: Calculate if the medical expenses exceed the balance of 3 of the family's total annual income.

Total medical expenses	$1,000
Minus the balance of 3% of total annual income	- $100
Allowable medical expenses deduction	$900

F. No Deduction for Alimony or Child Support Paid to a Person outside the Assisted Family

There is no deduction for an amount paid to a person outside the assisted family for alimony or child support. Even if the amount is garnished from the wages of a family member, it must be included in annual income.

Example – Child Support Garnished from Wages

George Graevette pays $150 per month in child support. It is garnished from his monthly wages of $950. After the child support is deducted from his salary, he receives $800. The owner must count $950 as George's monthly income.

Section 3: Verification

5-11 Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 3: Verification. The citations and their titles (or topics) are listed below.

A. 24 CFR part 5, subpart B Disclosure and Verification of Social Security Numbers and Employer Identification Numbers; Procedures for Obtaining Income Information

B. *24 CFR 5.233 Mandated Use of HUD's Enterprise Income Verification (EIV) System*

C. 24 CFR 5.659 Family Information and Verification

D. 24 CFR 8.24, 8.32, 100.204 (Reasonable accommodation)

5-12 Verification Requirements

A. Key Requirements

1. Owners must verify all income, assets, expenses, deductions, family characteristics, and circumstances that affect family eligibility or level of assistance.

2. *Owners must use the EIV Income Report for third party verification of a tenant's employment and income at the time of recertification (annual and interim) and to assist in reducing administrative and subsidy payment errors.*

3. Applicants and adult family members must sign consent forms to authorize the owner to collect information to verify eligibility, income, assets, expenses, and deductions. Applicants and tenants who do not sign required consent forms will not receive assistance.

4. *Household members must disclose and provide verification of their complete and accurate SSN except for those individuals who do not contend eligible immigration status, and tenants age 62 or older as of January 31, 2010, whose initial determination of eligibility was begun before January 31, 2010. See Paragraphs 3-9 and 3-31 for SSN disclosure and verification requirements.*

5. The owner must handle any information obtained to verify eligibility or income in accordance with the Privacy Act.

Figure 5-4: Privacy Act Notice

The Department of Housing and Urban Development (HUD) is authorized to collect this information by the U.S. Housing Act of 1937 (42 U.S.C. 1437 et. seq.), by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), and by the Fair Housing Act (42 U.S.C. 3601-19). The Housing and Community Development Act of 1987 (42 U.S.C. 3543) requires applicants and participants to submit the social security number of each household member.

Purpose: Your income and other information are being collected by HUD to determine your eligibility, the appropriate bedroom size, and the amount your family will pay toward rent and utilities.

Other Uses: HUD uses your family income and other information to assist in managing and monitoring HUD-assisted housing programs, to protect the Government's financial interest, and to verify the accuracy of the information you provide. This information may be released to appropriate federal, state, and local agencies, when relevant, and to civil, criminal, or regulatory investigators and prosecutors. However, the information will not be otherwise disclosed or released outside of HUD, except as permitted or required by law.

Penalty: You must provide all of the information requested by the owner, including all social security numbers you, and all other household members, have and use. Giving the social security numbers of all household members is mandatory, and not providing the social security numbers will affect your eligibility. Failure to provide any of the requested information may result in a delay or rejection of your eligibility approval.

B. Timeframe for Conducting Verifications

Owners conduct verifications at the following three times.

1. Owners must verify income, assets, expenses, and deductions and all eligibility requirements prior to move-in.

2. Owners must verify each family's income, assets, expenses, and deductions as part of the annual recertification process. Refer to Chapter 7, Section 1 for information on annual recertifications.

3. Owners must verify changes in income, allowances, or family characteristics reported between annual recertifications. Refer to Chapter 7, Section 2 for information on interim recertifications.

5-13 Acceptable Verification Methods

A. Methods of Verification

Owners must use verification methods that are acceptable to HUD. The owner is responsible for determining if the verification documentation is adequate and credible. *Acceptable methods of verification, in order of acceptability: 1) upfront-income verification (UIV) with use of EIV being mandatory and use of non-EIV UIV being optional; 2) third-party verification from source (written), 3) third-party verification from source (oral), and 4) family certification.* If third-party verification is not available, owners must document the tenant file to explain why third-party verification was not available. **Appendix 3** provides a detailed list of acceptable forms of verification by type of information.

B. Third-Party Verification

1. *The following describes the types of third-party verification in order of acceptability

   a. Upfront-income verification (UIV)

      UIV is verification of income before or during a certification and/or recertification, through an independent source that systematically and uniformly maintains income information in a computerized form.

      (1) Using HUD's EIV system for tenants (not available for applicants). **(Mandatory)**

         It is mandatory that owners use the EIV system as the third-party source to verify employment and income information of tenants during recertification (annual and interim) of family composition and income.

      (2) UIV using non-EIV system **(Optional)**

         (a) Owners may use other non-HUD UIV tools such as The Work Number and other state government databases, if available, to verify income:

            (1) Of applicants;

            (2) When no employment or income is available in EIV; or

            (3) For other types of income received by the family.

b. Third-party verification from source (written)

(1) An original or authentic document generated by a third party source that is dated within 120 days from the date of receipt by the owner. Such documentation may be in possession of the tenant (or applicant), and commonly referred to as tenant-provided documents. These documents are considered third-party verification because they originated from a third-party source.

Examples of tenant-provided documentation that may be used includes, but is not limited to: pay stubs, payroll summary report, employer notice/letter of hire/termination, SSA benefit letter, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.

Owners must consider the following when using tenant-provided documentation:

(a) Is the document current? Documentation of public assistance may be inaccurate if it is not recent and does not show any changes in the family's benefits or work and training activities.

(b) Is the documentation complete? Owners may not accept pay stubs to document employment income unless the applicant or tenant provides the most recent four to six, consecutive pay stubs to illustrate variations in hours worked. Actual paychecks or copies of paychecks should never be used to document income because deductions are not shown on the paycheck.

(c) Is the document an unaltered original? The greatest shortcoming of tenant-provided documents as a verification source is their susceptibility to undetectable change through the use of high-quality copying equipment. Documents with original signatures are the most reliable. Photocopied documents generally cannot be assumed to be reliable.

(2) Written documentation sent directly by the third-party source by mail or electronically by fax, email or internet.

Note: See Paragraph 9-10 for situations when this method of verification must be used prior to verifying through (1) above.*

(For information about electronic documentation, see subparagraph B.2 below.)

c. *Third-party verification from source (oral).*

When verifying information over the telephone, it is important to be certain that the person on the telephone is the party he or she claims to be. Generally, it is best to telephone the verification source rather than to accept verification from a source calling the property management office. Oral verification must be documented in the file, as described in paragraph 5-18.C.

d. *Family Certification.

An owner may accept a tenant's notarized statement or signed affidavit regarding the veracity of information submitted only if the information cannot be verified by another acceptable verification method. In these instances, the owner must document the file why third-party verification was not available. (See Paragraph 5-18.E for documentation requirements when third-party verification is not available.). The owner may witness the tenant signature(s) in lieu of a notarized statement or affidavit.*

2. *The following describes use of electronic information when used as third-party verification.*

Electronic Verification. The owner may obtain accurate third-party written verification by facsimile, email, or Internet, if adequate effort is made to ensure that the sender is a valid third-party source.

a. Facsimile. Information sent by fax is most reliable if the owner and the verification source agree to use this method in advance during a telephone conversation. The fax should include the company name and fax number of the verification source.

b. Email. Similar to faxed information, information verified by email is more reliable when preceded by a telephone conversation and/or when the email address includes the name of an appropriate individual and firm.

c. Internet. Information verified on the Internet is considered third party verification if the owner is able to view web-based information from a reputable source on the computer screen. Use of a printout from the Internet may also be adequate verification in many instances. Refer to subparagraph C. Review of Documents below.

Example – Verification by Internet Printout

Jose Perez maintains a portfolio of stocks and bonds through an Internet-based stockbroker. The broker only provides electronic account statements and will not respond to a written verification request. The owner may accept a printout of Jose's most recent statement if it includes the relevant information required for third-party verification and an Internet address and header or footer that identifies the company issuing the statement. If the owner has reason to question the authenticity of a document, the owner may require Jose to access the electronic file via the Internet in the owner's office, without providing the owner with username or password information.

5-14 Identifying Appropriate Verification Sources

An owner must only collect information that is necessary to determine the applicant's or tenant's eligibility for assistance or level of assistance. **Appendix 3** provides a list of acceptable forms of third-party verification.

5-15 Required Verification and Consent Forms

A. Consent and Verification Forms

Adult members of assisted families must authorize owners to request independent verification of data required for program participation. To provide owners with this authorization, adult family members must sign two HUD-required consent forms plus the owner's specialized verification forms. Owners must create their own verification forms to request information from employers, child care providers, and others. Families sign these and the two HUD consent forms at the time of move-in certification and annual recertification. All adults in each assisted family must sign the required consent forms or the family must be denied assistance. Owners must give the family a copy of each form the family signed.

B. HUD-Required Consent and Release Forms

Applicants and tenants must sign two HUD-required consent forms.

1. Form HUD-9887, *Notice and Consent to the Release of Information to HUD and to a PHA*. Each adult member must sign the form regardless of whether he or she has income. Each family member who is at least 18 years of age and the head, spouse or co-head, regardless of age, must sign this form at move-in, initial and at each annual recertification. The form must also be signed when a new adult member joins the household. The form is valid for 15 months from the date of signature. The consent allows HUD or a public housing agency to verify information with the Internal Revenue Service *(IRS), the Social Security Administration (SSA), the Department of Health and Human Services (HHS') National Directory of New Hires (NDNH), and with state agencies that maintain wage and unemployment claim information (SWICAs).* Owners must

keep the original signed form in the tenant's file and provide a copy to the family. Exhibit 5-5 contains a copy of form HUD-9887.

2. Form HUD-9887-A, *Applicant's/Tenant's Consent to the Release of Information – Verification by Owners of Information Supplied by Individuals Who Apply for Housing Assistance*. Owners and the head of household, spouse, co-head, *regardless of age,* and each family member who is at least 18 years of age must sign a HUD-9887-A form at move-in and at each annual recertification. Each adult member must sign a form regardless of whether he or she has income. The consent allows owners to request and receive information from third-party sources about the applicant or tenant. Owners keep the original form in the tenant's file and provide a copy to the family. Exhibit 5-6 contains a copy of form HUD-9887-A.

C. **Information to Tenants**

Owners must provide applicants and tenants with the HUD Fact Sheet, a copy of the *Resident Rights and Responsibilities* brochure, *and a copy of the *EIV & You* brochure.*

1. HUD-9887 Fact Sheet. When applicants and tenants sign form HUD-9887 and form *HUD-9887-A*, owners must provide each family with a copy of the *HUD-9887/A* Fact Sheet. This Fact Sheet describes the verification requirements for applicants and tenants and the tenant protections that are part of the verification process. Exhibit 5-7 contains a copy of the *HUD-9887/A* Fact Sheet.

2. *Resident Rights and Responsibilities Brochure*. Owners must provide applicants and tenants with a copy of the *Resident Rights and Responsibilities* brochure at move-in and annually at recertification. *See Chapter 1, paragraph 1-7.B for information on obtaining copies of the brochure.*

3. **EIV & You* Brochure. Owners must provide applicants and tenants with a copy of the *EIV & You* brochure at move-in and annually at recertification. See Chapter 1, paragraph 1-7.B for information on obtaining copies of the brochure.*

D. **Owner-Created Verification Forms**

1. Owners must create verification forms for specific *verificat*ion needs and must include the language required by HUD as shown in Figure 5-5. **Appendix 6** contains instructions, a sample verification consent, and guidance about the types of information to request when verifying income and eligibility.

2. It is important that the applicant or tenant know whom owners will ask to provide information and to whom the completed form will be returned. Therefore, verification forms must clearly state in a prominent location that the applicant or tenant may not sign the consent if the form does not

clearly indicate who will provide the requested information and who will receive the information. When sending a request for verification to a third party, owners send the verification form with the applicant's or tenant's original signature to the third-party source. Owners must retain a copy of the verification form and provide a copy to the applicant or tenant upon request.

Figure 5-5: Language Required on all Consent Forms

The following statement must appear on all consent forms developed by owners:

Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government. HUD and any owner (or any employee of HUD or the owner) may be subject to penalties for unauthorized disclosures or improper use of information collected based on the consent form. Use of the information collected based on this verification form is restricted to the purposes cited above. Any person who knowingly or willingly requests, obtains or discloses any information under false pretenses concerning an applicant or participant may be subject to a misdemeanor and fined not more than $5,000. Any applicant or participant affected by negligent disclosure of information may bring civil action for damages, and seek other relief, as may be appropriate, against the officer or employee of HUD or the owner responsible for the unauthorized disclosure or improper use. Penalty provisions for misusing the social security number are contained in the Social Security Act at 208 (a) (6), (7) and (8). Violation of these provisions are cited as violations of 42 U.S.C. 408 (a) (6), (7) and (8)

5-16 Effective Term of Verifications

Verifications and consent forms must be used within a reasonable time. HUD has set specific limits on the duration of verification consents. In addition, verified information must be used in a timely manner since family circumstances are subject to change. HUD places several other limits on the information that may be requested and when and how it may be used.

A. Duration of Verification Authorization

Owner-created verification forms and the forms HUD-9887 and *HUD-9887-A* expire 15 months after they are signed. Owners must ensure that the forms HUD-9887 and *HUD-9887-A* have not expired when processing verifications. However, there are differences between the duration of form HUD-9887 and that of the individual verification forms.

1. The form HUD-9887-A and individual verification forms can be used during the 120 days before the certification period. During the certification period, however, these forms may be used only in cases

where the owner receives information indicating that the information the tenant has provided may be incorrect. Other uses are prohibited.

2. Owners may verify anticipated income using individual verification forms to gather prospective information when necessary (e.g., verifying seasonal employment). Historical information that owners may request using individual verification forms is restricted as follows:

   a. Information requested by individual verification forms is restricted to data that is no more than 12 months old.

   b. However, if the owner receives inconsistent information and has reason to believe that the information the applicant or tenant has supplied is incorrect, the owner may obtain information from any time in the last five years when the individual was receiving assistance, as provided by the form HUD-9887-A.

3. The form HUD-9887 may be used at any time during the entire 15 month period. The information covered by the form HUD-9887 is restricted as follows:

   a. <u>State Wage Information Collection Agency (SWICA)</u> Information received from SWICA is limited to wages and unemployment compensation the applicant or tenant received during the last five years she/he received housing assistance.

   b. *NDNH. Information received from HHS' NDNH is limited to wages and unemployment compensation received during period(s) within the last five years when the tenant has received assisted housing benefits.*

   c. <u>Internal Revenue Service and Social Security Administration.</u> form HUD-9887 authorizes release by IRS and SSA of data from only the current income tax return and IRS W-2 form.

      If the IRS, *NDNH* or SSA matches reveal that the tenant may have supplied inconsistent information, HUD may request that the tenant consent to the owner acquiring information on the last five years during the periods in which the tenant was receiving assistance.

B. **Effective Term of Verifications**

1. Verifications are valid for 120 days from the date of receipt by the owner, *not the effective date of the 50059.*

2. If verifications are more than 120 days old *from the date of receipt by the owner*, the owner must obtain new verifications.

3. Time limits do not apply to information that does not need to be reverified, such as:

a. Age;

b. Disability status;

c. Family membership; or

d. Citizenship status.

5-17 Inconsistent Information Obtained Through Verifications

An owner may not take any action to suspend, terminate, reduce or make a final denial of any benefits based on inconsistent information received during the verification process or when the tenant disputes information obtained until the owner has independently investigated the information. The owner *must* follow procedures for addressing errors and fraud and for terminating assistance in accordance with Chapter 8.

5-18 Documenting Verifications

A. Key Requirement

Owners must include verification documentation in the tenant file.

B. Documenting Third-Party Verification

All third-party verification documentation must be put in the tenant file, e.g., EIV Income Reports or verifications received from sources via mail, etc.

C. Documenting Telephone Verification

When verifying information by phone, the owner must record and include in the tenant's file the following information:

1. Third-party's name, position, and contact information;

2. Information reported by the third party;

3. Name of the person who conducted the telephone interview; and

4. Date and time of the telephone call.

D. Recording Inspection of Original Documents

Original documents should be photocopied, and the photocopy placed in the tenant file. *Originals of tenant-provided documents are to be returned to the tenant.* If the original document cannot be copied, a clear note to the file must describe the type of document, the information contained in the document, the name of the person who reviewed the document, and the date of that review.

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E. **Documenting Why Third-Party Verification Is Not Available**

When third-party verification is not available, owners must document in the file efforts made to obtain the required verification and the reason the verification was not obtained. The owner must include the following documents in the applicant's or tenant's file:

1. A written note to the file explaining why third-party verification is not possible; or

2. A copy of the date-stamped original request that was sent to the third party;

3. Written notes or documentation indicating follow-up efforts to reach the third party to obtain verification; and

4. A written note to the file indicating that the request has been outstanding without a response from the third party.

F. **Reasonable Accommodation**

If an applicant or tenant cannot read or sign a consent form because of a disability, the owner must provide a reasonable accommodation. See Chapter 2, Section 3, Subsection 4 for a description of the requirements regarding reasonable accommodations.

Examples – Reasonable Accommodation

- Provide forms in large print.
- Provide readers for persons with visual disabilities.
- Allow the use of a designated signatory.
- Visit the person's home if the applicant or tenant cannot travel to the office to complete the forms.

5-19 Confidentiality of Applicant and Tenant Information

A. Federal law limits the information owners can collect about an applicant or tenant to only information that is necessary to determine eligibility and level of assistance.

B. Federal privacy requirements also establish the responsibility of owners and their employees to use information provided by applicants and tenants only for specified program purposes and to prevent the use or disclosure of this information for other purposes.

1. To help ensure the privacy of applicant and tenant information, owners and their employees are subject to penalties for unauthorized disclosure

of applicant/tenant information. In addition, applicants and tenants may initiate civil action against an owner for unauthorized disclosure or improper use of the information they provided. Language on the HUD-required consent forms, the verification forms developed by owners, and the HUD-50059 clearly describes owners' responsibility regarding the privacy of this information and the possible penalties.

2. HUD encourages owners to develop their own procedures and internal controls to prevent the improper use or unauthorized disclosure of information about applicants and tenants. Adequate procedures and controls protect not only applicants and tenants, but also owners.

C. Owners must also comply with state privacy laws concerning the information they receive from third-party sources about applicants and tenants. These laws generally require confidentiality and restrict the uses of this information.

5-20 *Security of EIV Data

The data in EIV contains personal information on individual tenants that is covered by the Privacy Act. The information in EIV may only be used for limited official purposes.

A. Owners, in connection with the administration of their project, may only use the employment and income information in EIV at the time of recertification, or at other times as addressed in their policies and procedures.

B. Owners cannot share the EIV income information with governmental entities not involved in the recertification process used for HUD's assisted housing programs, e.g., the LIHTC program and RHS Section 515 program.

See Chapter 9, Enterprise Income Verification (EIV), for additional information on official use of EIV information.*

5-21 Refusal to Sign Consent Forms

A. If an applicant refuses to sign forms HUD-9887 or *HUD-9887-A* or the owner's verification forms, the owner must deny assistance.

B. If a tenant *or any member of the tenant's family* refuses to sign the required verification and consent forms, the owner must terminate *the household's* assistance. If the owner intends to terminate assistance for this reason, the owner must follow procedures established in the lease that require the tenant to pay the HUD-approved market rent for the unit. In a Section 202 PRAC or Section 811 PRAC project, the tenant may be evicted if the tenant *or any member of the tenant's family* refuses to sign the required verification and consent forms.

C. If a tenant is unable to sign the forms on time due to extenuating circumstances, the owner must document the reasons for the delay in the tenant file and indicate how and when the tenant will provide the proper signature.

Examples – Tenant Failure to Sign Consent Forms Due to Extenuating Circumstances

- Jonas and Joycelyn Hardwick were to have forms HUD-9887 and *HUD-9887-A* signed by their adult son. However, he was in an automobile accident and has been in a coma.
- Lydia Bailey's husband has been temporarily assigned to overseas duty as part of a missionary hunger-relief program. She has signed consent forms, and the forms have been mailed to him but have not been returned. She reports that mail has recently been taking five or six weeks.

5-22 Interim Recertifications

When processing an interim recertification, the owner must ask the tenant to identify all changes in income, expenses, or family composition since the last recertification. Owners only need verify those items that have changed. For example, if the head of household was laid off from his or her job and asks the owner to prepare an interim recertification, the owner does not need to reverify the spouse's employment income unless that has also changed. When the tenant signs the certification she or he certifies that the information on the report is accurate and current. Additional information about the procedures for conducting interim recertifications is discussed in Chapter 7, Section 2.

5-23 Record-Keeping Procedures

A. Owners must keep the following documents in the tenant's file at the project site:

1. All original, signed forms HUD-9887 and HUD-9887-A;

2. A copy of signed individual consent forms;

3. *A copy of the EIV Income Report, regardless of whether or not any income is reported for the household, along with the HUD-50059 and any other documentation obtained supporting income and rent determinations; and

4. Third-party verifications received from third-party sources.*

B. Owners must maintain documentation of all verification efforts throughout the term of each tenancy and for at least three years after the tenant moves out

C. The tenant's file should be available for review by the tenant upon request or by a third party who provides signed authorization for access from the tenant.

***NOTE:** The Federal Privacy Act (5 USC 552a, as amended) prohibits the disclosure of an individual's information to another person without the written

consent of such individual. As such, the EIV data of an adult household member may not be shared (or a copy provided or displayed) with another adult household member, unless the individual has provided written consent to disclose such information. See Chapter 9, paragraph 9-18 for more information on disclosing EIV data to another individual or entity.*

D. Owners must maintain applicant and tenant information in a way to ensure confidentiality. Any applicant or tenant affected by negligent disclosure or improper use of information may bring civil action for damages and seek other relief, as appropriate, against the employee. Forms HUD-9887 and *HUD-9887-A* describe the penalties for the improper use of consent forms.

E. Owners must dispose of tenant files and records in a manner that will prevent any unauthorized access to personal information, e.g., burn, pulverize, shred, etc.

Section 4: Calculating Tenant Rent

5-24 Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 4: Calculating Tenant Rent. The citations and their titles or (topics) are listed below.

A. 24 CFR 5.628 Total Tenant Payment

B. 24 CFR 5.630 Minimum Rent

C. 24 CFR 236.735 Rental Assistance Payments and Rental Charges

D. 24 CFR 891.105, 891.410, 891.520, 891.640, 891.655, 891.705 (Project rental assistance payment, project assistance payment, tenant rent, total tenant payment, and rent for unassisted units)

E. 24 CFR 5.661 Section 8 project-based assistance programs: Approval for police or other security personnel to live in project

5-25 Calculating the Tenant Contribution for Section 8, PAC, PRAC, RAP, and Rent Supplement Properties

A. **Total Tenant Payment (TTP)**

The Total Tenant Payment (TTP) is the amount a tenant is expected to contribute for rent and utilities. TTP for Section 8, PAC, PRAC, RAP, and Rent Supplement properties is based on the family's income. The formulas for calculating TTP are shown in Figure 5-6. Exhibit 5-8 also shows the formulas for calculating tenant contributions for all assisted-housing programs.

B. **Unit Rent**

1. The contract rent (basic rent in the Section 236 program) represents the amount of rent an owner is entitled to collect to operate and maintain the property. It is HUD-approved. For Section 202 and 811 PRACS, the contract rent is the operating rent *(gross rent)* minus the utility allowance.

2. Projects in which the tenant pays all or some utilities have HUD-approved utility allowances that reflect an estimated average amount tenants will pay for utilities assuming normal consumption.

C. **Timeframe for Calculating Rent**

Owners calculate rent at three points in time.

1. Owners must calculate rent prior to occupancy by an applicant.

2. Owners must calculate rent as part of an annual recertification. Refer to Chapter 7, Section 1 for information on annual recertification of income.

3. When assistance is provided through Section 8, PAC, PRAC, RAP, or Rent Supplement, owners must recalculate rent if a tenant reports a change in income, allowances, or family composition. Refer to Chapter 7, Section 2 for information on interim recertifications of income.

Figure 5-6: Total Tenant Payment Formulas

Section 8, PAC, PRAC, and RAP

- TTP is the greater of the following:
  - 30% of monthly adjusted income;
  - 10% of monthly gross income;
  - Welfare rent (welfare recipients in as-paid localities only); or
  - The $25 minimum rent (Section 8 only).
- Section 8, RAP, and PAC programs may admit an applicant only if the TTP is less than the gross rent.
- In PRAC properties, the TTP may exceed the PRAC operating rent.

Rent Supplement

- TTP is the greater of the following:
  - 30% of monthly adjusted income; or
  - 30% of gross rent.
- At move-in or initial certification, the amount of Rent Supplement assistance may be no less than 10% of the gross rent or the tenant is not eligible.

5-26 Procedures for Determining Tenant Contribution for Section 8, PAC, PRAC, RAP, and Rent Supplement Properties

A. Tenant Rent

Tenant rent is the portion of the TTP the tenant pays each month to the owner for rent. Tenant rent is calculated by subtracting the utility allowance from the TTP.

It is possible for tenant rent to be $0 if the utility allowance is greater than the TTP.

Example – Calculating Tenant Rent

TTP:	$225
Utility allowance:	-$ 75
Tenant rent:	$150

B. Assistance Payments

The assistance payment is the amount the owner bills HUD every month on behalf of the tenant. The assistance payment covers the difference between the TTP and the gross rent. It is the subsidy that HUD pays to the owner.

1. Housing Assistance Payment (HAP) is the assistance payment made by HUD to owners with units receiving assistance from the Section 8 program.

Example – Calculating HAP

Gross rent	$564
TTP	- $175
HAP	$389

2. Rental Assistance Payment (RAP) is the assistance payment made by HUD to owners for units receiving assistance through the RAP program.

3. Rent Supplement payment is the assistance payment made by HUD to owners for units receiving assistance through the Rent Supplement program.

4. Project Assistance Payment (PAC) is the assistance payment made by HUD for assisted units in a Section 202 project for nonelderly disabled families and individuals (also referred to as Project Assistance Contract [PAC] projects).

5. Project Rental Assistance Payment (PRAC) is the assistance payment made by HUD for assisted units in Section 202 or Section 811 properties with a Project Rental Assistance Contract (PRAC).

C. Utility Reimbursement

When the TTP is less than the utility allowance, the tenant receives a utility reimbursement to assist in meeting utility costs. The tenant will pay no tenant rent. The utility reimbursement is calculated by subtracting the TTP from the utility allowance.

D. Section 8 Minimum Rent

Tenants in properties subsidized through the Section 8 program must pay a minimum TTP of $25.

NOTE: Minimum rent does not apply to Section 202 PAC, Section 202 PRAC, Section 811 PRAC, RAP, Rent Supplement, Section 221(d)(3) BMIR or Section 236 programs.

1. The minimum rent is used when 30% of adjusted monthly income and 10% of gross monthly income, and the welfare rent where applicable, are all below $25.

2. The minimum rent includes the tenant's contribution for rent and utilities. In any property in which the utility allowance is greater than $25, the full TTP is applied toward the utility allowance. The tenant will receive a utility reimbursement in the amount by which the utility allowance exceeds $25.

Example – Utility Reimbursement for a Tenant Paying Minimum Rent

The Nguyen family qualifies for the minimum total tenant payment of $25. The family pays its own utility bills. The utility allowance for the unit is $75 a month. The owner sends the Nguyen family a check each month for $50 ($75-$25) as a utility reimbursement. The Nguyen family does not pay any tenant rent to the owner.

3. Financial hardship exemptions.

   a. Owners must waive the minimum rent for any family unable to pay due to a long-term financial hardship, including the following:

      – The family has lost federal, state, or local government assistance or is waiting for an eligibility determination.

      – The family would be evicted if the minimum rent requirement was imposed.

      – The family income has decreased due to a change in circumstances, including but not limited to loss of employment.

      – A death in the family has occurred.

      – Other applicable situations, as determined by HUD, have occurred.

   b. Implementing an exemption request. When a tenant requests a financial hardship exemption, the owner must waive the minimum $25 rent charge beginning the month immediately following the tenant's request and implement the TTP calculated at the higher of 30% of adjusted monthly income or 10% of gross monthly income (or the welfare rent). The TTP will not drop to zero unless those calculations all result in zero.

(1) The owner may request reasonable documentation of the hardship in order to determine whether there is a hardship and whether it is temporary or long term in nature. The owner should make a determination within one week of receiving the documentation.

(2) If the owner determines there is no hardship as covered by the statute, the owner must immediately reinstate the minimum rent requirements. The tenant is responsible for paying any minimum rent that was not paid from the date rent was suspended. The owner may not evict the tenant for nonpayment of rent during the time in which the owner was making the determination. The owner and tenant should reach a reasonable repayment agreement for any back payment of rent.

(3) If the owner determines that the hardship is temporary, the owner may not impose the minimum rent requirement until 90 days after the date of the suspension. At the end of the 90-day period, the tenant is responsible for paying the minimum rent, retroactive to the initial date of the suspension. The owner may not evict the tenant for nonpayment of rent during the time in which the owner was making the determination or during the 90-day suspension period. The owner and tenant should reach a reasonable repayment agreement for any back payment of rent.

Example – Temporary Hardship Schedule

Due to the death of his wife, Yung Kim took a six-week leave of absence from his part-time job. He requests a financial hardship exception. The owner, Oak Knoll Management, reviews his request and determines that the hardship is not long term. Yung Kim and Oak Knoll Management implement the following schedule:

• Current TTP	$25
• Hardship request received	July 15
• Owner grants temporary hardship	July 20
• August TTP	$0
• September TTP	$0
• October TTP	$0
• 90-day period ends	October 15
Total balance due 3 x $25	$75
• Tenant agrees to pay $10 extra per month for seven months and $5 extra on the eighth month.	
• Monthly payment for seven months November May TTP $25 + $10	$35
• June TTP $25 + $5	$30
• July TTP	$25

(4) If the hardship is determined to be long term, the owner must exempt the tenant from the minimum rent requirement from the date the owner granted the suspension. The suspension may be effective until such time that the hardship no longer exists. However, the owner must recertify the tenant every 90 days while the suspension lasts to verify that circumstances have not changed. The length of the hardship exemption may vary from one family to another depending on the circumstances of each family. The owner must process an interim recertification to implement a long-term exemption. Owners must maintain documentation on all requests and determinations regarding hardship exemptions.

E. Welfare Rent

1. The term welfare rent applies only in states that have as-paid public benefit programs. A welfare program is considered as-paid if the welfare agency does the following:

   a. Designates a specific amount for shelter and utilities; and

b. Adjusts that amount based upon the actual amount the family pays for shelter and utilities.

2. The maximum amount that may be specifically designated for rent and utilities is called the welfare rent. See below for an example.

Example – Calculating Welfare Rent

Published maximum for shelter and utilities:	$200
Amount of welfare assistance for other needs:	$220
Other income:	$100

Monthly income =	$520
Welfare rent	$200

5-27 Calculating Assistance Payments for Authorized Police/Security Personnel

A. The amount of the monthly assistance payment to the owner is equal to the contract rent minus the monthly amount paid by the police officer or security personnel. HUD will not increase the assistance payment due to nonpayment of rent by the police officer or security personnel.

NOTE: The owner is not entitled to vacancy payments for the period following occupancy by a police officer or security personnel.

B. For police/security personnel whose income exceeds the income limit for the property, the rent is set by the owner.

1. The determination of the rent amount in such circumstances should take into consideration the income of the officer, the location of the property, and rents for comparable unassisted units in the area.

2. Owners should establish a rent that is attractive to the officer, but not less than what the officer would pay as an eligible Section 8 tenant.

3. Owners are expected to use a consistent methodology for each property when establishing the rents for officers in these circumstances.

5-28 Calculating Tenant Contribution for "Double Occupancy" in Group Homes

A. **Double Occupancy**

Some group homes for disabled residents provide units that may be shared by unrelated single tenants. The calculations for tenant contribution and for the assistance payment vary depending on whether the project is a Section 202/8 or a Section 811.

B. Total Tenant Payment

In both Section 202/8 and Section 811 group homes, each tenant in a double occupancy room is treated as a separate family in the calculation of TTP. Each resident is entitled to any deductions he or she would receive if occupying a single room, including the $400 elderly/disabled family deduction.

Example – TTP Calculation for Double Occupancy

Resident A:	
Annual income	$5,200
Elderly family deduction	- $400
Medical expense deduction	- $900
Annual adjusted income	$3,900
Monthly adjusted income	$325 ($3,900/12 months)
30% of monthly adjusted income	$98
10% of monthly gross income	$43
Minimum rent	$25
TTP for Resident A =	$98
Resident B:	
Annual income	$3,600
Elderly family deduction	- $400
Medical expense deduction	- $2,480
Annual adjusted income	$720
Monthly adjusted income	$60 ($720/12 months)
30% of monthly adjusted income	$18
10% of monthly gross income	$30
Minimum rent	$25
TTP for Resident B =	$30

C. Contract Rent and Assistance Payment in Section 202/8 Group Homes

1. In Section 202/8 group homes, the contract rent for a room shared by two occupants is split between the two tenants.

2. The assistance payment for the Section 202/8 double occupancy room is calculated separately for each tenant based on half of the contract rent for the unit.

Example – Assistance Payment, Section 202/8 Double Occupancy

Contract rent for the unit	$800
Half of the contract rent for the unit	$400
TTP for Tenant A =	$98
Assistance payment for Tenant A is $400 less $98 =	$302
TTP for Tenant B =	$30
Assistance payment for Tenant B is $400 less $30 =	$370

3. If the tenant rent for either tenant exceeds half of the contract rent, that tenant's rent will be capped at half of the contract rent. In the Section 202/8 double occupancy room, half of the contract rent is the maximum rent one occupant can pay.

Example – Section 202/8 Double Occupancy

Tenant A has an increase in income changing the monthly adjusted income to $1,500. 30% of $1,500 equals $450. Tenant A is no longer eligible for assistance. Tenant A's rent is capped at $400, which represents the maximum Tenant A will pay.

Gross rent for unit	$800
Half the contract rent for the unit	$400
TTP for Tenant A	$450
Assistance Payment for Tenant A	-0-
Rent Tenant A will pay	$400

4. Owner's rent-calculation software must reflect the split-unit rent and contain unit numbers that provide a distinction between tenants (e.g., unit 101A, 101B).

D. **Operating Cost and Assistance Payment in Section 811 Group Homes**

1. In a Section 811 group home, the operating cost for a room shared by two occupants is split between the two tenants.
2. The assistance payment for the Section 811 double occupancy room is calculated separately for each tenant based on half of the operating cost for the unit.

3. In a Section 811 property, each tenant is certified separately and pays the greater of 30% of monthly adjusted income, 10% of monthly annual income, or the welfare rent.

4. In the Section 811 double occupancy unit, both occupants will pay the calculated TTP amount even if it exceeds their portion of the operating cost for the unit.

Example – Calculating the Assistance Payment for a Double Occupancy Unit in a Section 811 Group Home

Operating cost for unit	$310
Half of the operating cost for the unit	$155
TTP Tenant A =	$160
Assistance Payment for Tenant A	$(5)
TTP Tenant B =	$75
Assistance Payment for Tenant B	$80

Although the Assistance Payment for Tenant A is zero, the voucher must indicate that $5 over the operating cost was collected for rent. This is indicated by bracketing the ($5.)

5. Owner's rent-calculation software must reflect the split-unit operating cost and contain unit numbers that provide a distinction between tenants (e.g., unit 101A, 101B).

Example – Section 811 Total Tenant Payments

Operating cost for the unit	$310
One half of operating cost	$155
TTP Tenant A =	$330
Assistance Payment for Tenant A	($175)
TTP Tenant B =	$240
Assistance payment for Tenant B	($85)

E. **Calculating Rent at Change in Occupancy**

1. If there is a change in the number of individuals occupying the double occupancy unit, the assistance payment for the whole unit may change.

2. In a Section 202/8 or a Section 811 PRAC double-occupancy room, the rent and assistance payments are calculated as if each tenant occupied a separate unit each with a rent equaling half of the contract rent or operating cost for the unit. If one resident moves out, the TTP and assistance payment calculations for the remaining resident remain the same. The other half of the unit is treated like a vacant unit: there is no assistance payment but the owner may be eligible for vacancy loss claims for the vacated half of the unit.

Example – Section 202/8 Calculation at a Change in Occupancy

Contract Rent	$800
Half of the contract rent	$400
Tenant A Tenant Rent	$98
Tenant B Tenant Rent	$30

Tenant A moves out.

Assistance Payment for Tenant B is calculated using half of the contract rent = $400 less the Tenant Rent for Tenant B $30 = $370 housing assistance payment.

There is no HAP payment for the half of the unit vacated by Tenant A. It is vacant. But, the owner may request a vacancy loss payment if appropriate.

Example – Section 811 Calculation at a Change in Occupancy

Operating Cost	$310
Half of the operating cost	$155
Tenant A Tenant Rent	$160
Tenant B Tenant Rent	$75

Tenant A moves out.

Assistance Payment for Tenant B is calculated using half of the operating cost = $155 less the Tenant Rent for Tenant B $75 = $80 housing assistance payment.

There is no Assistance Payment for the half of the unit vacated by Tenant A. It is vacant. Even though Tenant A was paying more than half of the operating cost for the unit at move-out, the owner may request a vacancy loss payment if all other vacancy claim requirements have been met.

5-29 Calculating Tenant Contribution for Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR)

A. Tenant's Rent Contribution

The tenant's contribution to rent in the Section 236 and Section 221(d)(3) BMIR programs is based on the cost to operate the property and the income of the family. Figure 5-7 presents the rules for determining the tenant rent in these two programs.

1. Section 236 property. Every Section 236 property has a HUD-approved basic rent and market rent. Basic rent is the minimum rent all Section 236 tenants must pay. It represents the cost to operate the property after HUD has provided mortgage assistance to reduce the mortgage interest expense. The market rent represents the amount of rent the owner would have to charge, if the mortgage were not subsidized. Tenants pay a percentage of their income towards rent, but never pay less than the basic rent or more than the market rent for the property.

   When a tenant pays more than basic rent, the difference between the tenant's rent and basic rent is called excess income. Excess income is an amount that exceeds what the owner needs to operate the property and is subject to specific requirements. Refer to HUD Handbook 4350.1, *Multifamily Asset Management and Project Servicing*, and other current HUD notices for guidance on handling excess income. Although a tenant may pay more than basic rent, no tenant in a Section 236 property will pay more than the market rent for the property.

Example – Calculating Excess Income

Rent for Tenant A (30 of Tenant A's income):	$350
Basic rent	-$300
Excess Income	$50

2. Section 221(d)(3) BMIR property. There is no rent calculation for tenants in a Section 221(d)(3) BMIR property. HUD approves a BMIR rent that all of the tenants must pay. The federal assistance in the BMIR property is provided through a below market interest rate for the mortgage loan. Applicants must meet income eligibility standards to be admitted to a BMIR property. After move-in, if a tenant's annual income goes above 110% of the BMIR income limit, the tenant must pay 110% the BMIR rent.

3. BMIR cooperative. If a BMIR cooperative member's annual income exceeds 110% of the BMIR income limit at the time of recertification, the cooperative must levy a surcharge to the member. See the definition of market rent in the Glossary for an explanation of the market carrying charge for over-income cooperative members.

B. Timeframe for Calculating Rent

Owners calculate rent at three points in time.

1. Owners must calculate rent prior to occupancy by an applicant.

2. Owners must calculate rent as part of an annual recertification. Refer to Chapter 7, Section 1 for information on annual recertification of income.

3. Owners of Section 236 properties must calculate rent if a tenant reports a change in income, allowances, or family composition. Refer to Chapter 7, Section 2 for information on interim recertifications of income.

Figure 5-7: Tenant Contributions for the Section 236 and Section 221(d)(3) BMIR

Section 236

Section 236 without Utility Allowance

- Tenant rent is the greater of:
  - ♦ 30% of monthly adjusted income; or
  - ♦ Section 236 basic rent.
- Tenant rent may not be more than the Section 236 market rent.

Section 236 with Utility Allowance

- Tenant rent is the greater of:
  - ♦ 30% of monthly adjusted income less the utility allowance; or
  - ♦ 25% of monthly adjusted income; or
  - ♦ Basic rent.
- Tenant rent may not be more than the Section 236 market rent.

Section 221(d)(3) BMIR

- At initial certification, the tenant pays the BMIR rent.
- At recertification, the tenant's annual income is compared to the BMIR income limits. If the tenant's annual income is:
  - ♦ Less than or equal to 110% of the BMIR income limit, the tenant pays the BMIR rent;
  - ♦ Greater than 110% of the BMIR income limit, the tenant pays 110% of the BMIR rent.

5-30 Determining Tenant Contribution at Properties with Multiple Forms of Subsidy

A. At many multifamily properties different kinds of subsidies have been combined. For many years, tenant-based Section 8 subsidies have been added to properties built with Section 202 loans or financed with Section 236 and Section 221(d)(3) mortgage subsidies. Recently, the Low Income Housing Tax Credit program has been combined with a wide range of programs, from Section 202 projects with Section 8 already in place (Section 202/8) to housing choice voucher assistance.

B. Although each of the programs combined within one property may have a different formula for determining tenant payments, it is generally possible to determine the correct rent for a family by identifying the available program for which that family is eligible that will provide the best option—or the lowest rent—for the tenant. The one exception to this can be at the recertification of a Section 8 or Rent Supplement family in a property with Low Income Housing Tax Credits. If the family's income has increased since move-in to a point that the assisted rent exceeds the Low Income Housing Tax Credit rent, that family will have to make a choice between the lower tax credit rent and the security of continuing on the rental assistance program.

C. The tenant rent at properties assisted under more than one program is generally the lowest rent available for which the tenant is eligible.

1. Section 202/Section 8. In a Section 202 property with Section 8 tenant-based assistance, a tenant eligible for Section 8 will pay the tenant rent based on the Section 8 rent formula. If that tenant's income increases to the point that its TTP equals or exceeds the Section 8 contract rent, the family would no longer be eligible for the tenant based assistance.

2. Section 236/Section 8. A family with a Section 8 subsidy in a Section 236 property will pay the Section 8 tenant rent unless, at recertification, the family's TTP equals or exceeds the Section 8 contract rent. Thereafter, the family will pay the tenant rent based on the Section 236 rent formula. A family living in a Section 236 property receiving Rent Supplement assistance would also stop receiving Rent Supplement assistance at the point the family's TTP increased to the level of the rent supplement contract rent. Thereafter the family will pay the tenant rent based on the Section 236 rent formula.

3. Section 221(d)(3) BMIR with Section 8. A family receiving Section 8 assistance at a BMIR project would continue to pay the tenant rent based on the Section 8 rent formula until the TTP equaled or exceeded the BMIR rent. Thereafter, the family would pay rent based on the BMIR rent formula.

D. In some instances, a tenant will not be eligible for the program offering the lowest rent, or a subsidy under that program will not be available for every unit or every tenant.

Sometimes, Section 8 subsidies are not available for the unit size the family needs, and the family must wait for a subsidy for the appropriate unit size. The owner's contract with HUD for the Section 8 assistance allocates Section 8 funding by unit size, and the owner is required to subsidize families based on the unit sizes allocated. If the owner was allocated 10 two-bedroom subsidies and has assigned those subsidies to 10 two-bedroom families, the owner cannot use an available three-bedroom subsidy to assist an 11th two-bedroom family. If the owner has determined that the bedroom distribution in its contract does not match the need in the project, the owner can ask HUD for a contract amendment to revise the unit size designations of the subsidy awarded.

E. In some instances, a family will not be eligible for a lower rent program available at the property.

For example, a family in a BMIR project with Section 8 may be financially stretched when paying the BMIR rent but may not be income-eligible for the lower-rent Section 8 program.

5-31 Procedures for Calculating Rent

A. Owners must calculate tenant rent payments electronically using on-site software or a service provider. Data used to determine the rent are based on information certified as accurate by the family and independently verified.

B. The owner's computer software calculates rent based on the appropriate formulas for the tenant's unit and produces a printed copy of the HUD-50059 to be signed by the tenant and the owner. The owner must produce a printed report in an easily read and understood format that contains all of the information used to calculate the tenant's rent.

C. The tenant and the owner sign a copy of the report containing a statement certifying the accuracy of the information. The certification statements are provided on the form HUD-50059 in Appendix 7-B.

D. The owner must give a copy of the printed HUD-50059 with the required signatures to the tenant and place another copy in the tenant file.

E. The HUD-50059 is then transmitted electronically to TRACS either directly or through the Contract Administrator.

F. In all cases, the computer generated HUD-50059 must include the required tenant signatures and owner signatures prior to submitting the data to the Contract Administrator or HUD. The owner may consider extenuating circumstances when an adult family member is not available to sign the HUD-50059, for example, an adult serving in the military, students away at college, adults who are hospitalized for an extended period of time, or a family member who is permanently confined to a nursing home or hospital. The owner must document the file why the signature(s) was not obtained and, if applicable, when the signature(s) will be obtained.

Chapter 5 Exhibits

5-1. Income Inclusions and Exclusions

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35699.pdf

5-2. Assets

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35701.pdf

5-3. Examples of Medical Expenses That Are Deductible and Nondeductible

http://portal.hud.gov/hudportal/documents/huddoc?id=43503e5-3HSGH.pdf

5-4. Sample Certification for Qualified Long-Term Care Insurance Expenses

http://portal.hud.gov/hudportal/documents/huddoc?id=90101.pdf

5-5. Form HUD-9887, *Notice and Consent for the Release of Information to HUD and to a PHA*

http://portal.hud.gov/hudportal/documents/huddoc?id=9887.pdf

5-6. Form HUD-9887-A, *Applicant's/Tenant*'s *Consent to the Release of Information – Verification by Owners of Information Supplied by Individuals Who Apply for Housing Assistance*

See 5-5 above.

5-7. HUD Fact Sheet Verification of Information Provided by Applicants and Tenants of Assisted Housing

See 5-5 above.

5-8. Tenant Rent Formulas

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35705.pdf

Exhibit 5-1: Income Inclusions and Exclusions

24 CFR 5.609(b) and (c)

Examples included in parentheses have been added to the regulatory language for clarification.

INCOME INCLUSIONS

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

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

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (2) above. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of $5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a **periodic amount (e.g., Black Lung Sick benefits, Veterans Disability, Dependent Indemnity Compensation, payments to the widow of a serviceman killed in action). See paragraph (13) under Income Exclusions for an exception to this paragraph;**

(5) Payments in lieu of earnings, such as unemployment, disability compensation, worker's compensation, and severance pay, except as provided in paragraph (3) under Income Exclusions;

(6) Welfare Assistance.

(a) Welfare assistance received by the family.

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

income shall consist of:

(c) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(d) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

(7) Periodic and determinable allowances, such as alimony and child support payments, and regularr contributions or gifts received from organizations or from persons not residing in the dwelling; and

(8) All regular pay, special pay, and allowances of a member of the Armed Forces, except as provided in paragraph (7) under Income Exclusions.

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

INCOME EXLCUSIONS:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually persons with disabilities unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses, except as provided in paragraph (5) under Income Inclusions;

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in 24 CFR 5.403;

(6) The full amount of student financial assistance paid directly to the student or to the educational institution (see Income Inclusions (9), above, for students receiving Section 8 assistance);

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire (e.g., in the past, special pay included Operation Desert Storm);

(8) (a) Amounts received under training programs funded by HUD (e.g., training received under Section 3);

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

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

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

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

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

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era. (Examples include payments by the German and Japanese governments for atrocities committed during the Nazi era);

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

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

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

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

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

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

The following is a list of income sources that qualify for that exclusion:

(a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 [b]);

(b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058) (employment through AmeriCorps, Volunteers in Service to America [VISTA], Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions);

(c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626[c])

(d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

(e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624[f]);

(f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552[b]; (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 [29 U.S.C. 2931], e.g., employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, state job training programs, career intern programs, Americorps);

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

(h) The first $2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first $2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408);

(i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);

(j) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056[f]), e.g., Green Thumb, Senior Aides, Older American Community Service Employment Program;

(k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent*-product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

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

(m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);

(n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991, including advanced earned income credit payments (26 U.S.C. 32[j]);

(o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);

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

(q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805);

(r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602); and

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

Exhibit 5-2: Assets

NOTE: There is no asset limitation for participation in HUD assisted-housing programs. However, the definition of annual income includes net income from family assets.

A. Net Family Assets include the following:

1. Cash held in savings and checking accounts, safe deposit boxes, homes, etc. For savings accounts, use the current balance. For checking accounts, use the average balance for the last six months. Assets held in foreign countries are considered assets.

2. Revocable trusts. Include the cash value of any revocable trust available to the family. See discussion of trusts in paragraph 5-7 G.1.

3. Equity in rental property or other capital investments. Include the current fair market value less (a) any unpaid balance on any loans secured by the property and (b) reasonable costs that would be incurred in selling the asset (e.g., penalties, broker fees, etc.).

   NOTE: If the person's main business is real estate, then count any income as business income under paragraph 5-6 G of the chapter. Do not count it both as an asset and business income.

4. Stocks, bonds, Treasury bills, certificates of deposit, mutual funds, and money market accounts. Interest or dividends earned are counted as income from assets even when the earnings are reinvested. The value of stocks and other assets vary from one day to another. The value of the asset may go up or down the day before or after rent is calculated and multiple times during the year thereafter. The owner may assess the value of these assets at any time after the authorization for the release of information has been received. The tenant may request an interim recertification at any time thereafter that a decrease in stock value may result in a decrease in rent.

5. Individual retirement, 401K, and Keogh accounts. These are included when the holder has access to the funds, even though a penalty may be assessed. If the individual is making occasional withdrawals from the account, determine the amount of the asset by using the average balance for the previous six months. (Do not count withdrawals as income.)

Example – Withdrawals from a Keogh Account

Ly Pham has a Keogh account valued at $30,000. When she turns 70 years old, she begins drawing $2,000 a year. Continue to count the account as an asset. Use the guidance in paragraph 5-7 to determine the cash value and imputed income from the asset. Do not count the $2,000 she withdraws as income.

6. Retirement and pension funds.

a. While the person is employed. Include only amounts the family can withdraw without retiring or terminating employment. Count the whole amount less any penalties or transaction costs. Follow paragraph 5-7 G.4 of the chapter on determining the value of assets.

b. At retirement, termination of employment, or withdrawal. Periodic receipts from pension and retirement funds are counted as income. Lump-sum receipts from pension and retirement funds are counted as assets. Count the amount as an asset or as income, as provided below.

(1) If benefits will be received in a lump sum, include the lump-sum receipt in net family assets.

(2) If benefits will be received through periodic payments, include the benefits in annual income. Do not count any remaining amounts in the account as an asset.

(3) If the individual initially receives a lump-sum benefit followed by periodic payments, count the lump-sum benefit as an asset as provided in the example below and treat the periodic payment as income. In subsequent years, count only the periodic payment as income. Do not count the remaining amount as an asset.

NOTE: This paragraph and the example below assume that the lump-sum receipt is a one-time receipt and that it does not represent delayed periodic payments. However, in situations in which a lump-sum payment does represent delayed periodic payments, then the amount would be considered as income and not an asset.

Example – Retirement Benefits as Lump-Sum and Periodic Payments

Upon retirement, Eleanor Reilly received a lump-sum payment of $15,000. She will also receive periodic pension payments of $350 a month.

The lump-sum amount of $15,000 is generally treated as an asset. In this instance, however, Eleanor spent $5,000 of the lump sum on a trip following her retirement. The remaining $10,000 she placed in her mutual fund with other savings. The entire mutual fund will be counted as an asset.

The owner has verified that Eleanor is now not able to withdraw the balance from her pension. Therefore, the owner will count the $350 monthly pension payment as annual income and will not list the pension account as an asset.

7. Cash value of life insurance policies available to the individual before death (e.g., the surrender value of a whole life policy or a universal life policy). It would not include a value for term insurance, which has no cash value to the individual before death.

8. Personal property held as an investment. Include gems, jewelry, coin collections, or antique cars held as an investment. Personal jewelry is NOT considered an asset.

9. Lump-sum receipts or one-time receipts. (See paragraph 5-6 **P** for additional information on what is counted as a lump-sum receipt and how to treat lump-sum receipts.) These include inheritances, capital gains, one-time lottery winnings, victim's restitution, settlements on insurance claims (including health and accident insurance, worker's compensation, and personal or property losses), and any other amounts that are not intended as periodic payments.

10. A mortgage or deed of trust held by an applicant.

    a. Payments on this type of asset are often received as one combined payment of principal and interest with the interest portion counted as income from the asset.

    b. This combined figure needs to be separated into the principal and interest portions of the payment. (This can be done by referring to an amortization schedule that relates to the specific term and interest rate of the mortgage.)

    c. To count the actual income for this asset, use the interest portion due, based on the amortization schedule, for the 12-month period following the certification.

    d. To count the imputed income for this asset, determine the asset value **as of the effective date of the certification**. Since this amount will continually be reduced by the principal portion paid during the previous year, the owner will have to determine this amount at each annual recertification. See the following example:

Example – Deed of Trust and Imputed Income

Computation of imputed income:
An elderly tenant sells her home and holds the mortgage for the buyer. The cash value of the mortgage is $60,000. The combined payment of principal and interest expected to be received for the upcoming year is $5,000. The amortization schedule breaks that payment into $2,000 in principal and $3,000 in interest. In completing the asset income calculation, the cash value of the asset is $60,000, and the projected annual income from that asset is $3,000. **The imputed income would be calculated by multiplying the cash value of $60,000 by the 2% imputed passbook rate.** Each subsequent year, the cash value of the asset should be reduced by the principal portion paid. In this example, it would be reduced to $58,000 in the following year ($60,000 – $2,000 principal payment = $58,000). **When calculating the imputed income for the following year, the owner would multiply the cash value of $58,000 by the 2% passbook savings rate.**

Regulatory References

(These references are current as of the date of publication. Readers should refer to the latest edition of the Code of Federal Regulations.)

24 CFR part 5.603 defines net family assets as follows:

Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and the equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded. . . . . In determining net family assets, owners shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or recertification, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

B. Net family assets **DO NOT** include the following:

IMPORTANT: The owner does not compute income from any assets in this paragraph.

1. Personal property (clothing, furniture, cars, wedding ring, other jewelry that is not held as an investment, vehicles specially equipped for persons with disabilities).

2. Interests in Indian trust land.

3. Term life insurance policies (i.e., where there is no cash value).

4. Equity in the cooperative unit in which the family lives.

5. Assets that are part of an active business. "Business" does NOT include rental of properties that are held as investments unless such properties are the applicant's or tenant's main occupation.

Example – Assets that are Part of an Active Business

- Laura and Lester Hines own a copier and courier service. None of the equipment that they use in their business is counted as an asset (e.g., the copiers, the FAX machines, the bicycles).
- Alice Washington rents out the home that she and her husband lived in for 42 years. This home is not an active business asset. Therefore, it is considered an asset and the owner must determine the annual income that Alice receives from it.

6. Assets that are NOT effectively owned by the applicant. Assets are not effectively owned when they are held in an individual's name, but (a) the assets and any income they earn accrue to the benefit of someone else who is not a member of the family, and (b) that other person is responsible for income taxes incurred on income generated by the assets.

   NOTE: Nonrevocable trusts (i.e., irrevocable trusts) are not covered by this paragraph. See information on nonrevocable trusts in paragraph 5-7 G.1.

Example – Assets not Effectively Owned by the Applicant

Net family assets do not include assets held pursuant to a power of attorney because one party is not competent to manage the assets, or assets held in a joint account solely to facilitate access to assets in the event of an emergency.

Example: Alexander Cumbow and his daughter, Emily Bornscheuer, have a bank account with both names on the account. Emily's name is on that account for the convenience of her father in case an emergency arises that would result in Emily handling payments for her father. Emily has not contributed to this asset, does not receive interest income from it, nor does she pay taxes on the interest earned. Therefore, Emily does not own this account. If Emily applies for assisted housing, the owner should not count this account as her asset. This asset belongs to Alexander and would be counted entirely as the father's asset should he apply for assisted housing.

7. Assets that are not accessible to the applicant and provide no income to the applicant. Nonrevocable trusts are not covered under this paragraph. See information on nonrevocable trusts in paragraph 5-7 G.1.

Example

A battered spouse owns a house with her husband. Because of the domestic situation, she receives no income from the asset and cannot convert the asset to cash.

Exhibit 5-3: Examples of Medical Expenses That Are Deductible and Nondeductible

The following are examples of eligible items for medical expense deductions. Please note that this list is not exhaustive.

Type of Medical Expenses	May Include*
Services of recognized health care professionals	Services of physicians, nurses, dentists, opticians, mental health practitioners, osteopaths, chiropractors, Christian Science practitioners, and acupuncture practitioners
Services of health care facilities; laboratory fees, X-rays and diagnostic tests, blood, oxygen	Hospitals, health maintenance organizations (HMOs), laser eye surgery, out-patient medical facilities, and clinics
Alcoholism and drug addiction treatment	
Medical insurance premiums	Expenses paid to an HMO; Medicaid insurance payments that have not been reimbursed; long-term care premiums (not prorated)
Prescription and nonprescription medicines	Aspirin, antihistamine only if prescribed by a physician for a particular medical condition
Transportation to/from treatment and lodging	Actual cost (e.g., bus fare) or, if driving in a car, a mileage rate based on IRS rules. *If the individual is receiving reimbursement for the cost of transportation to/from treatment or the lodging from another source, the cost or mileage is not eligible for the medical expense deduction*.
Medical care of permanently institutionalized family member IF his/her income is included in Annual Income	
Dental treatment	Fees paid to the dentist; x-rays; fillings, braces, extractions, dentures
Eyeglasses, contact lenses	
Hearing aid and batteries, wheelchair, walker, artificial limbs, Braille books and magazines, oxygen and oxygen equipment	Purchase and upkeep (e.g., additional utility costs to tenant because of oxygen machine [in properties with tenant paid utilities only])
Attendant care or periodic medical care	Nursing services, assistance animal and its upkeep
Payments on accumulated medical bills	Scheduled payments

* Or any other medically necessary service, apparatus, or medication, as documented by third-party verification.

Some items that **may not** be included in medical expense deductions are listed below.

Medical Expenses	May Not Include
Cosmetic surgery	Do not include in medical expenses amounts paid for unnecessary cosmetic surgery. This applies to any procedure that is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease. Procedures such as face-lifts, hair transplants, hair removal (electrolysis), and liposuction generally are not deductible. However, if medical complications, e.g., infections, etc., occur as a result of the procedure that requires medical treatment, the medical treatment expenses would be treated as a medical expense deduction. Amounts paid for cosmetic surgery may be deducted if necessary to improve a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or a disfiguring disease.
Health club dues	Do not include in medical expenses the cost of membership in any club organized for business, pleasure, recreation, or other social purpose, such as health club dues, YMCA dues, or amounts paid for steam baths for general health or to relieve physical or mental discomfort not related to a particular medical condition.
Household help	Do not include in medical expenses the cost of household help, even if such help is recommended by a doctor. However, certain expenses paid to a person providing nursing-type services may be deductible as medical costs.
Medical savings account (MSA)	Do not deduct as a qualified medical expense amounts contributed to an Archer MSA.
Nutritional supplements, vitamins, herbal supplements, natural medicines	Do not include in medical expenses the cost of nutritional supplements, vitamins, herbal supplements, natural medicines, etc., unless they are recommended in writing by a medical practitioner licensed in the locality where practicing. These items must be recommended as treatment for a specific medical condition diagnosed by a physician or other health care provider licensed to make a diagnosis in the locality where practicing. Otherwise, these items are taken to maintain ordinary good health, and are not for medical care.

Medical Expenses	May Not Include
Personal use items	Do not include in medical expenses an item ordinarily used for personal, living, or family purposes unless it is used primarily to prevent or alleviate a physical or mental defect or illness. For example, the cost of a wig purchased upon the advice of a physician for the mental health of a patient who has lost all of his or her hair from disease or incontinence supplies can be included with medical expenses
Nonprescription medicines	Do not include in medical expenses nonprescription medicines unless they are recommended in writing by a medical practitioner licensed in the locality where practicing. These items must be recommended as treatment for a specific medical condition diagnosed by a physician or other health care provider licensed to make a diagnosis in the locality where practicing.

Exhibit 5-4: Certification for Qualified Long-Term Care Insurance Expenses

I certify that the long-term care insurance policy for which I pay premiums,

(insert policy provider name) _____,

policy number _____ meets the following conditions.

1. It is guaranteed renewable;

2. It does not provide a cash surrender value which can be paid, assigned, pledged, or borrowed;

3. It provides that refunds (other than refunds on the death of the insured or complete surrender or cancellation of the contract) and dividends under the contract may be used only to reduce future premiums or increase future benefits; and,

4. It does not pay or reimburse expenses incurred for services or items that would be reimbursed under Medicare (except where Medicare is a secondary payer or the contract makes per diem or other periodic payments without regard to expenses).

_____
Name (print)

_____
Name (sign)

_____
Unit Number

Public reporting burden for this collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This information is required to obtain benefits and is voluntary. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. Upon completion of the certification, the insurance premiums are then included in the tenant's total medical expenses deduction which is electronically transmitted by the owner/management agent to HUD's Tenant Rental Assistance Certification System (TRACS).

This information is authorized by the 24 CFR 5.611(a)(3)(i) which allows for unreimbursed medical expenses in excess of three (3) percent of annual income be included as a mandatory deduction from annual income for any elderly family or disabled family in order to arrive at the adjusted income used for rent and subsidy determination. This information is considered non-sensitive and does no require any special protection.

U.S. Department of Housing and Urban Development

Document Package for Applicant's/Tenant's Consent to the Release Of Information

This Package contains the following documents:

1. **HUD-9887/A Fact Sheet describing the necessary verifications**
2. **Form HUD-9887 (to be signed by the Applicant or Tenant)**
3. **Form HUD-9887-A (to be signed by the Applicant or Tenant and Housing Owner)**
4. **Relevant Verifications (to be signed by the Applicant or Tenant)**

Each household must receive a copy of the 9887/A Fact Sheet, form HUD-9887, and form HUD-9887-A.

HUD-9887/A Fact Sheet

Verification of Information Provided by Applicants and Tenants of Assisted Housing

What Verification Involves

To receive housing assistance, applicants and tenants who are at least 18 years of age and each family head, spouse, or co-head regardless of age must provide the owner or management agent (O/A) or public housing agency (PHA) with certain information specified by the U.S. Department of Housing and Urban Development (HUD).

To make sure that the assistance is used properly, Federal laws require that the information you provide be verified. This information is verified in two ways:

1. HUD, O/As, and PHAs may verify the information you provide by checking with the records kept by certain public agencies (e.g., Social Security Administration (SSA), State agency that keeps wage and unemployment compensation claim information, and the Department of Health and Human Services' (HHS) National Directory of New Hires (NDNH) database that stores wage, new hires, and unemployment compensation). HUD (only) may verify information covered in your tax returns from the U.S. Internal Revenue Service (IRS). You give your consent to the release of this information by signing form HUD-9887. Only HUD, O/As, and PHAs can receive information authorized by this form.

2. The O/A must verify the information that is used to determine your eligibility and the amount of rent you pay. You give your consent to the release of this information by signing the form HUD-9887, the form HUD-9887-A, and the individual verification and consent forms that apply to you. Federal laws limit the kinds of information the O/A can receive about you. The amount of income you receive helps to determine the amount of rent you will pay. The O/A will verify all of the sources of income that you report. There are certain allowances that reduce the income used in determining tenant rents.

   Example: Mrs. Anderson is 62 years old. Her age qualifies her for a medical allowance. Her annual income will be adjusted because of this allowance. Because Mrs. Anderson's medical expenses will help determine the amount of rent she pays, the O/A is required to verify any medical expenses that she reports.

   Example: Mr. Harris does not qualify for the medical allowance because he is not at least 62 years of age and he is not handicapped or disabled. Because he is not eligible for the medical allowance, the amount of his medical expenses does not change the amount of rent he pays. Therefore, the O/A cannot ask Mr. Harris anything about his medical expenses and cannot verify with a third party about any medical expenses he has.

Customer Protections

Information received by HUD is protected by the Federal Privacy Act. Information received by the O/A or the PHA is subject to State privacy laws. Employees of HUD, the O/A, and the PHA are subject to penalties for using these consent forms improperly. You do not have to sign the form HUD-9887, the form HUD-9887-A, or the individual verification consent forms when they are given to you at your certification or recertification interview. You may take them home with you to read or to discuss with a third party of your choice. The O/A will give you another date when you can return to sign these forms.

If you cannot read and/or sign a consent form due to a disability, the O/A shall make a reasonable accommodation in accordance with Section 504 of the Rehabilitation Act of 1973. Such accommodations may include: home visits when the applicant's or tenant's disability prevents him/her from coming to the office to complete the forms; the applicant or tenant authorizing another person to sign on his/her behalf; and for persons with visual impairments, accommodations may include providing the forms in large script or braille or providing readers.

If an adult member of your household, due to extenuating circumstances, is unable to sign the form HUD-9887 or the individual verification forms on time, the O/A may document the file as to the reason for the delay and the specific plans to obtain the proper signature as soon as possible.

The O/A must tell you, or a third party which you choose, of the findings made as a result of the O/A verifications authorized by your consent. The O/A must give you the opportunity to contest such findings in accordance with HUD Handbook 4350.3 Rev. 1. However, for information received under the form HUD-9887 or form HUD-9887-A, HUD, the O/A, or the PHA, may inform you of these findings.

O/As must keep tenant files in a location that ensures confidentiality. Any employee of the O/A who fails to keep tenant information confidential is subject to the enforcement provisions of the State Privacy Act and is subject to enforcement actions by HUD. Also, any applicant or tenant affected by negligent disclosure or improper use of information may bring civil action for damages, and seek other relief, as may be appropriate, against the employee.

HUD-9887/A requires the O/A to give each household a copy of the Fact Sheet, and forms HUD-9887, HUD-9887-A along with appropriate individual consent forms. The package you will receive will include the following documents:

1. **HUD-9887/A Fact Sheet**: Describes the requirement to verify information provided by individuals who apply for housing assistance. This fact sheet also describes consumer protections under the verification process.
2. **Form HUD-9887:** Allows the release of information between government agencies.
3. **Form HUD-9887-A:** Describes the requirement of third party verification along with consumer protections.
4. **Individual verification consents:** Used to verify the relevant information provided by applicants/tenants to determine their eligibility and level of benefits.

Consequences for Not Signing the Consent Forms

If you fail to sign the form HUD-9887, the form HUD-9887-A, or the individual verification forms, this may result in your assistance being denied (for applicants) or your assistance being terminated (for tenants). See further explanation on the forms HUD-9887 and 9887-A.

If you are an applicant and are denied assistance for this reason, the O/A must notify you of the reason for your rejection and give you an opportunity to appeal the decision.

If you are a tenant and your assistance is terminated for this reason, the O/A must follow the procedures set out in the Lease. This includes the opportunity for you to meet with the O/A.

Programs Covered by this Fact Sheet

Rental Assistance Program (RAP)

Rent Supplement

Section 8 Housing Assistance Payments Programs (administered by the Office of Housing)

Section 202

Sections 202 and 811 PRAC

Section 202/162 PAC

Section 221(d)(3) Below Market Interest Rate

Section 236

HOPE 2 Home Ownership of Multifamily Units

O/As must give a copy of this HUD Fact Sheet to each household. See the Instructions on form HUD-9887-A.

Notice and Consent for the Release of Information

to the U.S. Department of Housing and Urban Development (HUD) and to an Owner and Management Agent (O/A), and to a Public Housing Agency (PHA)

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

HUD Office requesting release of information (Owner should provide the full address of the HUD Field Office, Attention: Director, Multifamily Division.):	O/A requesting release of information (Owner should provide the full name and address of the Owner.):	PHA requesting release of information (Owner should provide the full name and address of the PHA and the title of the director or administrator. If there is no PHA Owner or PHA contract administrator for this project, mark an X through this entire box.):

Notice To Tenant: Do not sign this form if the space above for organizations requesting release of information is left blank. You do not have to sign this form when it is given to you. You may take the form home with you to read or discuss with a third party of your choice and return to sign the consent on a date you have worked out with the housing owner/manager.

Authority: Section 217 of the Consolidated Appropriations Act of 2004 (Pub L. 108-199). This law is found at 42 U.S.C.653(J). This law authorizes HHS to disclose to the Department of Housing and Urban Development (HUD) information in the NDNH portion of the "Location and Collection System of Records" for the purposes of verifying employment and income of individuals participating in specified programs and, after removal of personal identifiers, to conduct analyses of the employment and income reporting of these individuals. Information may be disclosed by the Secretary of HUD to a private owner, a management agent, and a contract administrator in the administration of rental housing assistance.

Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, as amended by section 903 of the Housing and Community Development Act of 1992 and section 3003 of the Omnibus Budget Reconciliation Act of 1993. This law is found at 42 U.S.C. 3544.This law requires you to sign a consent form authorizing: (1) HUD and the PHA to request wage and unemployment compensation claim information from the state agency responsible for keeping that information; and (2) HUD, O/A, and the PHA responsible for determining eligibility to verity salary and wage information pertinent to the applicant's or participant's eligibility or level of benefits; (3) HUD to request certain tax return information from the U.S. Social Security Administration (SSA) and the U.S. Internal Revenue Service (IRS).

Purpose: In signing this consent form, you are authorizing HUD, the above-named O/A, and the PHA to request income information from the government agencies listed on the form. HUD, the O/A, and the PHA need this information to verify your household's income to ensure that you are eligible for assisted housing benefits and that these benefits are set at the correct level. HUD, the O/A, and the PHA may participate in computer matching programs with these sources to verify your eligibility and level of benefits. This form also authorizes HUD, the O/A, and the PHA to seek wage, new hire (W-4), and unemployment claim information from current or former employers to verify information obtained through computer matching.

Uses of Information to be Obtained: HUD is required to protect the income information it obtains in accordance with the Privacy Act of 1974, 5 U.S.C. 552a. The O/A and the PHA is also required to protect the income information it obtains in accordance with any applicable State privacy law. After receiving the information covered by this notice of consent, HUD, the O/A, and the PHA may inform you that your eligibility for, or level of, assistance is uncertain and needs to be verified and nothing else.

HUD, O/A, and PHA employees may be subject to penalties for unauthorized disclosures or improper uses of the income information that is obtained based on the consent form.

Who Must Sign the Consent Form: Each member of your household who is at least 18 years of age and each family head, spouse or co-head, regardless of age, must sign the consent form at the initial certification and at each recertification. Additional signatures must be obtained from new adult members when they join the household or when members of the household become 18 years of age.

Persons who apply for or receive assistance under the following programs are required to sign this consent form:

Rental Assistance Program (RAP)

Rent Supplement

Section 8 Housing Assistance Payments Programs (administered by the Office of Housing)

Section 202; Sections 202 and 811 PRAC; Section 202/162 PAC Section

221(d)(3) Below Market Interest Rate

Section 236

HOPE 2 Homeownership of Multifamily Units

Failure to Sign Consent Form: Your failure to sign the consent form may result in the denial of assistance or termination of assisted housing benefits. If an applicant is denied assistance for this reason, the owner must follow the notification procedures in Handbook 4350.3 Rev. 1. If a tenant is denied assistance for this reason, the owner or managing agent must follow the procedures set out in the lease.

Consent: I consent to allow HUD, the O/A, or the PHA to request and obtain income information from the federal and state agencies listed on the back of this form for the purpose of verifying my eligibility and level of benefits under HUD's assisted housing programs.

Signatures:

Additional Signatures, if needed:

Head of Household	Date	Other Family Members 18 and Over	Date
Spouse	Date	Other Family Members 18 and Over	Date
Other Family Members 18 and Over	Date	Other Family Members 18 and Over	Date
Other Family Members 18 and Over	Date	Other Family Members 18 and Over	Date

Agencies To Provide Information

State Wage Information Collection Agencies. (HUD and PHA). This consent is limited to wages and unemployment compensation you have received during period(s) within the last 5 years when you have received assisted housing benefits.

U.S. Social Security Administration (HUD only). This consent is limited to the wage and self employment information from your current form W-2.

National Directory of New Hires contained in the Department of Health and Human Services' system of records. This consent is limited to wages and unemployment compensation you have received during period(s) within the last 5 years when you have received assisted housing benefits.

U.S. Internal Revenue Service (HUD only). This consent is limited to information covered in your current tax return.

This consent is limited to the following information that may appear on your current tax return:

1099-S Statement for Recipients of Proceeds from Real Estate Transactions

1099-B Statement for Recipients of Proceeds from Real Estate Brokers and Barters Exchange Transactions

1099-A Information Return for Acquisition or Abandonment of Secured Property

1099-G Statement for Recipients of Certain Government Payments

1099-DIV Statement for Recipients of Dividends and Distributions

1099 INT Statement for Recipients of Interest Income

1099-MISC Statement for Recipients of Miscellaneous Income

1099-OID Statement for Recipients of Original Issue Discount

1099-PATR Statement for Recipients of Taxable Distributions Received from Cooperatives

1099-R Statement for Recipients of Retirement Plans W2-G

Statement of Gambling Winnings

1065-K1 Partners Share of Income, Credits, Deductions, etc.

1041-K1 Beneficiary's Share of Income, Credits, Deductions, etc.

1120S-K1 Shareholder's Share of Undistributed Taxable Income, Credits, Deductions, etc.

I understand that income information obtained from these sources will be used to verify information that I provide in determining initial or continued eligibility for assisted housing programs and the level of benefits.

No action can be taken to terminate, deny, suspend, or reduce the assistance your household receives based on information obtained about you under this consent until the HUD Office, Office of Inspector General (OIG) or the PHA (whichever is applicable) and the O/A have independently verified: 1) the amount of the income, wages, or unemployment compensation involved, 2) whether you actually have (or had) access to such income, wages, or benefits for your own use, and 3) the period or periods when, or with respect to which you actually received such income, wages, or benefits. A photocopy of the signed consent may be used to request a third party to verify any information received under this consent (e.g., employer).

HUD, the O/A, or the PHA shall inform you, or a third party which you designate, of the findings made on the basis of information verified under this consent and shall give you an opportunity to contest such findings in accordance with Handbook 4350.3 Rev. 1.

If a member of the household who is required to sign the consent form is unable to sign the form on time due to extenuating circumstances, the O/A may document the file as to the reason for the delay and the specific plans to obtain the proper signature as soon as possible.

This consent form expires 15 months after signed.

Privacy Act Statement. The Department of Housing and Urban Development (HUD) is authorized to collect this information by the U.S. Housing Act of 1937, as amended (42 U.S.C. 1437 et. seq.); the Housing and Urban-Rural Recovery Act of 1983 (P.L. 98-181); the Housing and Community Development Technical Amendments of 1984 (P.L. 98-479); and by the Housing and Community Development Act of 1987 (42 U.S.C. 3543). The information is being collected by HUD to determine an applicant's eligibility, the recommended unit size, and the amount the tenant(s) must pay toward rent and utilities. HUD uses this information to assist in managing certain HUD properties, to protect the Government's financial interest, and to verify the accuracy of the information furnished. HUD, the owner or management agent (O/A), or a public housing agency (PHA) may conduct a computer match to verify the information you provide. This information may be released to appropriate Federal, State, and local agencies, when relevant, and to civil, criminal, or regulatory investigators and prosecutors. However, the information will not be otherwise disclosed or released outside of HUD, except as permitted or required by law. You must provide all of the information requested. Failure to provide any information may result in a delay or rejection of your eligibility approval.

Penalties for Misusing this Consent:
HUD, the O/A, and any PHA (or any employee of HUD, the O/A, or the PHA) may be subject to penalties for unauthorized disclosures or improper uses of information collected based on the consent form.

Use of the information collected based on the form HUD 9887 is restricted to the purposes cited on the form HUD 9887. Any person who knowingly or willfully requests, obtains, or discloses any information under false pretenses concerning an applicant or tenant may be subject to a misdemeanor and fined not more than $5,000.

Any applicant or tenant affected by negligent disclosure of information may bring civil action for damages, and seek other relief, as may be appropriate, against the officer or employee of HUD, the Owner or the PHA responsible for the unauthorized disclosure or improper use.

Applicant's/Tenant's Consent to the Release of Information

Verification by Owners of Information
Supplied by Individuals Who Apply for Housing Assistance

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

Instructions to Owners

1. Give the documents listed below to the applicants/tenants to sign. Staple or clip them together in one package in the order listed.
   a. The HUD-9887/A Fact Sheet.
   b. Form HUD-9887.
   c. Form HUD-9887-A.
   d . Relevant verifications (HUD Handbook 4350.3 Rev. 1).
2. Verbally inform applicants and tenants that
   a. They may take these forms home with them to read or to discuss with a third party of their choice and to return to sign them on a date they have worked out with you, and
   b. If they have a disability that prevents them from reading and/ or signing any consent, that you, the Owner, are required to provide reasonable accommodations.
3. Owners are required to give each household a copy of the HUD9887/A Fact Sheet, form HUD-9887, and form HUD-9887-A after obtaining the required applicants/tenants signature(s). Also, owners must give the applicants/tenants a copy of the signed individual verification forms upon their request.

Instructions to Applicants and Tenants

This Form HUD-9887-A contains customer information and protections concerning the HUD-required verifications that Owners must perform.

1. Read this material which explains:
   - HUD's requirements concerning the release of information, and
   - Other customer protections.
2. Sign on the last page that:
   - you have read this form, or
   - the Owner or a third party of your choice has explained it to you, and
   - you consent to the release of information for the purposes and uses described.

Authority for Requiring Applicant's/Tenant's Consent to the Release of Information

Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, as amended by section 903 of the Housing and Community Development Act of 1992. This law is found at 42 U.S.C. 3544.

In part, this law requires you to sign a consent form authorizing the Owner to request current or previous employers to verify salary and wage information pertinent to your eligibility or level of benefits.

In addition, HUD regulations (24 CFR 5.659, Family Information and Verification) require as a condition of receiving housing assistance that you must sign a HUD-approved release and consent authorizing any depository or private source of income to furnish such information that is necessary in determining your eligibility or level of benefits. This includes information that you have provided which will affect the amount of rent you pay. The information includes income and assets, such as salary, welfare benefits, and interest earned on savings accounts. They also include certain adjustments to your income, such as the allowances for dependents and for households whose heads or spouses are elderly handicapped, or disabled; and allowances for child care expenses, medical expenses, and handicap assistance expenses.

Purpose of Requiring Consent to the Release of Information

In signing this consent form, you are authorizing the Owner of the housing project to which you are applying for assistance to request information from a third party about you. HUD requires the housing owner to verify all of the information you provide that affects your eligibility and level of benefits to ensure that you are eligible for assisted housing benefits and that these benefits are set at the correct levels. Upon the request of the HUD office or the PHA (as Contract Administrator), the housing Owner may provide HUD or the PHA with the information you have submitted and the information the Owner receives under this consent.

Uses of Information to be Obtained

The individual listed on the verification form may request and receive the information requested by the verification, subject to the limitations of this form. HUD is required to protect the income information it obtains in accordance with the Privacy Act of 1974, 5 U.S.C. 552a. The Owner and the PHA are also required to protect the income information they obtain in accordance with any applicable state privacy law. Should the Owner receive information from a third party that is inconsistent with the information you have provided, the Owner is required to notify you in writing identifying the information believed to be incorrect. If this should occur, you will have the opportunity to meet with the Owner to discuss any discrepancies.

Who Must Sign the Consent Form

Each member of your household who is at least 18 years of age, and each family head, spouse or co-head, regardless of age must sign the relevant consent forms at the initial certification, at each recertification and at each interim certification, if applicable. In addition, when new adult members join the household and when members of the household become 18 years of age they must also sign the relevant consent forms.

Persons who apply for or receive assistance under the following programs must sign the relevant consent forms:

Rental Assistance Program (RAP)
Rent Supplement
Section 8 Housing Assistance Payments Programs (administered by the Office of Housing)
Section 202
Sections 202 and 811 PRAC
Section 202/162 PAC
Section 221(d)(3) Below Market Interest Rate
Section 236
HOPE 2 Home Ownership of Multifamily Units

Failure to Sign the Consent Form

Failure to sign any required consent form may result in the denial of assistance or termination of assisted housing benefits. If an applicant is denied assistance for this reason, the O/A must follow the notification procedures in Handbook 4350.3 Rev. 1. If a tenant is denied assistance for this reason, the O/A must follow the procedures set out in the lease.

Conditions

No action can be taken to terminate, deny, suspend or reduce the assistance your household receives based on information obtained about you under this consent until the O/A has independently 1) verified the information you have provided with respect to your eligibility and level of benefits and 2) with respect to income (including both earned and unearned income), the O/A has verified whether you actually have (or had) access to such income for your own use, and verified the period or periods when, or with respect to which you actually received such income, wages, or benefits.

A photocopy of the signed consent may be used to request the information authorized by your signature on the individual consent forms. This would occur if the O/A does not have another individual verification consent with an original signature and the O/A is required to send out another request for verification (for example, the third party fails to respond). If this happens, the O/A may attach a photocopy of this consent to a photocopy of the individual verification form that you sign. To avoid the use of photocopies, the O/A and the individual may agree to sign more than one consent for each type of verification that is needed. The O/A shall inform you, or a third party which you designate, of the findings made on the basis of information verified under this consent and shall give you an opportunity to contest such findings in accordance with Handbook 4350.3 Rev. 1.

The O/A must provide you with information obtained under this consent in accordance with State privacy laws.

If a member of the household who is required to sign the consent forms is unable to sign the required forms on time, due to extenuating circumstances, the O/A may document the file as to the reason for the delay and the specific plans to obtain the proper signature as soon as possible.

Individual consents to the release of information expire 15 months after they are signed. The O/A may use these individual consent forms during the 120 days preceding the certification period. The O/A may also use these forms during the certification period, but only in cases where the O/A receives information indicating that the information you have provided may be incorrect. Other uses are prohibited.

The O/A may not make inquiries into information that is older than 12 months unless he/she has received inconsistent information and has reason to believe that the information that you have supplied is incorrect. If this occurs, the O/A may obtain information within the last 5 years when you have received assistance.

I have read and understand this information on the purposes and uses of information that is verified and consent to the release of information for these purposes and uses.

_____

Name of Applicant or Tenant (Print)

_____

Signature of Applicant or Tenant & Date

I have read and understand the purpose of this consent and its uses and I understand that misuse of this consent can lead to personal penalties to me.

_____

Name of Project Owner or his/her representative

_____

Title

_____

Signature & Date
cc:Applicant/Tenant
Owner file

Penalties for Misusing this Consent:

HUD, the O/A, and any PHA (or any employee of HUD, the O/A, or the PHA) may be subject to penalties for unauthorized disclosures or improper uses of information collected based on the consent form.

Use of the information collected based on the form HUD 9887-A is restricted to the purposes cited on the form HUD 9887-A. Any person who knowingly or willfully requests, obtains or discloses any information under false pretenses concerning an applicant or tenant may be subject to a misdemeanor and fined not more than $5,000.

Any applicant or tenant affected by negligent disclosure of information may bring civil action for damages, and seek other relief, as may be appropriate, against the officer or employee of HUD, the O/A or the PHA responsible for the unauthorized disclosure or improper use.

Exhibit 5-8: Tenant Rent Formulas

Section 8, RAP, PRAC, PAC

Total Tenant Payment (TTP) is the greater of:

- 30% monthly adjusted income;
- 10% monthly gross income;
- Welfare rent (welfare recipients in as-paid localities only); or
- $25 minimum rent (Section 8 only).

NOTE: An owner may admit an applicant to the Section 8, RAP, and PAC programs only if the TTP is less than the gross rent. This note does not apply to the PRAC program. In some instances under the PRAC program a tenant's TTP will exceed the PRAC operating rent (gross rent).

Rent Supplement

Total Tenant Payment (TTP) is the greater of:

- 30% of monthly adjusted income; or
- 30% of gross rent.

NOTE: For move-ins and initial certifications, the amount of Rent Supplement assistance may be no less than 10% of the gross rent. If the initial amount of Rent Supplement assistance would be less than 10% of the gross rent, the tenant is not eligible for Rent Supplement Assistance.

Section 236—No Utility Allowance

Tenant rent is the greater of:

- 30% of monthly adjusted income; or
- Section 236 basic rent.

Tenant rent is never more than market rent.

Section 236—With Utility Allowance

Tenant rent is the greater of:

- 30% of the monthly adjusted income less the utility allowance;
- 25% of monthly adjusted income; or
- Basic rent.

Tenant rent is never more than market rent.

Section 221(d)(3) BMIR (Below Market Interest Rate)

At move-in or initial certification, if the tenant's annual income is:

- At or below the BMIR income limit, the tenant is charged the BMIR rent.
- Above the BMIR income limit, the tenant may not be admitted to the project.

At recertification, if the tenant's annual income is:

- Less than or equal to 110% of the BMIR income limit, the tenant pays the BMIR rent.
- Greater than 110% of the BMIR income limit, the tenant pays 110% of the BMIR rent.

CHAPTER 6. LEASE REQUIREMENTS AND LEASING ACTIVITIES

6-1 Introduction

A. The previous chapters provided guidance on determining eligibility, organizing and managing waiting lists, determining income, and calculating rents. At this point in the process, residents are ready to sign a lease. A lease is a contract between the owner and tenant that explains the terms for residing in the unit. A lease is a legally binding contract and is enforceable in a court of law. Owners and tenants alike should be familiar with the provisions of the lease (when relevant, the applicable HUD model lease) so they can better understand their responsibilities under the lease.

B. Chapter 6 contains information on the lease and the activities associated with the leasing process. The information is organized as follows:

- **Section 1: Leases, *Lease Addendums*, and Lease Attachments** describes the lease requirements for the applicable programs described in paragraph 1-3. It also addresses lease *addendums and* documents that must be attached to the lease, when applicable. The section ends with a discussion on amending and modifying a lease.

- **Section 2: Security Deposits** discusses the requirements and procedures regarding security deposits.

- **Section 3: Charges in Addition to Rent** discusses the allowable and prohibited charges that owners may levy. These charges are those other than rent, which is addressed in Chapter 5, Section 4 about calculating tenant rent, and other than security deposits, which are discussed in Section 2 of this chapter.

- **Section 4: The Leasing Process** discusses the requirements and procedures for two activities associated with the leasing process: briefing new residents and inspecting units. It also addresses the handouts that owners must provide tenants, such as the lease, the Residents Rights and Responsibilities brochure, *the *EIV & You* brochure*, and the lead-based paint disclosure form.

6-2 Key Terms

A. There are a number of technical terms used in this chapter that have very specific definitions established by federal statute or regulations or by HUD. These terms are listed in Figure 6-1, and their definitions can be found in the Glossary to this handbook. It is important to be familiar with these definitions when reading this chapter.

B. The terms disability and persons with disabilities are used in two contexts for civil rights protections, and for program eligibility purposes. Each use has specific definitions.

1. When used in context of protection from discrimination or improving the accessibility of housing, the civil rights-related definitions apply.

2. When used in the context of eligibility under multifamily subsidized housing programs, the program eligibility definitions apply.

NOTE: See the Glossary for specific definitions and paragraph 2-23 for an explanation of this difference.

Figure 6-1: Key Terms

• Assisted tenant • Assistance animals • Briefing • Common household pet • Covered person • Currently engaging in • Drug • Drug-related criminal activity • Expected to reside • Law enforcement agency • Lease • Lease term • Legitimate tenant organization	• Minimum rent • Other person under the tenant's control • Pet deposit • Premises • Security deposit • Service animals • Tenant • Tenant consultation • Tenant rent • Total tenant payment • *Violence Against Women Act (VAWA)* • Violent criminal activity

Section 1: Leases and Lease Attachments

6-3 Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 1: Leases and Lease Attachments. The citations and their titles (or topics) are listed below.

A. **Lease Requirements**

1. 24 CFR 5.360, 891.425 Housing Programs: Additional Lease Provisions

2. 24 CFR 236.750, 886.127, 886.327, 891.425 (Form of lease)

3. 24 CFR 880.606, 881.601, 883.701, 884.215, 886.127, 886.327, 891.425, 891.625, 891.765 Lease Requirements

4. 24 CFR 880.606, 881.601, 883.701, 884.215, 886.127, 886.327, 891.425, 891.625, 891.765 (Lease term)

5. 24 CFR 884.215 (RHS 515/Section 8 properties lease requirements)

6. 24 CFR 891.425, 891.625, 891.765 (Section 202 and Section 811 properties lease requirements)

B. **Lead-Based Paint**

1. 24 CFR part 35, subpart A and 40 CFR, part 745 (Requirements for disclosure of known lead-based paint and/or lead-based paint hazards in housing)

2. 24 CFR 35.130 Lead Hazard Information Pamphlet

C. **Pet Regulations**

- 24 CFR part 5, subpart C Pet Ownership for the Elderly or Persons with Disabilities

D. **Amending the Lease**

1. 24 CFR 247.4, 891.430 (Termination notice)

2. 24 CFR 247.4, 880.607, 881.601, 883.701 (Increase in rent)

3. 24 CFR 247.4, 880.607, 881.601, 883.701, 891.430 (Modifying the lease)

E. *Violence Against Women Act (VAWA) Protections

- 24 CFR 5 Subpart L Protection for Victims of Domestic Violence in Public and Section 8 Housing*

6-4 Leases,* Lease Amendments* and Lease Attachments – General

A. This section identifies the regulatory requirements regarding an owner's lease, *lease addendums* and lease attachments, including the lead-based paint disclosure form, house rules, and pet regulations. It also describes procedures for meeting these requirements, identifying which procedures are required and which are optional. Throughout this section, the differences in policies and procedural requirements across the four model leases are identified.

NOTE: The leases may also need to be *provided* in languages other than English for LEP persons, when applicable, in accordance with HUD guidance, *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, published in the Federal Register on January 22, 2007. *The HUD model leases are available in English as well as several other languages and are posted on HUDCLIPS at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips and at HUD's LEP website at http://www.hud.gov/offices/fheo/lep.xml.*

The lease is a legally binding contract between the owner and the tenant. The regulations governing HUD's various multifamily housing programs state that owners must use leases that are in an acceptable form to HUD. In practice, owners must use one of the four model leases prescribed by HUD (see Figure 6-2). The lease an owner uses depends on the program being administered.

1. Owners may, but are not required to, use the HUD model leases for units where the tenant pays market rent, full contract rent, or 110% of the BMIR rent in the case of Section 221(d)(3) BMIR properties.

2. The HUD model leases do not apply to cooperatives. Cooperative members should use occupancy agreements. All occupancy agreements executed after February 15, 1984 must include the cooperative's policy on unit transfers and paragraphs 15, 16, 17, 23 and 25 of the Model Lease for Subsidized Programs covering recertification, termination of assistance, and fraud penalties. (See paragraph 6-5 A for more information.)

B. The HUD model leases identify the program requirements that owners and tenants must adhere to while participating in the programs. Although many of these requirements are the same in each of the four leases, several of the lease provisions vary from lease to lease. For example, changes in the tenant rent are listed in all four model leases; however, the specific requirements and language are different among the four leases.

C. *The Violence Against Women and Justice Department Reauthorization Act of 2005 Lease Addendum (VAWA), form HUD-91067, must be attached to the applicable model lease for all tenants receiving Section 8 assistance. (see Paragraph 6-5.B.2 for signature requirements).*

D. Changes to the Model Lease for Subsidized Programs *by owners* may only be for documented state or local laws, or a management practice generally used by management entities of assisted projects. *Lease modifications by owners are made using a lease addendum.* Before implementing the changes, the owner must obtain written approval from HUD or the Contract Administrator. The Model Lease for Section 202/8 or Section 202 PACs may only be modified for documented state or local laws or as specifically noted in paragraph 6-5 D. The Model Leases for Section 202 PRACs and Section 811 PRACs may only be modified for documented state or local laws or as specifically noted in paragraph

NOTE: Owner modifications to the HUD model leases through revisions to the leases themselves or through lease addendums that were approved prior to the effective date of Change 4 to this Handbook remain in effect until such time as HUD re-issues the model leases with modifications to the language in the leases or the lease addendum modifications are no longer applicable.

E. If any provision of a model lease conflicts with state or local law, the owner must follow the rule that is of most benefit to the tenant.

6-5 Lease Requirements

A. Form of Lease

Model leases. HUD has provided model leases that must be used under certain programs. Figure 6-2 identifies the appropriate lease for HUD's subsidized programs.

Figure 6-2: Required Leases

Form of Lease	Programs that Use the Lease
Model Lease for Subsidized Programs (Family Model Lease) (See **Appendix 4-A**.)	Section 221(d)(3) BMIR Section 236 Section 8 New Construction Section 8 Substantial Rehabilitation Section 8 State Agency (See Paragraph 6.5F) RHS 515 with Section 8 (See Paragraph 6.5 F) Section 8 Loan Management Set-Aside (LMSA) Section 8 Property Disposition Set-Aside (PDSA) Rental Assistant Payment (RAP) Rent Supplement
Model Lease for Section 202/8 or Section 202 PACs (See **Appendix 4-B**.)	Section 202 Programs for the Elderly and Persons with Disabilities in conjunction with Section 8 assistance *Prepaid Section 202/8 Loans*
*Model Lease for Section 202/8 or Section 202 PACs (See **Appendix 4-B,)**	Section 202 Programs for the Nonelderly Disabled Families and Individuals in conjunction with Section 162 assistance*
Model Lease for Section 202 PRACs (See **Appendix 4-C**.)	Section 202 Program of Supportive Housing for the Elderly
Model Lease for Section 811 PRACs (See **Appendix 4-D**.)	Section 811 Program of Supportive Housing for Persons with Disabilities
A model lease developed by a State Agency that complies with HUD rules and regulations	Section 8 State Agency
Occupancy Agreement	Assisted Cooperatives

*** Figure 6-3: HUD Issued Lease Addendum**

Form of Lease Addendum	Programs that Use the Lease Addendum
Violence Against Women and Justice Department Reauthorization Act of 2005 Lease Addendum (See **Appendix 4-H**.)	**Section 8 programs only** • Section 8 New Construction • Section 8 Substantial Rehabilitation • Section 8 State Agency • RHS 515 with Section 8 • Section 8 LMSA • Section 8 PDSA • Section 202 Programs for the Elderly and Persons with Disabilities in conjunction with Section 8 assistance*

1. For projects financed by a State Agency, owners must use the lease form prescribed by the State Agency or obtain the State Agency's approval for changes to that lease. (State Agencies must ensure that the lease form is consistent with HUD regulations and the rules in this handbook.)

2. Cooperatives. Although a family receiving Section 8 assistance and residing in a cooperative is subject to the same regulatory tenancy requirements as other Section 8-assisted families, cooperatives use HUD-approved occupancy agreements in lieu of a model lease.

   Occupancy agreements for assisted cooperatives must incorporate the cooperative's policy on unit transfers and paragraphs 15, 16, 17, 23 and 25 of the Model Lease for Subsidized Programs covering recertification, termination of assistance, and fraud penalties.

3. Required attachments.

   The following documents must be attached to the lease:

   a. HUD-50059 signed by the tenant and the owner;

   b. HUD-50059-A signed by the owner and, when applicable, by the tenant.

   c. Move-in inspection report signed by both the owner and tenant;

d. House Rules, if such rules have been developed by the owner;

e. Lead-based paint disclosure form (if applicable);

f. Pet rules (if applicable);

g. *Owner's* Live-in Aide addendum (if applicable).

NOTE: The live-in aide addendum must establish that a live-in aide is not eligible to remain in the unit once the tenant is no longer living in the unit, regardless of the circumstances for the tenant's departure. The live-in aide addendum may give the owner the right to evict a live-in aide who violates any of the house rules.

h. *Owner's Police or Security Personnel addendum (if applicable);

i. HUD issued Violence Against Women and Justice Department Reauthorization Act of 2005 (VAWA) Lease Addendum (Section 8 only).*

B. **Key Requirements under HUD's Model Leases *and Lease Addendums***

1. The lease may cover only rental of the unit and provision of services routinely provided at rental properties (e.g., parking).

   a. Owners and tenants must execute separate agreements for special services (e.g., voluntary meals program or health care services).

   b. Failure to adhere to these separate agreements is not grounds for termination of tenancy, except that:

      Tenant participation in a mandatory meals program is incorporated as a condition of occupancy in rental properties for the elderly or handicapped with HUD-approved mandatory meals programs. Under these conditions, compliance is binding on the tenant as a lease provision.

2. The head of household, spouse, any individual listed as co-head, and all adult members of the household must sign the lease, *HUD issued lease addendums and owner's lease addendums. (See Paragraph 6-4.D Note.)*

3. When a tenant transfers to another unit, the owner and all tenants required to sign the lease must sign a lease for the new unit.

4. The lease includes language permitting the owner to terminate the lease for drug-related activity and criminal activity. This is the result of regulations effective June 25, 2001, for Screening and Eviction of Drug

Abuse and Other Criminal Activity. For more information, refer to the lease and Chapter 8 for information regarding terminations.

C. **Model Lease for Subsidized Programs**

1. Applicability. The following properties use the Model Lease for Subsidized Programs (also known as the family model lease):

   a. Section 221(d)(3) BMIR;

   b. Section 236 Interest Reduction;

   c. Section 8 New Construction;

   d. Section 8 Substantial Rehabilitation;

   e. RHS 515 with Section 8 (see Paragraph 6-5 F);

   f. Section 8 Loan Management Set-Aside (LMSA); and

   g. Section 8 Property Disposition Set-Aside (PDSA).

   h. Rental Assistance Payment (RAP)

   i. Rent Supplement

2. HUD will permit modifications to the Model Lease for Subsidized Programs, but modifications must be *made in the form of a lease addendum and* approved by HUD or the Contract Administrator. (See paragraph 6-12 for modification procedures, and paragraphs 6-11 and 6-12 on amending and modifying leases for more information.)

3. HUD will not permit modifications to the following nine provisions of the model lease:

   a. Changes in Tenant Rent;

   b. Regularly Scheduled Recertifications;

   c. Reporting Changes between Regularly Scheduled Recertifications;

   d. Removal of Subsidy;

   e. Tenant Obligation to Repay;

   f. Discrimination Prohibited;

   g. Changes in Rental Agreement;

   h. Termination of Tenancy; and

i. Penalties for Submitting False Information.

4. Additional lease provision for pets in Section 8 projects. Lease provisions for pets are found only in the Model Leases for Section 202/8, Section 202 PACs, Section 202 PRACs, and Section 811 PRACs. However, certain properties (e.g., Section 8 New Construction, Section 8 State Agency) may be available for occupancy only to elderly and/or disabled tenants. As a result, the language addressing pets that is found in the Model Lease for Section 202/8 and Section 202 PACs must be added to the Model Lease for Subsidized Programs for use in these properties. Modifying the Model Lease for Subsidized Programs to include the pet provisions from the Model Lease for Section 202/8 and Section 202 PACs, *must be made as a lease addendum approved by HUD or the Contract Administrator.*

5. Additional lease provision for authorized police/security personnel. *A lease addendum* for units occupied by such persons must include a provision that states that the police officer or security personnel's right of occupancy is dependent on the continuation of the employment that qualified him/her for residency in the property under the plan.

6. Prohibited provisions. The following provisions must not be included in a lease modification.

   a. Confession of judgment. The prior consent by the tenant to any lawsuit initiated by the owner in connection with the lease and to a judgment in favor of the landlord.

   b. Distraint for rent or other charges. An agreement by the tenant that the owner is authorized to take property of the tenant and hold it until the tenant performs an obligation the owner has determined the tenant has failed to perform.

   c. Exculpatory clauses. An agreement by the tenant not to hold the owner or its agents liable for any acts or omissions, intentional or negligent, on the part of the owner or the owner's authorized representatives or agents.

   d. Waiver of legal notice by tenant before actions for eviction or money judgment. An agreement by the tenant that the landlord may institute suit without notifying the tenant that the suit has been filed.

   e. Waiver of legal proceedings. Authorization for the owner to evict the tenant or hold/sell the tenant's possessions whenever the owner determines a breach or default has occurred, without notice to the tenant or determination by a court of the rights and liabilities of the parties.

f. Waiver of jury trial. Authorization for the owner's attorney to appear in court on behalf of the tenant and waive the right to a jury trial.

g. Waiver of right to appeal judicial proceeding. Authorization for the owner's attorney to waive the tenant's rights to (1) appeal for judicial error in any suit brought against the tenant by the owner or its agent, or (2) file suit to prevent the execution of a judgment.

h. Tenant chargeable with cost of legal actions regardless of outcome. A provision that the tenant agrees to pay all attorney and other legal costs if the owner brings legal action against the tenant, even if the tenant prevails in the action. Prohibition of this provision does not mean the tenant, as a party to a lawsuit, may not be obligated to pay attorney's fees or other costs if the tenant loses the suit.

NOTE: In properties restricted to occupancy by the elderly or disabled, the lease must not contain a provision relieving the owner of liability for the wrongful removal of a pet.

D. **Model Lease for Section 202/8 and Section 202 PACs**

1. The Model Lease for Section 202/8 or Section 202 PACs may only be modified for documented state or local laws or as noted in the following paragraph. *Modifications to the lease must be in the form of a lease addendum.*

2. The regulations for Section 202 properties state that an owner may include a provision in the lease that permits the owner to enter the leased premises at any time without advance notice to the tenant when there is reasonable cause to believe an emergency exists or that the health or safety of a family member is endangered. (See Paragraph 6-4.D Note.)

E. **Model Lease for Section 202 PRACs and Section 811 PRACs**

1. The Model Lease for the Section 202 PRAC or Section 811 PRAC may only be modified for documented state or local laws or as noted in the following paragraph. *Modifications to the lease must be in the form of a lease addendum.* (See Paragraph 6-4.D Note.)

2. The regulations for Section 202 PRAC and Section 811 PRAC properties state that an owner may include a provision in the lease that permits the owner to enter the leased premises at any time without advance notice to the tenant when there is reasonable cause to believe an emergency exists or that the health or safety of a family member is endangered.

F. **Required Lease Provisions for Specific Properties**

1. Required Section 8 State Agency lease provisions. See Exhibit 6-1 at the end of Chapter 6 for a copy of the provision for Section 8 State Agency

properties. These provisions must be added to the lease developed by the State Agency.

2. Required RHS 515 with Section 8 lease provisions. The HUD model lease in Appendix 4-A must be used at Rural Housing Service's (RHS) Section 515 projects that have Section 8 assistance. Exhibit 6-2 contains the lease provisions required by RHS. Owners will be responsible for ensuring that any RHS required provisions not already included in the HUD model lease are added to the lease as an addendum. The lease addendum must be reviewed and approved by HUD or the Contract Administrator, ensuring the addendum does not include provisions that conflict with HUD requirements or regulations. The RHS required lease provisions are also provided in Attachment 6-E of the USDA *MFH Asset Management Handbook,* HB-2-3560.

G. ***Requirements of HUD Issued Lease Addendums**

Violence Against Women and Justice Department Reauthorization Act of 2005 Lease Addendum (VAWA) (form HUD-91067) Section 8 only

1. Owners must attach the HUD-approved lease addendum to each existing or new lease. The addendum must be signed by all tenants required to sign the lease. The lease addendum revises the applicable Section 8 lease to reflect the statutory requirements of the VAWA.

2. Protections Against Termination of Assistance or Eviction for Victims of Domestic Violence, Dating Violence or Stalking.

   a. An incident or incidents of actual or threatened domestic violence, dating violence or stalking will not be construed as serious or repeated violations of the lease by the victim or threatened victim or other good cause for terminating the assistance, tenancy, or occupancy rights of a victim of abuse.

   b. Criminal activity directly related to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of assistance, tenancy, occupancy rights of, or assistance to the victim, if the tenant or immediate family member of the tenant is the victim.

   c. The authority to evict or terminate assistance is not limited with respect to a victim that commits unrelated criminal activity. Furthermore, if an O/A can show an actual and imminent threat to other tenants or those employed at or providing service to the property if an unlawful tenant's residency is not terminated, then evicting a victim is an option, the VAWA notwithstanding. Ultimately, O/As may not subject victims to more demanding standards than other tenants.

3. Lease Bifurcation.

Assistance may be terminated or a lease bifurcated in order to remove an offending household member from the home. Whether or not the individual is a signatory to the lease and lawful tenant, if he/she engages in a criminal act of physical violence against family members or others, he/she stands to be evicted, removed, or have his/her occupancy rights terminated. This action is taken while allowing the victim, who is a tenant or lawful occupant, to remain.

a. Owners must keep in mind that eviction of or the termination action against the individual must be in accordance with the procedures prescribed by federal, state and local law.

b. In the event that one household member is removed from the unit because of engaging in acts of domestic violence, dating violence or stalking against another household member, an interim recertification should be processed reflecting the change in household composition.

4. The provisions protecting victims of domestic violence, dating violence or stalking engaged in by a member of the household, may not be construed to limit the owner, when notified, from honoring various court orders issued to either protect the victim or address the distribution of property in case a family's composition changes.

5. The VAWA protections shall not supersede any provision of any federal state, or local law that provides greater protection for victims of domestic violence, dating violence or stalking. The laws offering greater protection are applied in instances of domestic violence, dating violence or stalking.

See Chapter 4, Paragraph 4-4.C.9 for more information on the VAWA protections.

See the Glossary for the definition of Domestic Violence, Dating Violence, Stalking, Immediate Family Member, and Bifurcate.*

6-6 Lease Term

A. Introduction

Owners and tenants should recognize that lease terms and requirements vary across the different housing programs. An initial lease term is required when leasing the unit, but depending on the housing program, it can range from one month to multiple years.

Owners are required to notify tenants if the property has a HAP contract expiring within the next 12 months. Specific information relating to an expiring HAP contract and the required notification to the tenants can be found in HUD's Section 8 Renewal Policy Guidebook.

B. **Initial Term**

The requirements regarding the initial lease term are listed for each program in *Figure 6-4*. Owners of properties with Section 8 contracts should be aware of the expiration date of the HAP contract in relationship to the lease term listed on the lease. In such instances where the HAP contract is less than one year, the owner should execute a lease with a lease term equal to the remaining term on the HAP contract.

C. **Renewal Terms**

The requirements regarding the renewal lease term are listed for each program in *Figure 6-4*.

6-7 Attachments to the Lease

Three common attachments to the lease are described in the following paragraphs:

A. Paragraph 6-8: Lead-Based Paint Disclosure Form

B. Paragraph 6-9: House Rules

C. Paragraph 6-10: Pet Rules

Figure 6-4: Initial and Renewal Lease Terms for HUD Subsidized Programs

Program	Initial Term	Renewal Term
Section 236 Interest Reduction Assistance	Minimum: One month Maximum: One year	Minimum: One month Maximum: One year
Section 221(d)(3) BMIR	Minimum: One month Maximum: One year	Minimum: One month Maximum: One year
Properties with RAP	Minimum: One month Maximum: One year	Minimum: One month Maximum: One year
Properties with Rent Supplement	Minimum: One month Maximum: One year	Minimum: One month Maximum: One year
Section 8 LMSA with HUD-insured or HUD-held mortgages *[24 CFR 886.127]*	Minimum: The lesser of one year, or the remaining term of the HAP contract	Minimum: The lesser of one year, or the remaining term of the HAP contract
Section 8 PDSA *[24 CFR 886.327]*	Minimum: The lesser of one year, or the remaining term of the HAP contract	Minimum: The lesser of one year, or the remaining term of the HAP contract
Section 8 New Construction *[24 CFR 880.606]*	Minimum: One year*	Minimum: 30 days
Section 8 Substantial Rehabilitation *[24 CFR 881.601]*	Minimum: One year*	Minimum: 30 days
Section 8 State Agency *[24 CFR 883.701]*	Minimum: One year*	Minimum: 30 days
RHS 515 with Section 8 *[24 CFR 884.215]*	Minimum: One year*	Minimum: 30 days
Section 202 with Section 8 *[24 CFR 891.625]*	Minimum: One year*	The lease will automatically be renewed for successive one-month terms.
Section 202 with PAC *[24 CFR 891.765]*	Minimum: One year	The lease will automatically be renewed for successive one-month terms.
Section 202 with PRAC *[24 CFR 891.425]*	Minimum: One year	The lease will automatically be renewed for successive one-month terms.
Section 811 with PRAC *[24 CFR 891.425]*	Minimum: One year	The lease will automatically be renewed for successive one-month terms.

* **NOTE**: Minimum term may be less than one year if the Section 8 HAP contract will expire in less than 12 months from the effective date of the lease. Owners with these properties need to be aware of the expiration of the HAP contract in relation to lease expirations.

6-8 Lead-Based Paint Disclosure Form

A. Applicability

The Disclosure Rule [40 CFR part 745, subpart F and 24 CFR part 35, subpart A Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing], published March 6, 1996, specifies the types of information that owners must give to applicants prior to signing their leases. These requirements apply to all properties built prior to January 1, 1978, including cooperatives, with certain exemptions established by regulation. *Figure 6-5* lists specific exemptions when the disclosure rule does not apply. If a property is exempt, the owner does not need to comply with the requirements discussed in this paragraph.

***Figure 6-5*: Disclosure Rule Exemptions**

Residential structures built after January 1, 1978, are exempt from lead-based paint requirements because Congress banned the use of lead-based paint for residences after this date.

Rental property found to be lead-based paint free by a lead-based paint inspector certified under the federal certification program or under a federally accredited State or Tribal certification program is exempt.

Zero-room dwelling units, including single room occupancy (SRO) units, are exempt.

Housing *specifically designated* for the elderly or persons with disabilities is exempt, unless a child under age 6 resides or is expected to reside in the unit.

Short-term leases of 100 days or less when no lease renewal or extension can occur.

B. Overview

1. For properties where the requirements apply, both owners and tenants need to be aware of lead-based paint hazards, such as paint chips, paint dust in units, and contaminated soil in common areas. Lead-based paint is dangerous to adults and children, but especially to children under age 6. Units that are older, are in poor physical condition, have been renovated unsafely, or have exterior lead-contaminated soil are at the most risk. Nevertheless, owners in all applicable properties must provide tenants with basic information on lead-based paint and its hazards, and they must maintain an accurate record of this communication. Compliance with these regulations is also crucial in order to reduce liability and avoid lawsuits, obtain more favorable insurance premiums, and avoid penalties for failing to meet government requirements.

2. This paragraph on lead-based paint focuses on the owners' requirements during the leasing process. Lead-based paint requirements that must be

met during the life of the property are discussed in Handbook 4350.1, *Multifamily Asset Management and Project Servicing* or other current Notices. These requirements include:

a. Visual assessments to identify deteriorated paint or (for assistance over $5,000 per unit annually) risk assessments to identify lead-based paint hazards;

b. Paint stabilization or (for assistance over $5,000 per unit annually) interim controls with clearance testing when appropriate;

c. Ongoing paint maintenance and (for assistance over $5,000 per unit annually) re-evaluation every two years to identify hazards;

d. Notification of tenants about the actions above; and

e. Special actions when a child under six years old is reported to have high blood lead levels.

REMEMBER: Compliance with fair housing requirements applies when complying with the lead-based paint regulations. Owners may not refuse to rent to households with children to avoid triggering lead paint requirements, because this would constitute discrimination based on familial status.

3. Owners may affirmatively market the following types of units to families with children under age six:

a. Units that are built after January 1, 1978; and

b. Units that are built prior to January 1, 1978 <u>and</u> found to be free of lead hazards.

4. Owners must disclose known lead-based paint and/or lead-based paint hazards in the property and provide the EPA/HUD/Consumer Product Safety Commission (CPSC) Lead Hazard Information Pamphlet (*Protect Your Family from Lead In Your Home)* to tenants when leases are renewed, modified, or renegotiated, unless no new information on those subjects has come into the possession of the owner and the owner has already provided the tenants with the disclosure information and the pamphlet. This is in accordance with 24 CFR 35.82(d), in the Lead Disclosure Rule.

C. **Disclosure Rule Requirements**

1. Prior to leasing, owners must provide the tenant with two items:

a. <u>Lead Hazard Information Pamphlet</u>. Owners must provide tenants of a residential property with the EPA/HUD/Consumer Product Safety Commission (CPSC) Lead Hazard Information Pamphlet

(*Protect Your Family from Lead In Your Home)*, or an EPA-approved equivalent. Owners are required to document that the tenant was given a copy of the pamphlet before signing the lease.

NOTE: The Lead Hazard Information Pamphlet distributed to meet the Disclosure Rule requirement is the same pamphlet distributed for other lead-based paint requirements (e.g., the Lead-Based Paint Pre-Renovation Education Rule). It does not have to be distributed twice, so long as you can document that it has been provided.

b. Disclosure form. Owners must include the disclosure form in the lease packet and obtain the prospective tenant's signature before he or she signs the lease. (Exhibit 6-3 contains a copy of the Disclosure Form.) The disclosure form is designed to document receipt of the Lead Hazard Information Pamphlet and to meet three disclosure requirements, as follows:

(1) Disclose the presence of known lead-based paint/hazards. Owners of target housing must disclose the presence of known lead-based paint and/or lead-based paint hazards. The disclosure form has a line for owners to mark to verify that lead-based paint/hazards have been disclosed.

(2) Disclose information on lead-based paint/hazards. Owners must provide applicants with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards. Owners must provide applicants with procedures to obtain access to any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards. The disclosure form has a line for owners to mark to verify that copies of all relevant records and reports have been provided to the applicant. The form also documents if there are no records or reports available.

(3) Include contract language. Leasing contracts must include a Lead Warning Statement and an acknowledgment section to be signed by the prospective tenant, the owner and any agent. The owner must present the disclosure form signed by the owner and the Lead Hazard Information Pamphlet to the prospective tenant before the tenant signs the lease. The disclosure form has the Lead Warning Statement printed at the top and a place at the bottom for the applicant to sign acknowledging disclosure and receipt of the Lead Hazard Information Pamphlet.

(4) Recommended practice. The tenant briefing is an ideal time to provide applicants with the Lead Hazard Information Pamphlet and to give them the opportunity to

review the Disclosure Form. (See paragraph 6-27 Briefing with New Tenants.)

D. **Record-Keeping Requirements**

There are specific records that owners must keep to verify their compliance with the Disclosure Rule requirements.

1. Disclosure form. Owners must keep records of the Disclosure Form provided to each tenant for three years from the commencement of the leasing period.

2. Lead Hazard Information Pamphlet. A record of the distribution of the Lead Hazard Information Pamphlet is required under the HUD-EPA Disclosure Rule and the EPA Lead Pre-Renovation Education Rule. A record is not required under the new HUD regulation, but it is recommended.

6-9 House Rules

A. **Overview**

1. Developing a set of house rules is a good practice. By identifying allowable and prohibited activities in housing units and common areas, owners provide a structure for treating tenants equitably and for making sure that tenants treat each other with consideration. House rules are also beneficial in keeping the properties safe and clean and making them more appealing and livable for the tenants.

2. The decision about whether to develop house rules for a property rests solely with the owner, and HUD or the Contract Administrator's review or approval is not required. Owners, however, must be careful not to develop restrictive rules that limit the freedom of tenants. If owners develop house rules for a property, these rules must be consistent with HUD requirements for operating HUD subsidized projects, must be reasonable, and must not infringe on tenants' civil rights.

3. House rules are listed in the lease as an attachment to the lease. It is important, however, to recognize that house rules do not replace the lease.

4. House rules must not create a disparate impact on tenants based on race, color, national origin, religion, sex, disability, or familial status.

B. **Key Requirements**

1. House rules must:

   a. Be related to the safety, care, and cleanliness of the building or the safety and comfort of the tenants;

Example – Possible Topics for House Rules

Safety and care of the building: Guest rules, locks and lost keys, access to the front door, and security systems.

Cleanliness of the building: Trash disposal, littering, hallway obstructions, and lobby rules.

Safety and comfort of tenants: Noise levels, fire safety, and security.

b. Be compliant with HUD requirements;

c. Not circumvent HUD requirements;

d. Not discriminate against individuals based upon membership in protected class;

e. Be reasonable.

(1) Reasonable house rules are within the bounds of common sense. They are not excessive or extreme, and most importantly, they are fair.

(2) *Figure 6-6* identifies examples of reasonable and unreasonable house rules. The table does not include all possible situations; therefore, owners must use their own discretion to determine whether a house rule is reasonable or not while developing house rules for their properties;

f. Comply with state and local requirements.

***Figure 6-6*: Reasonable versus Unreasonable House Rules**

Reasonable House Rules	Unreasonable House Rules
Requesting that all visitors sign in when entering the building.	Not allowing a visitor in a tenant's apartment during nighttime.
Not allowing smoking in the common areas of the building.	
Asking tenants to turn sound equipment low after a certain time at night.	Asking tenants to turn the lights off after a certain time at night.
Asking all children under the age of 12 to be accompanied by an adult resident when using building facilities.	Asking all children under the age of 12 to be accompanied by an adult resident at all times in the building.

NOTE: There are no statutory or regulatory provisions governing smoking in assisted housing. HUD assisted properties are required to comply with applicable state and local laws, which would include any laws governing smoking in residential units. Owners are free to adopt reasonable rules that must be related to the safety and habitability of the building and comfort of the tenants. Owners should make their own informed judgment as to the enforceability of house rules.

2. Extended absence or abandonment. As part of a property's house rules, owners may establish rules specifying when tenants give up their right to occupancy because of their extended absence or abandonment of the unit. Under these rules, owners may initiate action to terminate tenancy in response to an extended absence or abandonment of the unit by the tenant or individual listed on the lease for that unit.

   NOTE: Abandonment is distinguished from an absence from the unit by the tenant's failure to pay the rent due for the unit and failure to acknowledge or respond to notices from the owner regarding the overdue rent.

   a. Owner discretion. The decision to establish rules regarding extended absence or abandonment of a unit as part of a property's house rules rests solely with the owner.

   b. Requirements and guidelines. If owners elect to establish such rules, they must be consistent with the requirements and guidelines listed below:

      (1) Rules regarding extended absence and abandonment must be consistent with state and local law.

      (2) Guidelines for rules regarding extended absence from a unit. Owners may establish a house rule defining extended absence as the tenant being absent from the unit for longer than 60 continuous days, or for longer than 180 continuous days for medical reasons. Owners may allow exceptions for extenuating circumstances.

      (3) Guidelines for abandonment of a unit. If abandonment of a rental unit is not addressed by state or local law, owners may establish a rule for declaring a unit abandoned. Rules regarding abandonment must be consistent with state and local law regarding nonpayment of rent, specify the actions that the owner will take to contact the tenant, and describe the handling and disposition or any tenant possessions left in the unit.

3. Tenants conducting incidental business in their unit

   Owners may establish house rules covering tenants who conduct incidental business, such as computer work, limited babysitting, etc., in their unit. The rules would deal with or prohibit such things as the:

   a. Amount of traffic (both foot and motor vehicle) associated with such incidental business income;

   b. Amount of noise associated with such incidental income;

   c. Prohibition of signs in unit windows;

   d. Use of parking within the project grounds for such incidental business use;

   e. Hours such as incidental work could be performed if such performance could disturb the rights or comfort of the neighbors; and

   f. Other such reasonable rules.

   NOTE: Tenants who conduct incidental business in their unit and receive incidental business income are not in violation of paragraph 13, General Restrictions, of the Model Lease for Subsidized Programs.

4. House rules are listed in the lease as an attachment and must be attached to the lease.

5. Owners must give tenants written notice 30 days prior to implementing new house rules.

6. If HUD or Contract Administrator staff becomes aware (through routine monitoring, site inspections, tenant complaints, etc.) that house rules circumvent or conflict with HUD requirements (including civil rights and Fair Housing), the owner will be required to modify the rules in order to conform with HUD requirements.

6-10 Pet Rules

A. Applicability

1. Pet rule requirements in this paragraph apply to housing for the elderly and persons with disabilities.

2. These pet rule requirements do not apply to family housing. Those properties are instead covered by state and local requirements.

3. The regulations apply to household pets only. (See the Glossary.)

4. An owner must not apply house pet rules to assistance animals (see Glossary for definition of Assistance Animals) and their owners. This prohibition does not preclude an owner from enforcing state and local laws, if they apply.

   NOTE: An owner must not apply house pet rules to assistance animals and their owners. However, this prohibition does not preclude the owner from enforcing state and local health and safety laws, if they apply, nor does it preclude the owner from requiring that the tenant with a disability who uses an assistance animal be responsible for the care and maintenance of the animal, including the proper disposal of the assistance animal's waste.

B. **Overview**

1. Pet rules help maintain a decent, safe, and sanitary living environment for the tenants in a property through the development of guidelines on the registration and inoculation of pets, the sanitary disposal of waste, and the restraint of pets while in common areas. In addition, they help protect and preserve the physical condition of the property and the owner's financial interest in it.

2. Tenants or tenant representatives may submit written comments on the proposed pet rules to the project owner by the date specified in the notice of proposed rules. In addition, the owner may schedule one or more meetings with tenants during the comment period to discuss the proposed rules. Tenants and tenant representatives may make oral comments on the proposed rules at these meetings. (See Exhibit 6-5 for more information on how to develop pet rules.)

3. By developing pet rules, owners ensure that existing and prospective pet owners know their responsibilities to their pets and neighbors as well as the property. Pet rules also make existing and potential tenants aware of their rights while living among pet owners.

C. **Key Requirements**

1. Owners must not prohibit tenants from having common household pets in the tenants' units or discriminate against applicants based on their ownership of a pet.

2. An applicant may reject an available unit if this unit is close to another unit with a pet. This action must not negatively affect the family's application for occupancy or position on the waiting list to be eligible for the next available unit. The owner is not obligated at the time the applicant rejects a unit to provide an alternate unit.

3. Property owners may refuse to register a pet if:

   a. The pet is not a common household pet (see Glossary for definition of Common Household Pet);

b. The keeping of the pet would violate any applicable house rule; or

c. The pet owner fails to provide complete pet registration.

4. Pet rules:

a. Must include the mandatory rules identified in Exhibit 6-4. Mandatory rules are the obligatory rules that must be prescribed for inoculations, sanitary standards, pet restraints, registration, and written notification to a pet owner if an owner refuses to register a pet.

b. May include additional discretionary rules, but they must be reasonable. Discretionary rules are the rules that may be developed by the owner. Tenants must be consulted in developing discretionary rules, as discussed in Exhibit 6-5.

c. Exhibit 6-4 identifies mandatory pet rules as well as possible discretionary pet rules.

5. Owners must make sure that pet rules do not conflict with applicable state or local law or regulations. If such a conflict exists, the state and local law or regulations apply.

6. For requirements on developing pet rules, see Exhibit 6-5.

7. Owners may modify the rules at any time. When doing so, they must follow procedures for notice and consultation. (See Exhibit 6-5.)

8. A pet owner violates pet rules when he/she fails to act according to the mandatory and discretionary rules.

9. When a pet's conduct or condition causes a threat or nuisance to the health or safety of the property's occupants, its owner violates the pet rules. State and local law determines the criteria for the conduct and conditions that are a threat or nuisance to the tenants of a property. Property owners should check with state or local law to find the appropriate definition for their jurisdiction.

10. In addition to the information presented here, an owner should consult HUD Handbook 4350.1, *Multifamily Asset Management and Project Servicing*, for further information and details relating to pet rules and regulations.

NOTE: See paragraph 5-10.C.4 for information on expenses for assistance animals. Expenses for assistance animals are deductible when calculating a tenant's annual income, because they may be counted as medical expenses. However, expenses for common household pets are not deductible when calculating annual income.

D. **Lease Provisions for Pets**

1. Leases must:

   a. State that tenants are permitted to keep common household pets in their units subject to pet rules;

   b. Incorporate the pet rules by reference;

   c. Have language that states that the tenant agrees to comply with these rules; and

   d. State that the tenant agrees to comply with these rules and that a violation of any of these rules may be grounds for removal of the pet or termination of the pet owner's tenancy (or both).

> **Remember!**
>
> The requirements in paragraph 6-10 apply only to properties developed for the elderly and persons with disabilities.

2. Leases may:

   a. Allow the property owner to enter and inspect the premises after reasonable notice to the tenant and during reasonable hours. This action is permitted by the lease only if the property owner has received a signed, written complaint that the conduct or condition of a pet in the unit constitutes, under applicable state or local law, a nuisance or a threat to the health or safety of the occupants of the project or others in the community.

   b. Contain language that allows the property owner to enter the premises to remove a pet that becomes vicious, displays symptoms of severe illness, or demonstrates other behavior that may be considered an immediate threat to the health or safety of the tenants, in the absence of state or local personnel to remove a pet.

   c. Permit the property owner to enter the premises and remove the pet only if the property owner requests that the pet owner remove the pet from the project immediately, and the pet owner refuses to do so. Another situation that allows such action is the case when the property owner is unable to contact the pet owner to make a removal request.

E. **Procedures When Pet Rules Are Violated**

1. If a property owner determines on the basis of clear evidence, supported by written statements, that a pet owner has violated a pet rule, the property owner may serve a written notice of a pet rule violation to the pet owner.

2. The notice must contain:

   a. The pet rule(s) alleged to be violated;

   b. A brief factual statement of how the pet violation was determined;

   c. A statement that the pet owner has 10 days from the effective date of service of the notice to correct the alleged violation, or to make a written request for a meeting to discuss it;

   d. A statement that the pet owner is entitled to be accompanied by another person of his/her choice at the meeting; and

   e. A statement that the pet owner's failure to correct the violation, request a meeting, or appear at a requested meeting may result in initiation of procedures to terminate the pet owner's tenancy.

3. Meeting with the tenant.

   a. If the pet owner makes a timely request for a meeting to discuss an alleged pet rule violation, a property owner must establish a mutually agreeable time and place for the meeting.

   b. The meeting must take place no later than 15 days from the effective date of the notice, unless the property owner agrees to a later date. As a result of the meeting, the property owner may give the pet owner additional time to correct the violation.

4. Notice of pet removal. A property owner may issue a notice for the removal of the pet if:

   a. The pet owner and property owner are unable to resolve the pet rule violation at the meeting; or

   b. It is determined that the pet owner has failed to correct the pet rule violation.

5. Initiation of procedures to terminate a pet owner's tenancy.

   a. The owner must not initiate procedures to terminate a pet owner's tenancy based on a pet rule violation, unless:

      (1) The pet owner has failed to remove the pet or correct a pet rule violation within the applicable time period; and

(2) The pet rule violation is sufficient to begin procedures to terminate the pet owner's tenancy under the terms of the lease and applicable regulations.

b. The property owner may initiate procedures at any time in accordance with the provision of applicable state or local laws. If the state or local provisions conflict with the 10 days that the pet owner is given to correct the violation (see subparagraph E.2.c above), then the timeframe that is most beneficial to the pet owner must be followed.

6-11 Amending the Lease for Rent Changes

A. Overview

Amending the lease for a change in rent provides the owner and tenant with an accurate and up-to-date record of an increase or decrease in a tenant's rent. The lease is a legal contract between the owner and the tenant, which stipulates the amount of rent the tenant is obligated to pay to the owner each month. By amending the lease for changes in the rent, the tenant and owner are both aware of the amount of rent the tenant must pay to the owner each month.

B. Key Requirements

1. Any increase in rent must be governed by HUD regulations and requirements currently in effect.

2. HUD does not require an addendum for a change in the tenant's rent.

   NOTE: The printout of the HUD-50059 or HUD-50059-A serves as an addendum identifying the change in rent.

3. If the tenant rent increases for any reason other than a tenant's failure to comply with recertification requirements, the owner must give the tenant 30 days advance written notice of the increase. The notice must state:

   a. The reason for the increase; and

   b. That it revises the rent at the following paragraph(s):

      (1) Paragraph 3 of the Model Lease for Subsidized Programs;

      (2) Paragraphs 2 and 5 of the Model Lease for Section 202/8 and Section 202 PACs; and

      (3) Paragraphs 2 and 4 of the Model Leases for Section 202 PRACs and Section 811 PRACs.

4. If the contract rent or assistance payment changes but the tenant rent and utility allowance remain the same, the owner need only provide the

tenant with a copy of the revised HUD-50059 or HUD-50059-A. A copy of the revised HUD-50059 or HUD-50059-A must also be filed in the tenant's file to reflect the correct gross rent and assistance payment (see paragraph 7-17 E)**.**

6-12 Modifying the Lease

A. Applicability

The properties identified in Figure 1-1 may modify their respective HUD Model Leases, except for the following properties:

1. Section 202/8;

2. Section 202 PACs;

3. Section 202 PRACs; and

4. Section 811 PRACs.

NOTE: Information on the model leases for Section 202/8, Section 202 PAC, Section 202 PRAC, and Section 811 PRAC is located at paragraphs 6-5 D and 6-5 E.

B. Key Requirements

1. A lease change provided by HUD Headquarters through issuance of Notices or revisions to this Handbook must be incorporated into the lease *as a lease addendum * and does not require HUD Field Office or Contract Administrator approval. *Lease addendums issued by HUD also do not require HUD Field Office or Contract Administration approval.* However, the tenant must be given notice as outlined in this paragraph.

2. An owner may modify the term and conditions of the lease, but he/she must *make the modifications in the form of a lease addendum and must* receive prior written approval of HUD or the Contract Administrator before providing the modification to the tenant(s). (See Paragraph 6-4.D Note.)

   NOTE: Implementation of the lead-based paint attachment does not require HUD approval.

3. Although not a HUD requirement, an owner may choose to determine whether any applicable state or local law (State Tenant-Landlord Law) requirements also apply when modifying the lease. Such a practice would ensure that an owner's lease is in compliance with, and enforceable under, state and local laws.

4. A modification to the lease may only be effective at the end of a lease term. The owner must provide the tenant with the approved modifications at least 60 days prior to the end of the lease term.

The notice must include a copy of the revised lease or an addendum revising the existing lease agreement. Owners must include a letter clearly stating that the tenant can either accept the modification or move, but that a response is due within 30 days.

5. A tenant must either:

   a. Accept the modification by signing both copies of the modification and returning one to the owner; or

   b. Refuse the modification and give the owner a 30-day notice of intent to vacate.

6. If, within 30 days, the tenant indicates that the modification is unacceptable or does not respond, the owner may begin the procedures for terminating tenancy set forth in paragraph 8-13 B of this handbook.

C. **Submission and Approval Process for Modifying the Lease**

1. An owner must submit a proposed modification to the lease for review and approval to the local HUD Field Office or Contract Administrator having jurisdiction over the property. *Modifications must be in the form of a lease addendum.* An owner must submit two (2) copies of the proposed modification, along with an explanation as to the necessity of the modification.

   - For modifications submitted to the HUD Field Office, the HUD Field Office will review the proposed modification and then forward it, along with any comments and/or concerns, to the Field Counsel. After meeting with the Field Counsel (or receiving comments from the Field Counsel), the local HUD Field Office will issue a letter to the owner either approving or denying the proposed modification, along with HUD's reason(s) for denying the modification, if applicable.

2. HUD Field Offices, State Agencies, and Contract Administrators may approve changes that will make the model lease comply with:

   a. State or local law; or

   b. Property management practices generally used in the project's market area.

Example – Approving Lease Changes

Examples of acceptable management practices:

- Units with a live-in aide, a lease addendum that denies occupancy of the unit to a live-in aide after the tenant, for whatever reason, is no longer living in the unit. (See also paragraph 3-6 E.)
- Units with a police officer or security personnel, a lease provision that states that the right of occupancy is dependent on continued employment as a police officer or security personnel. (See also paragraph 3-8 D.)

3. HUD Field Offices, Contract Administrators and State Agencies must not approve changes that would:

   a. Eliminate any provision related to HUD's subsidy rules;

   b. Circumvent HUD rules, or state or local law; or

   c. Effectuate any change to the required lease provisions. (Paragraph 6-5 F lists the required lease provisions.)

D. **Providing Notice to the Tenant**

The tenant must be provided with proper notice when *HUD or the* owner modifies the lease. An owner must comply with the following requirements to provide such notice.

1. The owner must provide the tenant with the approved modifications at least 60 days prior to the end of the lease term.

2. The notice must include a copy of the revised lease or *lease* addendum revising the existing lease agreement. Owners must include a letter clearly stating that the tenant can either accept the modification or move, but that a response is due within 30 days.

3. The notice must be served by:

   a. Sending a letter by first-class mail, properly stamped and addressed and including a return address, to the tenant at the unit address; and

   b. Delivering a copy of the notice to any adult person answering the door at the unit. If no adult answers the door, the person serving the notice may place it under or through the door, or affix it to the door.

4. The date on which the notice is deemed received by the tenant is the later of:

   a. The date the first-class letter is mailed; or

b. The date the notice is properly given.

5. Service of the notice is deemed effective once the notice has been both mailed and delivered.

Section 2: Security Deposits

6-13 Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 2: Security Deposits. The citations and their titles (or topics) are listed below.

A. 24 CFR 880.608, 881.601, 883.701, 884.115, 886.116, 886.315, 891.435, 891.635, and 891.775 (Security and utility deposits)

B. 24 CFR 880.608, 881.601, 883.701, 884.115, 886.116, 886.315, 891.435, 891.635, and 891.775 (Interest earned on the security deposit)

C. 24 CFR 880.608, 881.601, 883.701, 884.115, 886.116, 886.315, 891.435, 891.635, and 891.775 (Refunding and use of the security deposit)

6-14 Applicability

A. Unless otherwise indicated, all of the applicable properties identified in Figure 1-1 are subject to the information presented in this section.

B. If the security deposit now held by the owner met the HUD rules in effect at the time the deposit was collected:

1. An owner need not adjust the amount of the deposit to comply with current rules; and

2. The HUD Field Office or Contract Administrator may not reduce the Section 8 special claims because the deposit does not meet the current rules.

6-15 Collection of the Security Deposit

A. It is recommended the owner collect a security deposit at the time of the initial lease execution.

B. Security deposits provide owners with some financial protection when a tenant moves out of the unit and fails to fulfill his/her obligations under the lease. Additionally, many programs require that owners place security deposits in interest-bearing accounts and allocate the interest to the tenant. This requirement varies by programs and depends to a certain extent on state and local laws.

C. The owner must collect a security deposit at the time of the initial lease execution for the following properties:

1. Section 8 New Construction with an AHAP executed on or after November 5, 1979;

2. Section 8 Substantial Rehabilitation with an AHAP executed on or after February 20, 1980;

3. Section 8 State Agency with an AHAP executed on or after February 29, 1980;

4. Section 202/8;

5. Section 202 PAC;

6. Section 202 PRAC; and

7. Section 811 PRAC.

D. The amount of the security deposit established at move-in does not change when a tenant's rent changes.

E. The amount of the security deposit to be collected is dependent upon:

1. The type of housing program;

2. The date the AHAP or HAP contract for the unit was signed; and

3. The amount of the total tenant payment or tenant rent.

Figure 6-7 outlines the amount of the security deposit the owner may collect for each of the different programs.

F. The owner must comply with any applicable state and local laws governing the security deposit.

G. The tenant is expected to pay the security deposit from his/her own resources, and/or other public or private sources.

H. The owner may collect the security deposit on an installment basis.

I. The security deposit is refundable. (See paragraph 6-18 for more information on refunding a security deposit.)

J. An applicant may be rejected if he/she does not have sufficient funds to pay the deposit.

6-16 Security Deposits for Tenants Transferring to Another Unit

A. When a tenant transfers to a new unit, an owner may:

1. Transfer the security deposit; or

2. Charge a new deposit and refund the deposit for the old unit.

B. If the deposit for the old unit is refunded, the owner must:

1. Follow the requirements listed in paragraph 6-18 regarding the refunding and use of the security deposit; and

2. Establish a security deposit for the new unit based on the requirements listed in paragraph 6-15 regarding the collection of a security deposit.

Figure 6-7: Amount of Security Deposit to Collect from Tenant

Program	Amount to Collect
Section 8 New Construction with AHAP executed before November 5, 1979	One month's total tenant payment
Section 8 Substantial Rehabilitation with AHAP executed before February 20, 1980	One month's total tenant payment
Section 8 State Agency with AHAP executed before February 29, 1980	One month's total tenant payment
Section 8 New Construction with AHAP executed on or after November 5, 1979 *[24 CFR 880.608]*	The greater of: 1) One month's total tenant payment, or 2) $50
Section 8 Substantial Rehabilitation with AHAP executed on or after February 20, 1980 *[24 CFR 881.601]*	The greater of: 1) One month's total tenant payment, or 2) $50
Section 8 State Agency with AHAP executed on or after February 29, 1980 *[24 CFR 883.701]*	The greater of: 1) One month's total tenant payment, or 2) $50
RHS 515 with Section 8 *[24 CFR 884.115]*	Equal to one month's total tenant payment
Section 8 LMSA with HUD-insured or HUD-held mortgages *[24 CFR 886.116]*	An amount up to, but no greater than, one month's total tenant payment
Section 8 provided with the sale of a HUD-owned property (Property Disposition) *[24 CFR 886.315]*	The greater of: 1) One month's total tenant payment, or 2) $50
Section 202/8 or Section 202 PAC *[24 CFR 891.435]*	The greater of: 1) One month's total tenant payment, or 2) $50
Section 202 PRAC *[24 CFR 891.435]*	The greater of: 1) One month's total tenant payment, or 2) $50
Section 811 PRAC *[24 CFR 891.435]*	The greater of: 1) One month's total tenant payment, or 2) $50
Section 236	One month's tenant rent
Section 236 with RAP	The greater of: 1) One month's total tenant payment, or 2) $50
Section 221(d)(3) BMIR	One month's tenant rent
Rent Supplement	The greater of: 1) One month's total tenant payment, or 2) $50

6-17 Interest Earned on the Security Deposit

A. Section 8 New Construction, Substantial Rehabilitation, and State Agency properties are subject to two different sets of requirements depending on the date the AHAP was signed. Additionally, Section 202 properties with Section 8 or PAC have additional requirements for allocating interest and maintaining records. To further complicate the process, most states (and some counties and municipalities) have laws regarding the investment of security deposits and payments to the tenant of interest earned on the deposits, with which owners must comply. In instances where laws conflict, owners should follow the requirements that provide the greatest benefit to the tenant.

Owners must comply with any state and local laws regarding investment of security deposits and distribution of any interest earned thereon. If state law is silent, or if HUD regulations are more demanding, owners must comply with HUD's regulations. HUD requirements are discussed below.

In addition, interest to the tenants must be computed in accordance with state or local law. When state or local law is silent, the actual rate earned on the security deposits must be computed and credited to each tenant's portion of the security deposit.

B. The owner must place the security deposits into a segregated, interest-bearing account. The balance of the account must equal the total amount collected from all tenants then in occupancy, plus any accrued interest.

NOTE: For Section 202/8, Section 202 PRACs, and Section 811 PRACs, the balance must equal the total amount collected from all tenants then in occupancy, plus any accrued interest and less allowable administrative cost adjustments.

NOTE: For Section 202/8, the allowable administrative costs may not exceed the accrued interest allocated to the family's balance for the year.

NOTE: Owners of the following properties are not subject to the revised Section 8 regulations. Subject to state and local requirements, these properties may invest security deposits and deposit the interest into the property's operating account on a quarterly basis.

- Section 8 New Construction with an AHAP executed before November 5, 1979.
- Section 8 Substantial Rehabilitation with an AHAP executed before February 20, 1980.
- Section 8 State Agency with an AHAP executed before February 29, 1980.

C. In addition to the other requirements listed in this section, Section 202 properties with Section 8 or PAC are subject to the following:

1. The owner must maintain a record of the amount in the segregated interest-bearing account that is attributable to each tenant.

2. The owner must allocate interest accrued on the tenant's security deposit on an annual basis and when a tenant vacates the unit.

3. Unless prohibited by state or local law, the owner may deduct, from the accrued interest attributable to the tenant for the year, the administrative cost of computing the allocation of interest to the tenant's security deposit balance. The amount of the administrative cost must not exceed the accrued interest allocated to the tenant's balance for the year.

D. Although not a specific requirement for every program, it is in the owner's best interest to:

1. Maintain a record of the amount in the security deposit account attributable to each tenant; and

2. Allocate interest to the tenant's security deposit on an annual basis and when a tenant vacates the unit.

6-18 Refunding and Use of the Security Deposit

A. In order to receive a refund of the security deposit, a tenant must provide the owner with a forwarding address or arrange to pick up the refund. *[24 CFR 880.608(c), 881.601, 883.701, 891.435(b)(2), 891.635, and 891.775]*

NOTE: The regulations do not require the tenant to provide this type of notification to the owners in RHS 515 properties with Section 8 and properties with Section 8 LMSA and Section 8 PDSA. However, state law typically requires owners to attempt to refund a tenant's security deposit.

B. Subject to state and local laws, an owner may use the tenant's security deposit as reimbursement for any unpaid rent or other amounts the tenant owes under the lease.

C. Within 30 days after the move-out date (or shorter time if required by state and/or local laws), the owner must either:

1. Refund the full security deposit plus accrued interest to a tenant that does not owe any amounts under the lease; or

2. Provide the tenant with an itemized list of any unpaid rent, damages to the unit, and an estimated cost for repair, along with a statement of the tenant's rights under state and local laws.

a. If the amount the owner claims is less than the security deposit plus accrued interest, the owner must refund the unused balance to the tenant.

b. If the owner fails to provide the list to the tenant, the tenant is entitled to a full refund of the tenant's security deposit plus accrued interest.

NOTE: State laws may also have requirements regarding itemizing damages. When a specific federal housing program does not require an itemized list (as is the case for properties with Section 8 LMSA and Section 8 PDSA), owners must be aware of any state or local law that obligates an owner to provide the tenant with an itemized list of damages.

D. If a disagreement arises concerning the reimbursement of the security deposit to the tenant, the tenant has the right to present objections to the owner in an informal meeting. The owner must keep a record of any disagreements and meetings in the tenant file for a period of three years for inspection by the HUD Field Office or Contract Administrator. These procedures do not preclude the tenant from exercising any rights under state and local law.

NOTE: The regulations for RHS 515 properties with Section 8 and properties with Section 8 LMSA and Section 8 PDSA do not require an owner to meet with the tenant or keep a record of the meeting or any disagreements.

E. If the security deposit is insufficient to reimburse the owner for any unpaid rent or other amounts that the tenant owes under the lease, the owner may be able to claim reimbursement from the HUD Field Office or Contract Administrator.

F. Any reimbursement from HUD received by the owner must be applied first toward any unpaid tenant rent due under the lease. Additionally, no reimbursement may be claimed for unpaid rent for the period after termination of the tenancy.

Section 3: Charges in Addition to Rent

6-19 Key Regulations

This paragraph identifies the key regulatory citation pertaining to Section 3: Charges in Addition to Rent. The citation and its title are listed below.

- 24 CFR 5.318 Discretionary Pet Rules (Pet Deposit)
- 24 CFR 2.278 Mandatory Meals in Multifamily Rental or Cooperative Projects for the Elderly or Handicapped

6-20 Charges Prior to Occupancy

A. An owner must not charge applicants for costs associated with accepting and processing applications, screening applicants, or verifying income and eligibility. Hence, owners must not require applicants to pay application fees, credit report charges, charges for home visits, charges to obtain a police report(s), or other costs associated with the above functions. These costs are considered project expenses.

B. Cooperatives are permitted to charge a reasonable application and credit check fee.

6-21 Charges at Initial Occupancy

Owners must not collect any money from tenants at initial occupancy other than rent and the maximum HUD-allowed security deposit, unless they receive HUD approval to do otherwise.

Reminder!

An owner of housing specifically designed for occupancy by the elderly and persons with disabilities may also collect a pet deposit at initial occupancy. See paragraphs 6-10 and 6-24 of this handbook and HUD Handbook 4350.1, *Multifamily Asset Management and Project Servicing*, for further information and details relating to pet rules and regulations subject to HUD requirements.

6-22 Meal Program

Owners of properties for the elderly or persons with disabilities for which HUD approved a mandatory meals program prior to April 1, 1987, must comply with the following:

A. Owners may charge a HUD-approved meals fee. Such fees are paid by the tenants and are not rent. Income collected from such charges must be used solely to offset costs associated with purchasing, preparing, and serving meals.

B. HUD requires owners to grant exceptions to participation in a meals program for reasons such as medical or dietary restrictions, or employment.

C. Owners are required to execute a separate meals contract, incorporated as part of the lease, stating the program requirements.

6-23 Charges for Late Payment of Rent

A. Paragraph 6-23 does not apply to cooperatives. Cooperatives may collect any late charges that are approved by the Board and that are consistent with the cooperative's organizational documents and state and local laws.

B. Paragraph 6-23 does not apply to Section 202/8, Section 202 PAC, Section 202 PRAC and Section 811 PRAC projects. Owners of Section 202/8, Section 202 PAC, Section 202 PRAC and Section 811 PRAC projects cannot charge fees for late payment of rent.

C. Owners may assess a charge if the tenant has been given at least 5 calendar days as a grace period to pay the rent. The rent must be received by the fifth day, not postmarked by then.

On the sixth day, the owner may charge a fee, not to exceed $5 for the period of the first through fifth day that the rent is not paid. Additionally, the owner may charge a fee of $1 per day for each additional day the rent remains unpaid for the month.

D. Field Offices or Contract Administrators may approve a higher initial late fee if:

1. It is permitted under state and local laws;

2. It is consistent with local management practices; and

3. The total late charge assessed for the month does not exceed $30.

E. An owner may deduct accrued, unpaid late charges from the tenant's security deposit at the time of move-out, if such a deduction is permitted under state and local laws.

F. An owner must not evict a tenant for failure to pay late charges.

6-24 Pet Deposits

A. The pet rules may require tenants to pay a refundable pet deposit, but apply only to those tenants who own or keep cats or dogs in their units. This deposit is in addition to any additional financial obligation generally imposed on tenants of the property.

B. The maximum amount of the pet deposit that may be charged by an owner on a per-unit basis is determined as outlined in Figure 6-8. The amount of the deposit was set by publication of a notice in the *Federal Register* by HUD and may change periodically with future publications.

C. Pet deposits only apply to properties established for the elderly and persons with disabilities. Assistance animals *are animals that provide disability-related assistance, support, or provide service to persons with disabilities and are exempt from the pet policy and from the refundable pet deposit. See Chapter 2-44 Assistance Animals as a Reasonable Accommodation for more information.*

D. An owner may use the pet deposit only to pay reasonable expenses directly attributable to the presence of the pet on the property. Such expenses would include, but not be limited to, the cost of repairs and replacement to the unit, fumigation of the unit, and the cost of animal care facilities.

E. Owners must return the unused portion of a pet deposit to the tenant within a reasonable time after the tenant moves from the property or no longer owns or keeps a household pet in the unit.

F. In addition to the information presented here, an owner should consult HUD Handbook 4350.1, *Multifamily Asset Management and Project Servicing,* for further information and details relating to pet rules and regulations.

***Figure 6-8*: Collection of Pet Deposits**

Program	Maximum Amount to Collect
Tenants whose rents are subsidized under the following programs: Section 8 New Construction Section 8 Substantial Rehabilitation Section 8 State Agency RHS 515 with Section 8 Section 202 with PRAC Section 811 with PRAC Rent Supplement Rental Assistance Payment	The pet deposit must not exceed $300. The initial deposit cannot exceed $50 at the time the pet is brought onto the premises. The pet rules must provide for gradual accumulation of the remaining required deposit, not to exceed $10 per month until the deposit is reached. **NOTE:** A tenant must be allowed to pay the entire amount or increments that are greater than $10 if he or she chooses to do so.
Tenants whose rents are not subsidized under one of the programs listed in 1 above, but who live in a property assisted under the following programs: Section 236 Interest Reduction Section 202 with Section 8 Section 202 with PAC Section 221(d)(3) BMIR	The pet deposit must not exceed $300. The pet rules may provide for a gradual accumulation of the required deposit.

6-25 Other Charges During Occupancy

A. When Owners May Require Other Charges

An owner may charge tenants for allowable charges identified under subparagraphs B, C, D, and E below.

B. Checks Returned for Insufficient Funds

1. Owners may impose a fee on the second time, and each additional time, a check is not honored for payment. (See paragraph 5 of the Model Lease for Subsidized Programs for more information.)

2. The owner may bill a tenant only for the amount the bank charges for processing the returned check.

3. Field Offices or Contract Administrators may authorize an owner to impose additional charges, if such charges are consistent with local management practices and are permitted by state and local laws.

   NOTE: This paragraph does not apply to Section 202/8, Section 202 PAC, Section 202 PRAC and Section 811 PRAC projects. Owners of Section 202/8, Section 202 PAC, Section 202 PRAC and Section 811 PRAC projects cannot charge fees for checks returned for insufficient funds.

C. **Damages**

1. Whenever damage is caused by carelessness, misuse, or neglect on the part of the tenant, household member, or visitor, the tenant is obligated to reimburse the owner for the damages within 30 days after the tenant receives a bill from the owner.

2. An owner may deduct accrued, unpaid damage charges from the tenant's security deposit at the time of move-out, if such a deduction is permitted under state and local laws.

3. The owner's bill is limited to actual and reasonable costs incurred by the owner for repairing the damages.

D. **Special Management Services**

1. An owner may charge a tenant for special services such as responding to lock-out calls and providing extra keys.

2. At the time of move-out, the owner may charge the tenant a fee for each key not returned.

   An owner may not charge a tenant for bad behavior, such as foul language, noise, or failure to supervise children. However, if such behavior is serious or prolonged, it may be grounds for termination of tenancy.

E. **Court Filing, Attorney, and Sheriff Fees**

1. Owners may accept payment of these fees from tenants who wish to avoid or settle an eviction suit provided:

   a. It is permitted under state and local laws; and

   b. The fees appear reasonable and do not exceed the actual costs incurred.

2. Cooperatives may collect legal and other out-of pocket costs incurred in collecting delinquent carrying charges and in terminating a membership following a member's default under the

occupancy agreement. The occupancy agreement requires members to pay attorney fees even if the cooperative has not filed a suit. Any charges levied on a cooperative member must be consistent with state and local law and policies approved by the cooperative's Board.

F. **Owners May Require Tenants to Pay Other Charges**:

1. If HUD or Contract Administrator has approved the charges; and

2. The schedule of charges is either:

a. Listed in the lease agreement; or

b. Has been distributed to all tenants in accordance with the modification of the lease requirements and procedures listed in this chapter, paragraph 6-12.D.

Section 4: The Leasing Process

6-26 Key Regulations

This paragraph identifies the key regulatory citation pertaining to Section 4: The Leasing Process. The citation and its topic are listed below.

- 24 CFR 5.703 and 5.705 (Unit inspections)

6-27 Briefing with New Tenants

A. **Overview**

HUD does not require a briefing with residents prior to occupancy, but it is good practice for managers to incorporate this briefing as a part of their routine process. Holding a meeting prior to occupancy helps an owner ensure that new tenants understand the terms of the lease. It also gives the owner an opportunity to relay important information about resident rights, lead-based paint disclosure, house rules, and conditions for termination of assistance and tenancy. At the same time, information provided during tenant briefing topics gives tenants a clear understanding of the owner's responsibilities and better enables tenants to fulfill their own responsibilities. The briefing gives the tenant an opportunity to ask questions and discuss the information being presented.

B. **Briefing Topics**

1. The briefing may cover a variety of topics. The following list identifies topics related to lease requirements that are important to discuss with the tenant:

a. Signatures;

b. Term of lease;

c. Annual/interim recertifications;

d. Rent;

e. Security deposit

f. Lease attachments, when applicable (e.g., HUD-50059, HUD-50059-A, move-in inspection report, house rules, lead-based paint disclosure form, pet rules, live-in aide, *VAWA addendum*);

g. Other charges;

h. Maintenance/damages;

i. Rights and responsibilities: At move-in and annually at recertification, owners are required to provide the head of household with a copy of the *Resident Rights and Responsibilities* brochure reissued by HUD in the fall of 1998. The brochure is available in 10 languages through the HUD Multifamily Clearinghouse at 800-685-8470 *and HUD's LEP website at http://www.hud.gov/offices/fheo/lep.xml;*

j. **EIV & You* Brochure. Owners are required to provide applicants at the time of selection from the waiting list or final application processing and tenants annually at recertification a copy of the *EIV & You* brochure. The brochure is posted on the Multifamily EIV website and is also available through the HUD Multifamily Clearinghouse at 800-685-8470.*

k. Penalties for fraud;

l. Termination of assistance;

m. Termination of tenancy; and

n. General rules.

2. Exhibit 6-6 provides examples of more detailed information that may be provided to the tenant during the briefing.

C. **Conducting the Briefing Meeting**

If owners decide to conduct a briefing with new tenants:

1. They are advised to conduct the briefing before the tenant signs the lease to make sure that the tenant has a good understanding of his/her obligations and responsibilities prior to move-in.

2. They must make sure that the presentation is clear. If at all possible, it is suggested that the presenter use visual and media aids such as slide presentations and charts to conduct the briefing. *Owners must ensure that there are appropriate means to communicate with hearing and/or speech impaired individuals. In addition, information may also have to be conveyed in languages other than English for LEP persons, in accordance with HUD guidance available on HUD's LEP website at http://www.hud.gov/offices/fheo/lep.xml.*

3. It would also be beneficial for the tenant to receive an information packet that contains handouts summarizing important topics covered during the briefing. If applicable, forms can also be given to the residents during the briefing.

4. Preferably, the briefing does not take place the same day the tenant signs the lease. This way the tenant will have time to think of questions regarding the lease.

6-28 Form of Payment

A. An owner may require any tenant to pay the security deposit or the last month's rent in a guaranteed form (e.g., money order, cashier's check, bank check).

B. In all other instances, an owner must accept a tenant's personal check.

C. If the tenant bounces a rent check, thereafter the owner may refuse to accept the tenant's personal check. The owner may require the tenant to pay rent in a guaranteed form as identified above.

REMINDER: Owners must be consistent in their treatment of all tenants.

6-29 Unit Inspections

A. Overview

1. The move-in inspection is an opportunity to familiarize the tenant with the project and the unit, as well as to document its current condition. By performing move-in inspections, owners and tenants are assured that the unit is in livable condition and is free of damages. A move-in inspection gives the owner an opportunity to explain to the new residents the tenant's responsibility for damages caused to the unit by family members

   and visitors, discuss the house rules, and familiarize tenants with the operation of appliances and equipment in the unit.

2. Upon the unit being vacated by the tenant, an owner performs a move-out inspection to ensure there are no damages to the unit. The owner should list the damages on the move-out form and compare it with the move-in form to determine if the damage is reasonable wear or tear or excessive damage caused by the tenant's abuse or negligence. The tenant should

be given prior notice of the move-out inspection and be allowed to accompany the owner if the tenant chooses. Ideally, the tenant should accompany the owner on the move-out inspection so that any discrepancies can be discussed and a decision reached as to the extent of the damage and who is responsible for the cost associated with the damage.

3. Move-in and move-out inspection forms should not be confused with annual unit inspections performed by owners and physical inspections performed by HUD and/or HUD contractors. Owners perform unit inspections on at least an annual basis to determine whether the appliances and equipment in the unit are functioning properly and to assess whether a component needs to be repaired or replaced. This is also an opportunity to determine any damage to the unit caused by the tenant's abuse or negligence and, if so, make the necessary repairs and bill the tenant for the cost of the repairs.

4. HUD, or its authorized contractor(s), has the right to inspect the units and the entire property to ensure that the property is being physically well maintained. These inspections assure HUD that owners are fulfilling their obligations under the regulatory agreements and/or subsidy contracts and tenants are provided with decent, safe, and sanitary housing.

B. **Key Requirements**

1. Owners in all HUD-subsidized multifamily properties are required to complete move-in and move-out inspections.

2. Owners must document these inspections. (See **Appendix 5** for a sample unit inspection report.)

3. Owners may design their own inspection forms.

C. **Move-In Inspection Requirements**

1. Before executing a lease, the owner and tenant must <u>jointly</u> inspect the unit.

2. After the owner conducts a unit inspection, the inspection form must indicate the condition of the unit. The condition of the unit must be decent, safe, sanitary, and in good repair. If cleaning or repair is required, the owner must specify on the inspection form the date by which the work will be completed. The date must be no more than <u>30 days</u> after the effective date of the lease.

3. Both the owner and the tenant must sign and date the inspection form. The inspection form must include the statement, The unit is in decent, safe and sanitary condition .

4. The tenant has <u>5 days</u> to report any additional deficiencies to the owner to be noted on the move-in inspection form.

5. The move-in inspection form must be made part of the lease, as an attachment to the lease.

D. **Move-Out Inspection Instructions**

1. Owners are advised to encourage tenants to accompany them on the inspection. Upon a tenant's request, he/she must be allowed to attend the move-out inspection conducted by the owner. If a tenant is with the owner during the inspection, disagreements between the owner and the tenant regarding unit damage can be resolved up front.

2. If a tenant does not wish to participate, the owner may do the inspection alone.

3. HUD does not provide move-out inspection criteria. It is at the owner's discretion to develop criteria to distinguish between wear-and-tear and damage. If an owner determines that the unit is damaged as a result of tenant abuse or neglect, he/she may use the security deposit to cover the repair costs. (See Section 2: Security Deposits for more information.)

Example – Wear-and-Tear Versus Damage

Wear-and-tear: The carpet is worn and has reached the end of its useful life.

Damage: A relatively new carpet has rips and tears.

6-30 Documents to Be Provided to Tenants

Throughout Chapter 6, several documents have been identified that owners must, and in some cases may, provide tenants when they initially sign the lease and occupy the unit. This paragraph summarizes all of these documents in Figure 6-9.

***Figure 6-9*: Summary of Documents for Tenants**

Documents
Lease, with the HUD-50059 or HUD-50059-A
Move-in inspection form
Consent forms
Lead-Based Paint Disclosure Form (if applicable)
Lead Hazard Information Pamphlet (if applicable)
House Rules (if developed)
Pet Rules (if applicable)
Police/Security Addendum (if applicable)
Live-in Aide addendum (if applicable)
HUD VAWA lease addendum (Section 8 only)
**EIV & You* brochure*
Resident Rights and Responsibilities brochure
How Your Rent is Determined Fact Sheet

Chapter 6 Exhibits

6-1 Required State Agency Lease Provisions

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35707.pdf

6-2 Required RHS 515 with Section 8 Lease Provisions

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35709.pdf

6-3 Disclosure Form for Target Housing Rentals and Leases

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35711.pdf

6-4 Mandatory and Discretionary Pet Rule

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35713.pdf

6-5 How to Develop Pet Rules

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35715.pdf

6-6 Examples of Tenant Briefing Topics

http://portal.hud.gov/hudportal/documents/huddoc?id=43503e6-6HSGH.pdf

Exhibit 6-1: Required State Agency Lease Provisions

For Section 8 State Agency properties, the lease must contain the following additional provision or addendum:

The following additional lease provisions are incorporated in full in the Lease between _____ (landlord) and _____ (tenant) for the following dwelling unit: ___. In case of any conflict between these and any other provisions of the lease, these provisions will prevail.

The total rent will be $___ per month.

Of the total rent, $_____ will be payable by the State Housing Agency (Agency) as assistance on behalf of the Tenant and $_____ will be payable by the Tenant. These amounts will be subject to change by reason of changes in the Tenant's family income, family composition, or extent of exceptional medical or other unusual expenses, in accordance with HUD established schedules and criteria; or by reasons of changes in program rules. Any such change will be effective as of the date stated in a notification to the Tenant.

The landlord will not discriminate against the tenant in the provision of services, or in any other manner, on the grounds of race, color, creed, religion, sex, or national origin.

The landlord will provide the following services and maintenance:
_____.

A violation of the tenant's responsibilities under the Section 8 program, as determined by the Agency, is also a violation of the lease.

Landlord: _____

By: _____

Date: _____

Tenant: _____

Date: _____

Exhibit 6-2: Required RHS 515 Lease Provisions

**All leases for RHS 515 with Section 8 properties must contain the following information and provisions. Those provisions marked with an asterisk (*) are addressed in the HUD Model Lease for Subsidized Programs. See RHS Handbook HB-2-3560 for additional information pertaining to RHS lease requirements.

(i) *****The name of the tenant, any co-tenants, and all members of the household residing in the rental unit;
(ii) *****The identification of the rental unit;
(iii) *****The amount and due date of monthly tenant contributions, any late payment penalties, and security deposit amounts;
(iv) *****The utilities, services, and equipment to be provided for the tenant;
(v) *****The tenant's utility payment responsibility;
(vi) *****The certification process for determining tenant occupancy eligibility and contribution;
(vii) *****The limitations of the tenant's right to use or occupancy of the dwelling;
(viii) *****The tenant's responsibilities regarding maintenance and consequences if the tenant fails to fulfill these responsibilities;
(ix) The agreement of the borrower to accept the tenant contribution toward rent charges prior to payment of other charges that the tenant owes and a statement that borrowers may seek legal remedy for collecting other charges accrued by the tenant;
(x) *****The maintenance responsibilities of the borrower in buildings and common areas according to state and local codes, Agency regulations, and Federal fair housing requirements.
(xi) *****The responsibility of the borrowers at move-in and move-out to provide the tenant with a written statement of rental unit's condition and provisions for tenant participation in inspection;
(xii) *****The provision for periodic inspections by the borrower and other circumstances under which the borrower may enter the premises while a tenant is renting;
(xiii) *****The tenant's responsibility to notify the borrower of an extended absence;
(xiv) *****A provision that tenants may not assign the lease or sublet the property;
(xv) A provision regarding transfer of the lease if the housing project is sold to an Agency-approved buyer;
(xvi) *****The procedures that must be followed by the borrower and the tenant in giving notices required under terms of the lease including lease violation notices;
(xvii) *****The good-cause circumstances under which the borrower may terminate the lease and the length of notice required:
(xviii) The disposition of the lease if the housing project becomes uninhabitable due to fire or other disaster, including rights of the borrower to repair building or terminate the lease;
(xix) The procedures for resolution of tenant grievances consistent with the requirements of §3560.160;
(xx) *****The terms under which a tenant may, for good cause, terminate their lease, with 30 days notice, prior to lease expiration; and
(xxi) *****The signature and date clause indicating that the lease has been executed by the borrower and the tenant.**

Exhibit 6-3: Disclosure Form for Target Housing Rentals and Leases

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement
Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure (initial)
_____(a) Presence of lead-based paint or lead-based paint hazards (check one below):

- ❑ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).
  _____
- ❑ Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

_____(b) Records and reports available to the lessor (check one below):

- ❑ Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).
  _____
- ❑ Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee's Acknowledgment (initial)
_____(c) Lessee has received copies of all information listed above.

_____(d) Lessee has received the pamphlet *Protect Your Family from Lead In Your Home.*

Agent's Acknowledgment (initial)
_____(e) Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy
The following parties have reviewed the information above and certify, to the best of their knowledge, that the information provided by the signatory is true and accurate.

_____	_____	_____	_____
Lessor	Date	Lessor	Date
_____	_____	_____	_____
Lessee	Date	Lessee	Date
_____	_____	_____	_____
Agent	Date	Agent	Date

Exhibit 6-4: Mandatory and Discretionary Pet Rules

Mandatory Rules ***[24 CFR 5.350]***	**Examples of Discretionary Rules** ***[24 CFR 5.318]***
Inoculation – Pets need to be inoculated in accordance with state and local law.	**Pet size and type –** Property owners may place reasonable limitations on the size, weight, and type of common household pets.
Property owners must prescribe sanitary standards to govern the disposal of pet waste. These rules may: a) Require pet owners to exercise and allow pets to deposit waste only in designated areas; b) Forbid pet owners from walking pets or allowing them to deposit waste in areas outside designated exercise and waste deposit areas; c) Require pet owners to remove and properly dispose of all removable pet waste; d) Require pet owners to take pets elsewhere to exercise or deposit waste if there are no areas on the premises designated for such purposes; e) Require owners of pets using litter boxes to remove pet waste from litter boxes and prescribe methods for disposal of pet waste, but not more frequently than once each day; and f) Require owners of pets using litter boxes to change the litter and prescribe methods for disposal of pet waste and used litter, but not more frequently than twice each week.	**Density of tenants and pets –** Property owners may place reasonable limitations on the number of pets that are allowed in each unit. Owners may limit the number of 4-legged, warm-blooded pets to one per unit or group home. **Pet care standards –** Property owners may prescribe standards of pet care and handling to protect the property premises and health, safety, and welfare of tenants, employees, and the public. Standards may: a) Require dogs and cats to be spayed or neutered; b) Bar pets from certain areas, except those that would deny access to the building; c) Require pet owners to control noise and odor; d) Require pet owners to comply with state/local licensing requirements; and e) Exclude from the property any pets not owned by a tenant that are being kept temporarily (less than 14 days).
Pet restraint – All household pets must be under the control of a responsible individual while on the common areas of the property. All pets must be effectively and appropriately restrained and under the control of a responsible individual while on the common areas of the property. **Registration –** Pet owners must register their pets with the project owner/manager before the pet is brought on premises and must update the registration annually. Registration must include the following: a) Certification of inoculation; b) Information sufficient to identify the pet and to demonstrate that it is a common household pet; and c) Name, address, and phone number of at least one responsible party who will care for pet if owner dies or is unable to provide care.	**Potential financial obligations of tenants –** a) **Refundable deposit.** Property owners may ask tenants who own or keep cats or dogs in their units for a refundable pet deposit. If the owner chooses to collect a deposit, the deposit must: • Be reasonable; • Not exceed the amount periodically fixed by HUD through notice (current limitation is $300); and • Provide for gradual accumulation of the deposit not to exceed an initial $50 when the pet is brought into unit and subsequent monthly payments of $10 per month. For allowable uses of the pet deposit, see paragraph 6.24 D. The unused portion of the pet deposit must be returned to the tenant within a reasonable time after the tenant moves from the project or no longer owns or keeps a pet in the unit. b) **Waste removal charge.** Owners may impose a separate waste removal penalty of up to $5 per occurrence for failure to comply with pet rule on waste removal.

Exhibit 6-5: How to Develop Pet Rules *[24 CFR 5.353]*

Owners must use the following procedures to develop pet rules:

A. **Notice**

Tenants must be given a notice containing the proposed pet rules. The notice must:

1. Include the text of the proposed rules;

2. State that tenants or tenant representatives may submit written comments on the rules;

3. State that all comments must be submitted to the project owner no later than 30 days from the effective date of notice of the proposed rules; and

4. Announce the date, time, and place for a meeting to discuss the proposed rules.

B. **Distribution Method**

Owners must distribute the notice by one of the following methods:

1. Sending a letter by first-class mail, properly stamped and addressed, to the tenant at the unit, with a proper return address;

2. Giving a copy of the notice to any adult answering the door at the tenant's leased unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by attaching the notice to the door; or

3. In high-rise buildings, posting the notice in at least three places within the building and maintaining the posted notices intact and in legible form for 30 days.

C. **Tenant Consultation**

Tenants or tenant representatives may submit written comments on the proposed pet rules by the date specified in the notice. In addition, the owner may schedule one or more meetings with tenants during the comment period to discuss the proposed rules. Tenants or tenant representatives may make oral comments on the proposed rules at these meetings. The owner must consider comments made at these meetings only if they are summarized, reduced to writing, and submitted to the owner before the end of the comment period.

1. For the purpose of computing time periods following the distribution of the notice, the notice is effective on the day that all notices are mailed or delivered or posted, depending on the method of distribution.

2. The owner must develop the final rules after reviewing tenants' comments. He/she may meet with tenants and tenant representatives to

attempt to resolve issues raised by the comments. The content of the final pet rules, however, is within the sole discretion of the project owner.

3. If pet rules are to be included in the lease provisions, the current lease must be amended:

   a. Upon renewal of the lease and in accordance with any applicable regulation, and

   b. When a tenant registers a common household pet.

Exhibit 6-6: Examples of Tenant Briefing Topics

The table below displays information that may be relayed to tenants during the briefing. These topics may not apply to all properties.

Topics Related to Tenant Responsibilities	Topics Related to Owner Responsibilities
Signatures ▪ The lease must be signed by the head, spouse, any individual listed as co-head, and all adult members of the household. This information may have to be conveyed in languages other than English for LEP persons, in accordance with HUD guidance.	
Terms of Lease • Lease starting date. • Lease ending date. • Automatic renewal of lease, if applicable. • 30-day written notice by tenant prior to moving out of unit. **NOTE:** There is a difference between the leases regarding when the tenant may give the 30-day notice. See the section on terminating tenancy in each model lease for further information.	**Termination of Tenancy** • The owner must give the tenant 30-day advance written notice. • The owner must advise the tenant of his/her rights. • The tenant agrees that providing recertification or other required information is a material obligation of the lease.
Annual/Interim Recertifications • Annual recertification for changes in income, family composition, and circumstances. Tenant will be notified. Rent will be adjusted accordingly. • Failure to recertify may result in raising rent to market rent, full contract rent, or 110% of BMIR rent, and/or terminating assistance. • Failure to recertify for Section 202 PRAC and Section 811 PRAC may result in termination of tenancy. • Between annual recertifications, reporting required when the household composition changes, or there is a change in employment status or income increases of $200 or more per month. • A unit transfer may result from changes in household composition. The tenant must move within 30 days or pay market rent, full contract rent, or 110% of BMIR rent. • *Use of the Enterprise Income Verification systemfor verification of employment and income and to reduce administrative and subsidy errors.*	**Termination of Assistance** • The owner must give the tenant written notice of intent to terminate assistance. • The owner must give the tenant 10 days to meet and discuss termination.

Rent • Tenant rent amount. • Rent due date. • Change in rent if the family circumstances change.	**Rent or other payment** • The owner must give the tenant 30-day written notice of a rent increase, unless the tenant has violated responsibilities under terms of the lease. • The owner must provide the tenant with opportunity to discuss changes in rent.
Security Deposit • Security deposit amount. • Security deposit due date. • The security deposit is refundable at move-out. • Amounts for damages, unpaid rent, or other unpaid charges permitted in the lease will be taken out of the security deposit.	**Security Deposit** • The owner will hold security deposits until move-out. • Deductions may be made to cover the cost of unit damages made by the tenant. • The owner will itemize deductions. • The owner will explain if and how interest will be paid.
	Lease Attachments • HUD-50059 signed by the tenant and the owner. • HUD-50059-A signed by the owner and, when applicable, by the tenant. • Move-in inspection report signed by both the owner and tenant. • House rules. Lead-based paint disclosure form (if applicable). • Pet rules (if applicable). • Live-in aide addendum (if applicable). • Expiration of the Section 8 contract (if applicable). • *Violence Against Women Act (VAWA) addendum (Section 8 only)*
Other Charges • Utilities that are paid by the tenant. • Late rent charge amount. • Returned check charge amount. • Unreturned key/lock charge amount. • Meals requirement amount.	

Maintenance/Damages • Instructions on using appliances properly. • Cleanliness requirements for units. • Prohibition of unit alterations without owner permission. • Responsibility for damages made to unit/project. Cost paid to owner.	**Maintenance** • The owner maintains the common area. • The owner arranges for collection and removal of trash/garbage. • The owner maintains equipment and appliances in working order. • The owner makes necessary repairs. • The owner gives reasonable notice of intent to enter unit for repairs. • The owner complies with health, housing, and building codes and maintains premises in decent, safe, and sanitary condition.
Penalties for Fraud • Submission of false information may result in fines up to $10,000 and five years imprisonment.	
General Rules • Not subletting the unit. • Prohibited involvement in unlawful activities in unit/project. • No installation of washers, dryers, or AC without landlord approval. • Abiding by noise restrictions and pet rules. • Obeying the house rules. • Permitting owner access to unit for inspections and repairs. • Prohibited use of the unit for purposes deemed hazardous by the landlord's insurance carrier.	

CHAPTER 7. RECERTIFICATION, UNIT TRANSFERS, AND GROSS RENT CHANGES

7-1 Introduction

A. As discussed in Chapter 5, a family's eligibility for assistance is based on its income, as determined in accordance with program rules. Changes in income or family composition can affect the amount of assistance a tenant is eligible to receive and, therefore, the amount the tenant pays for rent.

B. Because a tenant's income and family composition can change over time, program requirements establish procedures for addressing these changes. Such changes are examined and implemented through the recertification process. Under program requirements, tenants have responsibilities for providing timely information about these changes. Similarly, owners have responsibilities for promptly reviewing and verifying this information and for making changes in assistance payments or tenant rent consistent with program requirements. This chapter describes these requirements and procedures.

C. Further, changes in the family size or composition of an existing tenant household may mean the current unit is no longer appropriate in size and a transfer to a suitable unit is needed. This chapter describes the requirements for determining when transfers are needed based on changes in family composition and the availability of suitable units.

D. Finally, when owners receive approval from HUD for changes to the gross rents for a property, there are several occupancy-related actions that owners must take. These responsibilities are described in this chapter.

E. The chapter is organized into four sections:

- **Section 1: Annual Recertification** describes the program requirements and procedures for performing the yearly verification and recertification of family composition and income. Owners must verify family composition and income in order to recalculate the tenant's Total Tenant Payment (TTP) and tenant rent and the assistance payment provided by HUD.

- **Section 2: Interim Recertification** discusses the program requirements and procedures for performing interim recertifications when a tenant experiences a change in income or family composition between annual recertifications.

- **Section 3: Unit Transfers** presents the program requirements and procedures that owners must follow when an existing tenant transfers to a different unit in the property.

- **Section 4: Gross Rent Changes** describes the required procedures that owners must follow before making changes in unit rents or utility allowances.

7-2 Key Terms

A. There are a number of technical terms used in this chapter that have very specific definitions established by federal statute or regulations, or by HUD. These terms are listed in Figure 7-1, and their definitions can be found in the Glossary to this handbook. It is important to be familiar with these definitions when reading this chapter.

B. The terms disability and persons with disabilities are used in two contexts for civil rights protections, and for program eligibility purposes. Each use has specific definitions.

1. When used in context of protection from discrimination or improving the accessibility of housing, the civil rights-related definitions apply.

2. When used in the context of eligibility under multifamily subsidized housing programs, the program eligibility definitions apply.

NOTE: See the Glossary for specific definitions and paragraph 2-23 for an explanation of this difference.

Figure 7-1: Key Terms

• Annual income	• Family composition
• Assets	• Gross rent change
• Assistance payment	• Market rent
• Assisted tenant	• Recertification anniversary date
• Contract rent	• Total tenant payment (TTP)
• Deductions	• Unit transfer
Enterprise Income Verification (EIV)	• Utility allowance

Section 1: Annual Recertification

7-3 Key Regulations

The following are the key regulatory citations pertaining to Section 1: Annual Recertification. The citations and their titles are listed below.

A. 24 CFR 5.657 Section 8 Project-based Assistance Programs: Re-examination of Family Income and Composition

B. 24 CFR 880.603, 884.218, 886.124, 886.324, 891.410, 891.610, and 891.750 Re-examination of Family Income and Composition

C. 24 CFR 5.659 Family Information and Verification

D. *24 CFR 5.233 Mandated Use of HUD's Enterprise Income Verification (EIV) System *

7-4 Key Requirements

A. To ensure that assisted tenants pay rents commensurate with their ability to pay, HUD requires the following:

1. Owners must conduct a recertification of family income and composition at least annually. Owners must then recompute the tenants' rents and assistance payments, if applicable, based on the information gathered.

2. Tenants must supply information requested by the owner or HUD for use in a regularly scheduled recertification of family income and composition in accordance with HUD requirements.

3. Tenants must sign consent forms and asset declaration forms

4. *Owners must use the EIV Income Report as third-party verification of employment and income unless the tenant disputes the information on the EIV report. (See Chapter 5, for more information on determining and verifying income. and Chapter 9, Enterprise Income Verification (EIV) for using EIV reports.)*

5. *Owners must obtain third-party verification directly from the third party source for the following items. (See Chapter 5, Section 3, for more information about verification of income.)

   a. Annual income from wages, unemployment and Social Security benefits when tenant is unable to provide acceptable income documentation or disputes the employment and income information in the EIV system (see Chapter 5, Paragraph 5-5.A.3 for calculation of tenant income);

b. Reported family annual income from sources not reporting income data to the EIV system;*

c. The value of family assets;

d. Expenses related to deductions from annual income; and

e. Other factors that affect the determination of adjusted income.

6. At each annual recertification, the owner must provide the tenant with a copy of the HUD Fact Sheet describing how the tenant's rent is determined. *The owner must also provide the tenant with a copy of the *EIV & You* brochure.*

7. Owners have the authority to require a criminal background check, *including a State lifetime sex offender registration check*, on tenants at recertification. Owners who adopt the policy of conducting criminal background checks, *including a State lifetime sex offender registration check*, at recertification must conduct *the checks* on all tenants at recertification. If the background checks indicate that the tenant is in violation of the provisions of the lease, the owner may evict the tenant in accordance with the lease and the owner's standards for termination of tenancy. The owner must:

   a. Notify the household of the proposed action based on the information.

   b. Must provide the subject of the criminal record and the tenant with a copy of the information and an opportunity to dispute the accuracy and relevance of the information obtained from any law enforcement agency.

   ***NOTE:** Persons who are subject to a lifetime sex offender registration requirement who were admitted prior to June 25, 2001, the effective date of the Screening and Eviction of Drug Abuse and Other Criminal Activity final rule, must not be evicted unless they commit criminal activity while living in federally assisted housing or have some other lease violation, in which case the owner may terminate the tenancy and pursue eviction to the extent allowed by their lease and state or local law.*

8. Owners must perform annual recertifications on any resident of a Section 236 project paying less than the Section 236 market rent, and on any resident of a Section 221(d)(3) BMIR project paying the BMIR rent. Tenants of Section 236 and Section 221(d)(3) BMIR projects must be supported in the Tenant Rental Assistance Certification System (TRACS) with a submission of the required HUD-50059.

   NOTE: Section 236 and Section 221(d)(3) BMIR cooperatives must enforce annual recertifications for both current and new members.

B. Owners do not have to perform annual recertifications for individual tenants who are paying market rent as described below:

1. Tenants paying the contract rent or market rent and living in a unit covered by a Section 8, RAP, Rent Supplement, or PAC housing assistance payment contract, unless the tenants request an initial certification to determine their eligibility to receive program assistance.

2. Tenants of a Section 236 project paying the Section 236 market rent established for the property, unless the tenants request an initial certification to determine their eligibility to pay less than the market rent.

3. Tenants of a Section 221(d)(3) BMIR project paying 110% of the BMIR rent established for the property, unless the tenants request an initial certification to determine their eligibility to pay the BMIR rent.

C. If a tenant in a property covered by this handbook is receiving rental assistance through the Section 8 Housing Choice Voucher Program, the Public Housing Authority (PHA) administering the voucher completes the annual recertification. Owners are not responsible for completing recertification activities but must cooperate with PHA staff in providing needed information.

D. When a change in family composition is reported in Section 202/8 projects, adult children are eligible to move in after initial occupancy only if they are essential for the care or well-being of the elderly tenant(s). They are considered a part of the family and their income must be counted. Owners should require adult children to sign a release form relinquishing any future rights to the unit as a remaining member of the tenant family, as they qualify for occupancy only as long as the individual needing the supportive services is in occupancy.

E. When a change in family composition is reported in Section 202 PRAC and Section 811 projects, occupancy by adult children is subject to the following restriction. Adult children are not eligible to move into a unit after initial occupancy unless they are performing the functions of a live-in aide and are classified as a live-in aide for eligibility purposes. See paragraph 3-6 E.3 for eligibility requirements for a live-in aide.

Figure 7-2: Comparison of Live-in Aid and Adult Child in 202/8 and 202 PRAC projects

	202/8	202 PRAC
Admission to household after initial occupancy:		
Live-in aide	Yes	Yes
Adult child	Yes if needed for essential care of family member	Yes - Only if performing function of live-in aide
Income counted:		
Live-in aide	No	No
Adult child	Yes	No
Counted as member of family:		
Live-in aide	No	No
Adult child	Yes	No
Right to remain in unit: (See paragraphs 7-4.D and 3-6.E.3 for lease addendum requirements.)		
Live-in aide	No	No
Adult child	No	No

7-5 Timing of Annual Recertifications

A. Key Requirement

Annual recertifications must be completed by the tenant's recertification anniversary date.

B. Determining Recertification Anniversary Dates

1. The recertification anniversary date is the first day of the month in which the tenant moved into the property. A tenant moving in with no assistance payment, such as a Section 236 or a Section 221(d)(3) BMIR tenant, who later begins receiving assistance payments, will have his or her annual recertification date changed to the first day of the month that the tenant began receiving assistance from HUD.

2. The recertification anniversary date does not change if a tenant transfers from one unit to another unit at the same property.

C. **HUD Approval of Alternative Recertification Anniversary Dates**

With the approval of the HUD Field Office or the Contract Administrator, owners may establish alternative recertification anniversary dates. Examples of acceptable reasons for requesting alternative dates include the following:

1. In properties for the elderly and/or the disabled, owners may request that the recertification anniversary date be based on the issuance of the cost-of-living adjustments for the Social Security or other assistance programs.

2. For coordination purposes, owners may request that the recertification anniversary date for all tenants be based on the anniversary date of the assistance payment contract for the property.

3. For coordination purposes, owners may request that the recertification anniversary date be assigned by building or unit number to better coordinate recertification and inspection activities.

Examples – Recertification Anniversary Dates

New Tenants

If a family moves in on September 1, its anniversary date is September 1.

If a family moves in on September 15, its anniversary date is September 1.

If a family moves in on September 30, its anniversary date is September 1.

Existing Tenants Who Receive a New Form of Assistance

The Johnson family moves in on April 15 and pays the market rent. During the following January, the family qualifies to receive Section 8 assistance at the property and begins receiving rental assistance on February 1. The owner must set the Johnson's anniversary date at February 1.

The Murray family moves into a Section 236 project on April 15 and pays the Section 236 market rent established for the property. As a market renter, the Murrays are not required to complete annual recertifications. During October of the following year, the Murrays request that the owner complete an initial certification to determine their eligibility for paying less than the market rent. The family begins paying $42 less than the market rent on November 1. The new anniversary date is November 1.

The Chiu family moves into a Section 236 project on April 15 and pays the Section 236 basic rent. The owner must set the family's anniversary date at April 1. During the following July, the Finnigans qualify for one of the RAP slots at the property and begin to receive rental assistance on August 1. The owner must set a new anniversary date for the Finnigans of August 1.

The Padilla family moves into a BMIR project on June 15 and pays the BMIR rent. The owner must set the anniversary date for the family at June 1. During August of the following year, the Riddles qualify for the Rent Supplement Program at the property and begin to receive rental assistance on September 1. The owner must set a new anniversary date for the Riddles of September 1.

The Kreutz family moves into a BMIR project on July 15 and pays the BMIR rent. The owner must set the anniversary date for the family at July 1. During the annual recertification process two years later the owner determines the Kreutz's income to be more than 110 of the income limit and the family begins paying 110% of the BMIR rent. During the following December, the Kreutzes request that the owner complete a new certification to determine their eligibility to pay the BMIR rent. The recertification results show that they are eligible and the family begins paying the BMIR rent on January 1. The owner must set a new anniversary date for the Kreutzes at January 1.

7-6 Overview of Annual Recertification Procedures

It is the owner's responsibility to process all recertifications in a timely manner. HUD Headquarters will terminate *a certification* if a new recertification is not submitted within 15 months of the previous year's recertification anniversary date. HUD has instructed Contract Administrators to terminate assistance payments to an owner if a new annual recertification has not been completed and submitted through TRACS within 15 months after the previous year's anniversary date. Owners must repay, by making an adjustment to the voucher, the assistance collected for the 3-month period from the date the annual recertification should have been effective through the end of the 15th month when assistance was terminated. Once the new certification is processed, owners must follow the guidance in paragraph 7-8 for determining the effective date for changes in the TTP, tenant rent and assistance payment when the recertification is delayed.

A. Owners and tenants must complete the applicable steps listed in Figure 7-3.

B. Owners must maintain a tracking system to facilitate timely completion of recertifications.

C. To enable owners to give the tenant the required 30-day advance notice of any increase in the TTP or tenant rent, Steps 1 through 6 in Figure 7-3 should be completed at least 35 days before the recertification anniversary date.

7-7 Notices to Tenants

A. Overview

Owners must inform tenants, through written notices, about the tenants' responsibility to provide information about changes in family income or composition necessary to properly complete an annual recertification. These notices include information on the recertification process, requirements, and timelines.

B. Description of Required Notices

Owners must provide tenants with the Initial Notice and subsequent reminder notices as specified below during the annual recertification process. Figure 7-4 describes the timing of each notice.

REMINDER: Notices to a tenant with a disability must be in a form accessible to the tenant (e.g., in Braille or audio form for a tenant with a vision impairment). Notices may also need to be *provided* in languages other than English for LEP persons in accordance with HUD guidance.

1. Initial Notice. Upon initial signing of the lease and at each annual recertification, the owner must provide an Initial Notice to the tenant. This notice serves to ensure that tenants understand that they will need to report to the property's management office by the specified date the following year to prepare for their next recertification.

Figure 7-3: Recertification Steps

	Action	Responsible Party
1.	Provide Initial Notice to tenant about next year's annual recertification. (See paragraph 7-7.)	Owner
2.	Provide First Reminder Notice to tenant. If needed, provide up to two subsequent reminder notices. (See paragraph 7-7.)	Owner
3.	If not already established by the owner, schedule a recertification interview with the property owner or manager, collect information, as necessary, to verify income and family composition, and obtain signatures on consent forms to allow verification of income and other relevant characteristics from outside sources.	Tenant
4.	*Obtain and review EIV Income Reports and EIV Verification Reports.* Conduct recertification interview.	Owner
5.	Verify family income, assets, and allowances following the procedures described in Chapter 5, Section 3, for more information about verification of income. Ensure that the tenant file includes citizenship documentation, if applicable, for all family members and documented *social security numbers for all household members except those household members who do not contend eligible immigration status or members who were age 62 or older on January 31, 2010, and whose initial determination of eligibility was begun before January 31, 2010.*	Owner
6.	Enter all required data into the owner's or service bureau's TRACS software package for calculation of the new TTP/ tenant rent and assistance payment and conversion to an electronic file ready for submission.	Owner
7.	Notify the tenant of any change in the TTP or tenant rent resulting from the recertification. For rent increases, a 30-day notice must be provided.	Owner
8.	Obtain the original signature of the head, co-head, spouse and all other adult members of the household on the HUD-50059 with the required data electronically generated by owner's (or service bureau's) software package. Owner representative signs the HUD-50059 and provides the tenant with a copy. Only after the tenant and owner representative sign the HUD-50059, transmit electronic file to the Contract Administrator or HUD.	Owner
9.	Provide the tenant with the Initial Notice for next year's annual recertification (see paragraph 7-7 B.1).	Owner

Figure 7-4: Recertification Notice Due Dates (Step 2 from Figure 7-3)

Notice	Date the Notice Is Due to the Tenant	Sample Timeline Assumes a December 1 Recertification Anniversary Date
Initial Notice for Upcoming Recertification	At initial lease signing and at every annual recertification thereafter. (Obtain tenant signature acknowledging receipt.)	The initial notice should have been signed by the tenant at the previous year's certification/recertification date, *December 1*.
First Reminder Notice	120 days prior to the tenant's recertification anniversary date.	The first reminder notice should be sent out by *August 1.*
Second Reminder Notice (*If no response to First Notice.*)	At least 90 days prior to the tenant's recertification anniversary date.	The second reminder notice should be sent out by *September 1*.
Third Reminder Notice (*If no response to Second Notice.*)	At least 60 days prior to the tenant's recertification anniversary date.	The third reminder notice should be sent out no later than *October 1*.

a. The Initial Notice must do the following:

(1) Refer to the requirements in the HUD model lease regarding the tenant's responsibility to recertify annually.

(2) Specify the cutoff date (the 10th day of the 11th month after the last annual recertification) by which the tenant must contact the owner and provide the required information and signatures necessary for the owner to process the recertification.

b. The tenant must sign and date the initial notice to acknowledge receipt; the owner or manager must sign and date the notice as a witness.

c. The owner must maintain the notice with original signatures in the tenant's file and provide a copy of the signed notice to the tenant.

d. A sample Initial Notice is included as Exhibit 7-1.

Example – Initial Recertification Notice Procedures

- The Singhs move into a project and begin receiving Section 8 assistance on 9/1/2002. The owner establishes a 9/1 anniversary date for the Singhs.
- When the Singhs sign the lease, the owner provides the head of the family with an Initial Notice. In the Initial Notice, the owner states that the Singhs must report for their first annual recertification by 7/10/2003.
- When the Singhs sign all forms necessary to complete their annual recertification during the summer of 2003, the owner provides the head of the Singh household with another Initial Recertification Notice. In this Initial Notice, the owner states that the Singhs must report for their next annual recertification by 7/10/2004.

2. First Reminder Notice.

a. Owners must provide tenants with a reminder notice at least 120 days prior to the recertification anniversary date.

b. The First Reminder Notice must do the following:

(1) Refer to the requirements in the HUD model lease regarding the tenant's responsibility to recertify annually.

(2) State the name of the staff person at the property to contact about scheduling a recertification interview, the contact information for this person, and how the contact should be made. The owner may propose an interview date as long as the tenant has the option to reschedule the interview for a more convenient date and time.

(3) Give the location, days, and office hours that property staff will be available for recertification interviews.

(4) List the information that the tenant should bring to the interview.

(5) State the cutoff date by which the tenant must contact the owner and provide the information and signatures necessary for the owner to process the recertification.

(6) State that if the tenant responds to the owner after the specified cutoff date (10th day of the 11th month after the last annual recertification), the owner will process the annual recertification but will not provide the tenant 30 day notice of any resulting rent increase.

(7) State that if the tenant fails to respond before the recertification anniversary date, the tenant will lose the assistance and will be responsible for paying the Section 236 market rent in a 236 project, 110% of BMIR rent or the

full contract rent in a Section 8 or Section 202 PAC project. In a Section 202 PRAC or Section 811 PRAC project, the tenant may be evicted for noncompliance with the lease requirement to recertify annually.

c. Owners must maintain a copy of this notice in the tenant file documenting the date the notice was issued.

d. A sample First Reminder Notice is included as Exhibit 7-2.

3. Second Reminder Notice.

a. If the tenant fails to respond within 30 days of the First Reminder Notice, the owner must provide a Second Reminder Notice approximately 90 days prior to the tenant's recertification anniversary date informing the tenant that his/her recertification information is due.

b. The Second Reminder Notice must provide the tenant with all of the information given in the First Reminder Notice. (See subparagraph B-2 b above.)

c. Owners must maintain a copy of this notice in the tenant file documenting the date the notice was issued.

d. A sample Second Reminder Notice is included as Exhibit 7-3.

4. Third Reminder Notice.

a. If the tenant does not respond to the Second Reminder Notice before 60 days prior to the recertification anniversary date, the owner must provide the tenant a Third Reminder Notice no later than 60 days prior to the anniversary date. This notice also serves as a 60-day notice to terminate assistance, and as a 60-day rent increase notice. (See Chapter 8 for information on the termination of assistance.)

b. The Third Reminder Notice must do the following:

(1) Provide the tenant with all of the information given in the First Reminder Notice. (See subparagraph B-2 b above.)

(2) Specify the amount of rent the tenant will be required to pay if the tenant fails to provide the required recertification information by the recertification anniversary date and state that this rent increase will be made without additional notice.

(3) In a Section 202 PRAC or 811 PRAC project, state that the tenant may be evicted for noncompliance with the lease requirement to recertify annually.

NOTE TO OWNERS: Eviction should be pursued only as a last measure for enforcing compliance. Prior to any eviction proceedings, owners must make every effort to contact the disabled and frail elderly to be sure the requirements of the recertificaiton process are communicated in a manner that is comprehended by the tenant.

c. Owners must maintain a copy of this notice in the tenant file documenting the date the notice was issued.

d. A sample Third Reminder Notice is included as Exhibit 7-4.

7-8 Effective Dates of Changes in Assistance Payment, Total Tenant Payment, and Tenant Rent

A. Overview

In general, recertification processing should be complete by the recertification anniversary date. However, there may be circumstances when delays are encountered while processing a recertification that prevent its completion in time to provide a resident with a notice 30 days prior to the anniversary date. HUD has established specific procedures regarding the timing of changes in the TTP, tenant rent, and assistance payment when the recertification is delayed.

B. Timely Completion of Recertification Process

1. Timely completion of the recertification process occurs when all steps in Figure 7-3 are completed prior to the tenant's recertification anniversary date. Timely completion includes issuing the required 30-day notice of a rent change and timely delivery of the three reminder notices as shown in Figure 7-4. Exhibit 7-5 provides a Sample Recertification Interview and Verification Record that can help facilitate timely completion of the recertification process.

2. Changes to the TTP, tenant rent, and assistance payment all take effect on the recertification anniversary date. Exhibit 7-6 includes a sample notification of a rent increase resulting from recertification processing.

Example – Timely Recertification of a Tenant

- Recertification anniversary date is 9/1.
- Owner sends tenant First Reminder Notice on 5/1.
- Owner sends tenant Second Reminder Notice on 6/1.
- Tenant reports for recertification interview on 6/25.
- Owner completes processing of recertification and provides 30-day notice of rent increase to the tenant on 7/25.
- Assistance payment, TTP, and tenant rent change on 9/1.

C. **Timely Tenant Response, But Short Processing Time**

1. This situation can occur as follows:

   a. The owner provides the First, Second, and Third Reminder Notices per HUD requirements; and

   b. The tenant reports for the recertification interview just prior to the 10th day of the 11th month after the last annual recertification. The owner is then responsible for completing the verification process in time to give the tenant a 30-day advance notice of any rent change. In order to complete the verification processing and provide the notice in time to have the new rent take effect by the recertification anniversary date.

      Third-party verification must continue to be pursued for other types of income or for deductions or family composition, but the processing of the recertification can be completed using other sources of verification. *The owner must use the EIV Income Report as third party verification of employment and income unless the tenant disputes the EIV information or cannot provide acceptable documentation to use for rent calculation. (See Chapter 5 for more information on verifying and determining income using EIV.)*

2. Should the owner fail to complete the verification process in time to give the tenant a 30-day advance notice of a rent increase, the tenant's rent increase may not take effect until the 30-day rent increase notice period has expired. The HAP change, however, will be effective on the recertification anniversary date.

   If the tenant's rent is decreasing, no 30-day advance notice is required. Both the tenant's rent and the HAP will change on the recertification anniversary date.

Example – Timely Tenant Response, But Delayed Verification Processing

- Recertification anniversary date is 9/1.
- Owner sends out all notices in compliance with the requirements on 5/1, 6/1 and 7/1.
- Tenant responds on 7/8.
- Owner completes processing on 8/3.
- Assistance payment changes on 9/1.
- Rent increase is effective on 10/1.

D. **Late Response/Processing of Recertifications**

1. Delays in processing due to owner or third-party action.

a. This situation can occur as follows:

(1) The owner fails to provide timely recertification reminder notices per HUD requirements; or

(2) The owner has adequate time, but fails to complete verification and recertification processing procedures 30 days before the recertification anniversary date, and fails to provide the required 30-day notice for a rent increase to take effect on the recertification anniversary date.

b. Changes in the assistance payment take effect on the recertification anniversary date.

c. Changes in the TTP and tenant rent are effective as follows:

(1) On the recertification anniversary date, if the tenant rent decreases as a result of the recertification; or

(2) On the first of the month following a 30-day notice period, if the tenant rent increases as a result of the recertification.

Example – Owner or Third-Party Causes Delays in Recertification Procedures

- Recertification anniversary date is 9/1.
- Owner sends First Reminder Notice on 8/1.
- Tenant reports for recertification interview on 8/15.
- Owner finishes processing recertification and provides the tenant with rent increase notice on 9/15.
- Assistance payment changes take effect on 9/1.
- TTP and tenant rent changes take effect on 11/1.

2. Delays in processing due to late tenant response.

   a. This situation can occur as follows:

      (1) The owner provides all three recertification reminder notices in accordance with HUD requirements; and

      (2) The tenant reports for the recertification interview and provides information and signatures after the cutoff date (i.e., after the 10th day of the 11th month following the last annual recertification), but before the recertification anniversary date.

   b. The owner processes the annual recertification.

      (1) Changes in the TTP/tenant rent and assistance payment take effect on the recertification anniversary date.

      (2) As established in the Model Lease, the third reminder notice fulfills the requirement for a 30-day notice of rent increase effective on the anniversary date.

   c. In all cases where the tenant reports for recertification after the 10th day of the 11th month after the last annual recertification but before the recertification anniversary date (as described in subparagraph D-2 a above), all adjustments in assistance payments and the tenant's rent are made retroactive to the recertification anniversary date.

Example – Tenant Delays Recertification Process

- Recertification anniversary date is 9/1.
- Owner provides all three recertification reminder notices per HUD requirements.
- Tenant reports for recertification interview on 8/28.
- Owner finishes processing recertification and notifies the tenant on 9/20.
- New assistance payment, TTP, and tenant rent are retroactive to 9/1.
- The owner does not provide the tenant with a 30-day rent increase notice.

3. Tenant responds after recertification anniversary date. Tenant is out of compliance.

   a. This situation occurs when:

      (1) The owner provides all three recertification reminder notices per HUD requirements; and

      (2) The tenant reports for the recertification interview on or after the recertification anniversary date.

   b. On the recertification anniversary date, the tenant must begin paying the market rent.

      NOTE: In a Section 202 PRAC or *Section 811 PRAC project the tenant will be evicted for failing to comply with the recertification requirements.* The tenant will pay the greater of operating rent or 30% of income until eviction procedures are completed.

      NOTE: In a Section 236 project, the tenant must pay the Section 236 market rent. In a BMIR project, the tenant must pay the BMIR market rent.

   c. Assistance should be reinstated if:

      (1) Assistance is available at the property;

      (2) The tenant submits the required information; and

      (3) The owner determines that the tenant qualifies for assistance.

   d. The new TTP/tenant rent and assistance payment take effect the first day of the month following the date on which the tenant reported for the certification. The tenant must pay the market rent until this date. If the tenant fails to report for the recertification

interview and fails to pay market rent, or make arrangements to pay, the owner is obligated to evict for nonpayment.

Example – Tenant Out of Compliance

- Recertification anniversary date is 9/1.
- Owner provides all three recertification notices per HUD requirements.
- Tenant does not respond to notices. Rent raised to market rate effective 9/1.
- Tenant responds 9/10.
- Owner completes processing of income certification on 9/30.
- New rent TTP/tenant rent effective 10/1 (reduced from market rent if assistance reinstated).

Example – Tenant Out of Compliance in 202 or 811 PRAC Project

- Recertification anniversary date is 9/1.
- Owner provides all three recertification notices per HUD requirements.
- Tenant does not respond to notices. Eviction process is initiated. Rent is raised to the greater of operating rent or 30% of income until eviction completed.
- Tenant responds 9/10. Eviction process stopped.
- Owner completes processing of income certification on 9/30.
- New rent TTP/tenant rent effective 10/1 (rent based on 30% of income reinstated).

e. If the owner completes the income certification processing during the month following the date on which the tenant reported for the certification, the new TTP/tenant rent and assistance payment still take effect on the first day of the month following the date on which the tenant reported for the certification. When the owner processes the rent change and assistance payment, they are retroactive to this effective date.

f. The owner may not evict the tenant for failure to pay market rent after the tenant reports for the interview and the owner is processing the certification.

Example – Tenant Out of Compliance and Recertification Completed in Second Month Following Tenant Response

- Recertification anniversary date is 9/1.
- Owner provides all three recertification notices per HUD requirements.
- Tenant does not respond to notices. Rent raised to market rate effective 9/1.
- Tenant responds on 9/30.
- Recertification not complete 10/1.
- Owner completes recertification on 10/20.
- New TTP/tenant rent retroactive to 10/1.

g. The tenant's recertification date changes to the first day of the month the property begins receiving assistance again for the tenant. The tenant's recertification is processed as an initial certification.

4. Extenuating circumstances when tenant is out of compliance. When a tenant fails to provide the required recertification information by the recertification anniversary date, an owner must inquire whether extenuating circumstances prevented the tenant from responding prior to the anniversary date. If the tenant is a person with disabilities, the owner must consider extenuating circumstances when this would be required as a matter of reasonable accommodation.

a. Extenuating circumstances. These are circumstances beyond the tenant's control. Examples of extenuating circumstances include, but are not limited to:

(1) Hospitalization of the tenant.

(2) Tenant out of town for a family emergency (such as the death or severe illness of a close family member).

(3) Tenant on military duty overseas.

b. Inquiring about extenuating circumstances.

(1) At the time the tenant submits the required recertification information, the owner must inquire whether extenuating circumstances prevented the tenant from submitting the information prior to the recertification anniversary date.

(2) If the tenant indicates that extenuating circumstances were present, the tenant must promptly provide the owner with evidence of their presence.

c. Determining whether extenuating circumstances were present. When a tenant provides evidence of extenuating circumstances, the owner must determine whether the information provided shows that the circumstances meet the condition described above in subparagraph a.

d. Notice of decision. The owner must provide the tenant with a written notice of the decision. The notice must also inform the tenant of his/her right to appeal the owner's decision if the owner determines that extenuating circumstances were not present.

e. Appeal to the owner. If the owner denies extenuating circumstances, he or she must provide the tenant with an opportunity, within 10 days of notification, to meet with the owner or designated representative to appeal the decision to raise the tenant rent to market rent. The owner has an obligation to arrange for a person, who was not part of the original determination, to conduct the appeal meeting. The tenant may have representation at the meeting, may present information for consideration, and may respond to the information presented by others.

f. Extenuating circumstances NOT present. If the owner determines that extenuating circumstances were not present, follow the procedures in subparagraph D.3 above for completing processing of the tenant's information, determining whether assistance can be reinstated, and establishing effective dates.

5. Effective date of TTP/tenant rent, assistance, recertification anniversary when extenuating circumstances were present. If the owner determines that extenuating circumstances were present:

a. There is no change in the recertification anniversary date; and

b. The TTP/tenant rent and the assistance payments determined based on the recertification information provided by the tenant are effective retroactively to the recertification anniversary date

Section 2: Interim Recertification

7-9 Key Regulations

The following are the key regulatory citations pertaining to Section 2: Interim Recertification. The citations and their titles are listed below.

A. 24 CFR 5.657 Section 8 Project-Based Assistance Programs: Re-examination of Family Income and Composition

B. 24 CFR 884.218, 886.124, 886.324, 891.410, 891.610, and 891.750 Re-examination of Family Income and Composition

C. 24 CFR 5.659 Family Information and Verification

7-10 Key Requirements

A. To ensure that assisted tenants pay rents commensurate with their ability to pay, tenants must supply information requested by the owner or HUD for use in an interim recertification of family income and composition in accordance with HUD requirements. All tenants must notify the owner when:

1. A family member moves out of the unit;

2. The family proposes to move a new member into the unit;

   NOTE: At a minimum, owners must apply screening criteria for drug abuse and other criminal activity, *including State sex offender registration, and use of the EIV Existing Tenant Search to persons proposed to be added to the household, including live-in aides. (See paragraph 7-11 B.1 and paragraph 4-7 B.5 for more information.) The owner must make sure that the person also discloses and provides verification of his or her SSN. (See Chapter 3, Paragraph 3-9 for more information on SSN disclosure requirements.)*

   NOTE: See Paragraphs 7-4 D and 7-4 E for eligibility of adult children after initial occupancy in Section 202/8, Section 202 PRAC, and Section 811 PRAC projects.

3. An adult member of the family who was reported as unemployed on the most recent certification or recertification obtains employment; or

4. The family's income cumulatively increases by $200 or more per month.

B. Tenants may request an interim recertification due to any changes occurring since the last recertification that may affect the TTP or tenant rent and assistance payment for the tenant. Changes a tenant may report include the following:

1. Decreases in income including, but not limited to, loss of employment, reduction in number of hours worked by an employed family member, and loss or reduction of welfare income;

2. Increases in allowances including, but not limited to, increased medical expenses, and higher child care costs; and

3. Other changes affecting the calculation of a family's annual or adjusted income include, but *are* not limited to a family member turning 62 years old, becoming a full-time student or, becoming a person with a disability.

C. Tenants are not required to report when a family member turns 18 years of age between annual recertifications. Tenants must follow the requirements in their lease for reporting changes in the household income. *However, if a tenant turns 18 and has not signed the form HUD-9887, the owner must not use the EIV income reports until the form is signed. Owners must address in their policies and procedures notification requirements and timeframes for tenants who turn 18 between annual recertifications to sign the consent forms HUD-9887 and HUD-9887-A and/or lease. If the tenant fails to sign the consent form(s) the household is in non-compliance with their lease and assistance to, and the tenancy of, the household may be terminated.*

D. Section 236 and BMIR cooperatives must enforce the interim recertification procedures described in this section only for members who executed occupancy agreements after February 15, 1984. Cooperatives may impose interim recertification requirements on members who executed occupancy agreements prior to February 15, 1984, only if the cooperative amended its by-laws to make such requirements binding on all members or a member voluntarily agreed to include such clauses in his/her occupancy agreement.

7-11 Owner Responsibilities

A. Owners must process an interim recertification if a tenant reports:

1. A change in family composition;

2. An increase in a family's cumulative income of $200 or more a month;

3. An increase in allowances (e.g., number of dependents, a new disability assistance expense);

   ***NOTE**: See Paragraph 3-9.D.7 for SSN requirements for adding new household members who are dependents.*

4. Most decreases in income except in the circumstance described in subparagraph D below; or

5. A change in citizenship or eligible immigration status of any family members.

   NOTE: See Chapters 3, 4, and 8 for other citizenship and eligible immigration status requirements. (Restriction on assistance to

noncitizens is addressed in paragraph 3-12, denial of assistance is addressed in paragraph 4-31, and termination of assistance is addressed in paragraph 8-7.)

B. If a tenant reports a change in income that does not increase the household's cumulative income by $200 or more a month, the owner should not process an interim recertification to increase the tenant's rent. If a tenant reports any other change addressed above along with an increase in income that does not increase the household's cumulative income by $200 or more a month, the owner should not include the increase in income in processing the interim recertification.

1. Example: The tenant reports that a family member has gone to work part-time. The owner verifies the employment income and learns that the household's cumulative income will only increase by $150 per month. The owner should not process an interim recertification.

2. Example: The tenant reports they have a new baby and also that a family member has gone to work part-time. The owner verifies the employment income and learns that the household's cumulative income will only increase by $100 per month. The owner should process an interim recertification to include the new baby as a dependent but should not include the increase in income.

C. Upon receiving a tenant request for an interim recertification, owners must process a recertification of family income and composition within a reasonable time, which is only the amount of time needed to verify the information provided by the tenant. Generally, this should not exceed 4 weeks.

1. If the reason for interim recertification is a proposed change in family composition, the owner must screen the proposed additional person(s), including live-in aides, for drug abuse and other criminal activity, *including a State lifetime sex offender registration check. The owner must also obtain the new household member's SSN, unless the household member does not contend eligible immigration status or is an individual age 62 or older as of January 31, 2010, and does not have a SSN but was receiving HUD rental assistance at another location on January 31, 2010. (See Chapter 3, Paragraph 3-9.D.7, Adding New Household Members.)*

2. The owner may also apply additional owner established screening used for applicants to proposed new persons. In the case of live-in aides, the owner established screening criteria may also be applied, except for the criteria to pay rent on time.

D. Owners may refuse to process an interim recertification when the tenant reports a decrease in income <u>only</u> if the following apply:

1. The decrease was caused by a deliberate action of the tenant to avoid paying rent. For example, the owner receives documented evidence that a tenant quit a job in order to qualify for a lower rent.

2. The owner has confirmation that the decrease will last less than one month. For example, an owner receives confirmation from the tenant's employer that the tenant will be laid off for only two weeks.

   a. If the owner determines that the decrease in income will last less than one month, the owner may choose, but is not obligated, to process an interim recertification.

   b. The owner must, however, implement this policy consistently for all tenants in the property who experience a decrease in income that will last for less than one month.

E. Owners should not recertify a tenant receiving welfare assistance in an as-paid welfare program when the Public Assistance Agency reduces the tenant's shelter and utility allowance because it is greater than the tenant's actual rent.

F. Owners may delay, but not refuse, to process an interim recertification if they have confirmation that a tenant's income will be partially or fully restored within two months. Processing may be delayed only until the new income is known.

Example – Delaying an Interim Recertification

A tenant, Bob Jenkins, reports to the owner that he was laid off from his job last week. The owner verifies that Bob lost his job and has filed for unemployment benefits. The processing of his application for unemployment benefits has not yet been completed. The owner may wait until the processing of the unemployment claim has been completed.

1. When owners decide to delay processing, the following apply:

   a. May require the tenant to pay the current amount of rent until the interim recertification is complete.

   b. Must not evict the tenant for nonpayment of rent.

   c. Must not charge the tenant a late fee for paying rent after the 5th of the month because the owner elected to delay processing, knowing the tenant has experienced a change in income.

2. Once owners are able to verify the tenant's new income, they must do as follows:

   a. Recertify the tenant, as described in paragraph 7-12.

   b. Retroactively apply any reduction in rent to the first day of the month after the date of the action that caused the decrease in income.

   c. Notify the tenant in writing of any rent due for the period of delay. If the tenant fails to pay this amount within 30 days of notification, the owner may pursue eviction for nonpayment of rent.

NOTE: Owners must not enforce language, in any existing lease with a tenant, based on any previous version of Section 16(b) of the model lease other than that presently contained in **Appendix 4** and designated revised 3/22/89." In cases where existing leases contain the previous version of Section 16(b), at the next recertification of each tenant, owners are to attach a copy of the revised paragraph to the lease, dated and signed by the owner and initialed by the tenant, and give the tenant a copy. The revised version will therefore supersede the old version. All new leases will use the revised form as contained in **Appendix 4**.

G. Owners do not have to perform interim recertifications for individual tenants who are paying market rent.

7-12 Processing Interim Recertifications

A. When a tenant requests an interim recertification or when a tenant reports changes in income or other circumstances as required, the owner must take the following steps when processing an interim recertification.

1. Interview the tenant to obtain information on the reported change. The owner must also review and ask if there have been other changes to family composition, income, assets, or allowances since the most recent certification.

2. Obtain third-party verification of the income or other facts reported as changed since the last recertification and maintain documentation in the tenant file. (See Chapter 5, Section 3 for more information about verification.)

3. *The EIV system must be used at the time a tenant reports a change in employment or income to determine if any information has been provided by the employer or if the tenant had unreported income. However, because of the delay in reporting requirements by state agencies, EIV may not contain data that can be used to verify employment or income for use in processing interim recertifications in instances where tenants report a change in employment or income. In these cases, the owner will need to use another method of verification.*input any changes to the tenant's income or other characteristics in the owner's software program and print *the* HUD-50059.*

4. Document the resulting changes in the tenant's rent and assistance payment by obtaining signatures on the HUD-50059 from the head, co-head, and spouse and all other adult family members. Maintain copy with original signatures in the tenant file. Provide the tenant with a separate copy.

5. After obtaining tenant and owner representative signatures, electronically transmit interim recertification to the Contract Administrator or HUD to update the tenant information in TRACS.

B. Owners must take the following steps upon learning that a tenant failed to report a change in income or family composition, as stated in the lease.

1. Tenant notification. When owners learn that a tenant has experienced a change in family income or composition listed in paragraph 7-11 A, they must immediately notify the tenant in writing of his or her responsibility to provide information about such changes. *This includes the owner using the EIV New Hires Report in accordance with their written policies and learning that the tenant, or a member of the tenant's household, has new employment. (The owner must have policies in place to use the New Hires Report at least quarterly. See Chapter 9, Enterprise Income Verification (EIV).* The owner's notice must:

   a. Refer the tenant to the lease clause that requires the interim recertification;

   b. Give the tenant 10 calendar days to respond to the notice; and

   c. Inform the tenant that his or her rent may be raised to the market rent if the 10-day deadline is not met.

   NOTE: See Exhibit 7-7 for a sample letter.

2. Timely tenant response. If the tenant responds to the notice and supplies the required information within 10 days, the owner must process the request in accordance with subparagraph A above and implement any resulting rent changes in accordance with paragraphs 7-13 C and D.

3. Tenant fails to respond within 10 calendar days of notice. If the tenant fails to respond within the 10 calendar days, the owner must require the tenant to pay market rent as of the first rent period following the 10-day notice period. (See sample notice provided in Exhibit 7-8.) If the tenant subsequently submits the required information, the owner must reduce the tenant's rent on the first of the following month. In a Section 202 PRAC or 811 PRAC project, the owner may evict the tenant for noncompliance with the lease requirement to report changes in family income or composition.

7-13 Effective Date of Interim Recertifications

A. Owners must provide the tenant with written notice of the effective date and the amount of the change in TTP or tenant rent resulting from the interim recertification.

B. For interim recertifications, both the change in assistance payment and change in TTP or tenant rent are effective on the same day.

C. If the tenant complies with the interim reporting requirements, rent changes must be implemented as follows:

   1. Rent increases. If the tenant's rent increases because of an interim adjustment, the owner must give the tenant 30 days advance notice of the increase. The effective date of the increase will be the first of the month commencing after the end of the 30-day period.

2. Rent decreases. If the tenant's rent will decrease, the change in rent is effective on the first day of the month after the date of action that caused the interim certification, *e.g., first of the month after the date of loss of employment.* A 30-day notice is not required for rent decreases.

D. If the tenant does not comply with the interim reporting requirements, and the owner discovers the tenant has failed to report changes as required in paragraph 7-10, the owner initiates an interim recertification and implements rent changes as follows:

1. Rent increases. Owners must implement any resulting rent increase retroactive to the first of the month following the date that the action occurred.

2. Rent decreases. Any resulting rent decrease must be implemented effective the first rent period following completion of the recertification.

Section 3: Unit Transfers

7-14 Key Regulations

This paragraph is the key regulatory citation pertaining to Section 3: Unit Transfers. The citation and its topic are listed below.

- 24 CFR 880.605, 886.125, 886.325, 891.420, 891.620, 891.760 (Overcrowded and underoccupied units)

7-15 Key Requirements

A. If an owner determines that a tenant's current dwelling unit is smaller or larger than appropriate as a result of a change in a tenant's family size or composition, the owner must decide whether to require the tenant to transfer to another unit.

B. Owners must not reduce or terminate the assistance payment associated with the original unit until the family has been offered a transfer to a unit of appropriate size and has been given sufficient time (no less than 30 days) to move to the new unit.

C. In the case of a unit transfer, both the change in rent and change in the assistance payment are effective on the day the tenant actually occupies the new unit.

D. Owners must develop additional unit transfer policies to address tenant transfer requests beyond those needed for change in family size, including transfers needed for medical reasons or to accommodate a person with a disability.

E. Owners are obligated to transfer tenants to different units as a reasonable accommodation to a household member's disability. For example, a tenant with a physical disability might need a transfer to an accessible unit, or a unit on the

ground floor, or a larger unit to accommodate a live-in aide. Transfers which are needed as a reasonable accommodation should be made on a priority basis.

7-16 Unit Transfers Due to a Change in Family Composition

A. Determining Whether a Unit Transfer Should Occur

If a tenant reports a change (or the owner becomes aware of a change) in family composition, the owner must do the following:

1. Determine appropriate unit size. Owners should use the occupancy standards established for the property to determine whether the unit is still the appropriate size for the tenant. The property's occupancy standards must be consistent with the requirements discussed in paragraph 3-23.

2. Determine whether a transfer is required. The following considerations determine whether the tenant is required to move:

   a. Is there a unit of appropriate size in the property? If there are appropriately sized units available, then a transfer to an appropriately sized unit is required. If a unit of appropriate size is not available, then the tenant should be moved to the most appropriately sized unit.

   b. Is there a market for the size of unit the tenant would be vacating? If the tenant is occupying a unit that is larger than needed and there is no demand for that larger unit, the owner does not have to require the tenant to move from the larger unit until there is a demand for that size of unit.

   c. How long will the tenant remain in the property? If the tenant has given a written notice to vacate, the owner need not require the tenant to transfer.

   NOTE: In Section 236 and Section 221(d)(3) BMIR cooperatives in which the member is receiving no other assistance, the cooperative may establish its own policy on whether the cooperative should offer over-housed members smaller units and require members who refuse such offers to pay the market-rate carrying charge as described in paragraph 3-23 H.1.

B. Transfer Requirements

1. When an owner determines that a transfer is required, the Model Lease for Subsidized Programs states that the tenant:

   a. May remain in the unit and pay the HUD-approved market rent; or

   b. Must move within 30 days after the owner notifies the family that a unit of the required size is available within the property.

2. Depending upon the circumstances of the transfer, a tenant may be obligated to pay all costs associated with the move. However, if a tenant is transferred as a reasonable accommodation to a household member's disability, then the owner must pay the costs associated with the transfer, unless doing so would be an undue financial and administrative burden. See Chapter 2 for a thorough discussion of the requirements of Section 504 of the Rehabilitation Act of 1973 and Chapter 2, Subsection 4 for information and guidance on Reasonable Accommodation.

C. **Written Policies**

Owners are required to describe the unit transfer policies in a written tenant selection plan for the property, and address the following topics (refer to Chapter 4, Figure 4-2 and Paragraph 4-4 C for Required Contents of a Tenant Selection Plan):

1. Transfer waiting lists;

2. Acceptable reasons for transfers;

3. Procedures for filling vacancies; and

4. Owner's policy for establishing priority for filling vacant units with either tenants awaiting transfers or applicants from the property waiting list.

D. **Transfer Fees in Section 236 and BMIR Cooperatives**

1. A cooperative may collect fees for processing transfers of membership if such fees are approved by the cooperative's board and consistent with the cooperative's by-laws and occupancy agreements.

2. While these fees must be reasonable in amount, the cooperative need not request HUD approval of the amount of the fee.

3. The cooperative may only impose a transfer fee on a member who voluntarily initiates a transfer. Cooperatives must not charge transfer fees when transfers are required pursuant to changes in household composition.

Section 4: Gross Rent Changes

7-17 Key Requirements

A. A gross rent change may occur due to a rent change only, a change in the utility allowance only, or due to a change in both the rent and utility allowance.

B. Owners must comply with the tenant comment and posting procedures described in the Code of Federal Regulations at 24 CFR 245.

C. Owners must submit approved gross-rent changes through their software package to the Contract Administrator or to TRACS.

D. Owners must provide the tenant a new HUD-50059-A reflecting all changes in rents, utility allowances, total tenant payment, tenant rent, and assistance payments.

E. A copy of the HUD-50059-A reflecting any change in the tenant rent, utility reimbursement, total tenant payment or assistance payment must be placed in the tenant file.

F. Tenants need only sign and date the HUD-50059-A if the gross rent change results in a change in the amount of rent the tenant is required to pay or in the utility reimbursement the tenant will receive. Owners must sign and date the HUD-50059-A.

7-18 Submission and Approval Process

A. Owners must submit requests for rent increases to HUD or the Contract Administrator following the submission requirements described in the following:

1. HUD Handbook 4350.1, *Multifamily Asset Management and Project Servicing,* for budget-based rent increases, annual adjustment factor increases, and utility allowance changes; or

2. The Section 8 Contract Renewal Policy Guide for rent adjustments, if the Section 8 contract has been renewed pursuant to Multifamily Assisted Housing Reform and Affordability Act (MAHRA).

B. Owners must implement approved rent changes on the effective date approved by HUD or the Contract Administrator. In some cases, this date may reflect a retroactive approval, and the owner must change the tenant certification and adjust the monthly subsidy voucher. Revised data must be transmitted to the Contract Administrator or to TRACS to reflect the retroactive changes.

C. Owners must make changes to the Utility Allowances effective the same date as the rent effective date for the annual analysis submitted at the time of the rent adjustment. In cases where the Utility Analysis is completed mid-year due to a 10% or greater rate increase, the effective date of the Utility Allowance must be the first day of the first month following approval by HUD or the Contract Administrator.

D. Owners must prepare tenant certifications reflecting gross rent changes using the on-site software and submit the changes to their Contract Administrator or TRACS for each tenant in the project/contract.

Chapter 7 Exhibits

7-1 Sample Annual Recertification Initial Notice

http://portal.hud.gov/hudportal/documents/huddoc?id=90100.pdf

7-2 Sample Annual Recertification First Reminder Notice

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12156.pdf

7-3 Sample Annual Recertification Second Reminder Notice

http://portal.hud.gov/hudportal/documents/huddoc?id=43503e7-3HSGH.pdf

7-4 Sample Annual Recertification Third Reminder Notice/Notice of Termination

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12158.pdf

7-5 Sample Recertification Interview and Verification Record

http://portal.hud.gov/hudportal/documents/huddoc?id=43503e7-5HSGH.pdf

7-6 Sample Model Form of Notification of Rent Increase Resulting from Recertification Processing

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12159.pdf

7-7 Sample Interim Adjustment Initial Notice

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12160.pdf

7-8 Sample Interim Adjustment Termination of Assistance

http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12161.pdf

Exhibit 7-1: Annual Recertification Initial Notice

Initial Notice [To be signed by resident and owner at initial certification and at subsequent recertifications].

(Tenant's Name) (Date)
(Address)

Dear _____:

As stated in paragraph [15, 10, or 9—indicate the paragraph number that corresponds to the paragraph of the model lease being used for the tenant] of your lease, the U.S. Department of Housing and Urban Development (HUD) requires that we review your income and family composition every year to redetermine rent and assistance levels.

To complete our review of your income and family composition, you must meet with (Resident Manager, Occupancy Clerk, etc.) and supply the required information each year. (The Resident Manager, Occupancy Clerk, etc.) will conduct your recertification interviews in (month and year). We will send you a reminder notice when it is time for your next recertification interview. At that time you must contact (the Resident Manager, Occupancy Clerk, etc.) to schedule an appointment for an interview.

**Cooperation with the recertification requirement is a condition of continued program participation. You must report the required information and provide the required signatures to enable the owner to process the recertification by the (insert the 10th day of the 11th month after the last annual recertification). **

When you attend the interview, you must bring the following information: (List all required information.)

I have read and understand this letter describing the requirement for my participation in an annual recertification interview.

_____
Signature of the Head of Family Date

_____
Signature of Witness Date

Public reporting burden for this collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This information is required to obtain benefits and is voluntary. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. This information is authorized by 24 CFR 5.657, 880.603, 884.218, 886.324, 891.410, 891.610 and 891.750 require that the owner must reexamine the income and composition of all families at least annually. By providing tenants notification in advance of the scheduled recertification meeting and the information they need to provide, the tenant is made aware of the documents they need to retain throughout the recertification period in order to reduce their burden at the time of recertification. This information is considered non-sensitive and does no require any special protection.

Exhibit 7-2: **Sample** Annual Recertification First Reminder Notice

(Tenant's Name)
(Address)

(Date, at least 120 days prior to the upcoming recertification anniversary date)

Dear _____:

It will soon be time for your annual recertification. You received a notice of your upcoming annual recertification at an interview just less than a year ago.

Paragraph [15, 10, or 9—indicate the paragraph number that corresponds to the paragraph of the model lease being used for the tenant] of your lease states that the Department of Housing and Urban Development (HUD) requires that we review your income and family composition every year to determine if you are still eligible to receive assistance paying your rent.

To complete our review of your income and family composition, you must meet with (Resident Manager, Occupancy Clerk, etc.) at (place of interview) and supply the required information. (Resident Manager, Occupancy Clerk, etc.) will be available for recertification interviews (dates and times available). Please contact (Resident Manager, Occupancy Clerk, etc.) (by phone, at the office) as soon as possible to schedule an appointment for an interview.

Cooperation with the recertification requirement is a condition of continued program participation. **You must report the required information and provide the required signatures to enable the owner to process your recertification.** If you respond to this notice after (insert the 10th day of the 11th month after the last annual recertification), paragraph 15 of your lease (if applicable) gives us the right to implement any rent increase resulting from the recertification without providing you a 30-day written notice.

(**NOTE:** For tenants of all projects, <u>except PRAC projects</u>, add the following sentence.) If you do not respond before (insert recertification anniversary date), paragraph [15 **or **14] of your lease gives us the right to terminate your assistance and charge you the (**insert type of rent, either** market rent, contract rent or 110% of BMIR rent) effective (insert the recertification anniversary date).

(**NOTE:** For tenants in PRAC projects add the following sentence.) If you do not respond before (insert the recertification anniversary date), your tenancy may be terminated.

When you attend the interview, you must bring the following information:
(List all required information.)

Sincerely,

(Managing Agent, Resident Manager, etc.)

Exhibit 7-3: Sample Annual Recertification Second Reminder Notice

(Tenant's Name)
upcoming (Address)

(Date, *at least* 90 days prior to the recertification anniversary date)

Dear _____:

On (date of First Reminder Notice) you received a notice requesting that you contact (Resident Manager, Occupancy Clerk, etc.) to schedule your periodic recertification interview. So far you have not scheduled your interview.

Cooperation in the recertification process is a condition for receiving assistance. Paragraph [15, 10, or 9—indicate the paragraph number that corresponds to the paragraph of the model lease being used for the tenant] of your lease states that the Department of Housing and Urban Development (HUD) requires that we review your income and family composition every year to re-determine rent and assistance levels.

To complete our review of your income and family composition, you must meet with (Resident Manager, Occupancy Clerk, etc.) at (place of interview) and supply the required information. (Resident Manager, Occupancy Clerk, etc.) will be available for recertification interviews (dates and times available). Please contact (Resident Manager, Occupancy Clerk, etc.) (by phone, at the office) as soon as possible to schedule an appointment for an interview.

Cooperation with the recertification requirement is a condition of continued program participation. You must report the required information and provide the required signatures to enable the owner to process your recertification. If you contact (Resident Manager, Occupancy Clerk, etc.) after (insert the 10th day of the 11th month after the last annual recertification), we will process your recertification but you will not receive 30 days notice of any resulting rent increase.

(**NOTE:** For tenants of all projects, <u>except PRAC projects</u>, add the following sentence.) If you do not respond before (insert recertification anniversary date), paragraph [15 or 14] of your lease gives us the right to terminate your assistance and charge you the (insert type of rent, either market rent, contract rent or 110% of BMIR rent) effective (insert the recertification anniversary date).

(**NOTE:** For tenants in PRAC projects add the following sentence.) If you do not respond before (insert the recertification anniversary date), your tenancy may be terminated.

To help us process your recertification, you must bring the following information to your interview:
(List all required information.)

Please do not make us increase your rent. Go to the Rental Office today to set up your interview and to discuss your recertification and any possible change in rent. Thank you for your cooperation.

Sincerely,

(Managing Agent, Resident Manager, etc.)

Exhibit 7-4: **Sample** Annual Recertification Third Reminder Notice/Notice of Termination

(Tenant's Name)
(Address)

(Date at least 60 days prior to the upcoming recertification anniversary date)

Dear _____:

On (date of First Reminder Notice) and (date of Second Reminder Notice) we sent you notices requesting you to set up your recertification interview. You still have not scheduled your interview. Paragraph [15,10, or 9—indicate the paragraph number that corresponds to the paragraph of the model lease being used for the tenant] of your lease states that the Department of Housing and Urban Development (HUD) requires that we review your income and family composition every year to redetermine rent and assistance levels.

To complete our review of your income and family composition, you must meet with (Resident Manager, Occupancy Clerk, etc.) at (place of interview) and provide the required information **and signatures to enable the owner to process your recertification. Your cooperation with the recertification requirement is a condition of continued program participation.** (Resident Manager, Occupancy Clerk, etc.) will be available for recertification interviews (dates and times available). Please contact (Resident Manager, Occupancy Clerk, etc.) (by phone, at the office) as soon as possible to schedule an appointment for an interview.

If you meet with (Resident Manager, Occupancy Clerk, etc.) and provide all of the required information **and signatures**, we will not terminate your assistance unless your income shows you are no longer eligible for assistance. If you report to the Rental Office after (insert the cutoff date, the 10th day of the 11th month after the last annual recertification), we will process your recertification but will not provide you 30 days notice of any resulting rent increase.

To help us process your recertification, you must bring the following information to your interview. (List all required information.)

(**NOTE:** For tenants of all projects, <u>except PRAC projects</u>, add the following.) If you do not respond before (insert recertification anniversary date), paragraph [15 **or** 14] of your lease gives us the right to terminate your assistance and charge you the (**insert type of rent, either** market rent, contract rent or **110% of BMIR rent) of $_____(insert the rent the tenant will be required to pay)** effective (insert the recertification anniversary date). **This increase in rent will be made without providing you additional notice. If you fail to pay the increased rent, we may terminate your tenancy and seek to enforce the termination in court.**

(**NOTE:** For tenants in PRAC projects add the following sentence.) If you do not respond before (insert the recertification anniversary date), your tenancy may be terminated.

Please do not make us increase your rent. Go to the Rental Office today to set up your interview and to discuss your recertification and any possible change in rent.

Thank you for your cooperation.

Sincerely,

(Managing Agent, Resident, Manager etc)

Exhibit 7-5: Sample Recertification Interview and Verification Record

Name of Tenant: _____

Address/Unit No.: _____

1. Date Initial Letter Mailed to Tenant to Arrange Recertification Interview: ___/___/___

2. Date and Type of Action Required to Follow Up Initial Letter to Arrange Recertification Interview:

Date	Type of Action
/___/___/___ (M D y)	_____
/___/___/___	_____
/___/___/___	_____

3. Date Recertification Interview Completed ___/___/___. If interview not completed, give reason. _____

4. Member #1*

For verifications not available in the EIV System:

	Verifications Sent To:		Processing Dates:	
	Written		Oral	
	Sent	Rec'd	Sent	Rec'd
a. _____	_____	_____	_____	_____
b. _____	_____	_____	_____	_____
c. _____	_____	_____	_____	_____
d. _____	_____	_____	_____	_____
e. _____	_____	_____	_____	_____

* This information should be completed for all household members. Include additional sheets as needed.

Exhibit 7-6: **Sample** Model Form of Notification of Rent Increase Resulting from Recertification Processing

(Tenant's Name) (Date)
(Address)

Dear Tenant:
This is to notify you that on the basis of our recent review of your income and family composition your rent has been adjusted to $_____. This new rent is effective beginning (month/day/year). This notification amends Paragraph [3, 4, or 5—indicate the paragraph number that corresponds to the paragraph of the model lease being used for the tenant.] of your lease agreement, which sets forth the amount of rent you pay each month.

Please visit the site office within 7 days of receipt of this notice to sign and receive a copy of the **HUD-50059**. The **HUD-50059** must be signed by the head, co-head, spouse and all other adult members of the household. The copy of the **HUD-50059**provides the information on your income that we used to calculate your new rent and the amount of rental assistance, if any, HUD pays monthly on your behalf.

You may call _____ if you wish to arrange a meeting to discuss this change. Thank you for your cooperation.

Sincerely,

(Managing Agent,
Resident Manager, etc.)

Exhibit 7-7: **Sample** Interim Adjustment Initial Notice

(Tenant's Name) (Date)
(Address)

Dear _____:

(Management Agent, Resident Manager, etc.) believes that you have failed to report a change in your (income or family composition). If this is true, your failure to report this change is a violation of paragraph (16 or 24) of your lease (if applicable).

If you have failed to report a change, your lease gives us the right to terminate your rental assistance and give it to another family. However, if you meet with (Resident Manager, Occupancy Clerk, etc.) by (10 calendar days from the date of this notice) and report the change in your (income, family composition), if any, we will not terminate your assistance unless your income shows you are no longer eligible for assistance. Please do not make us take such a drastic step. Call (Resident Manager, Occupancy Clerk, etc.) immediately to set up a meeting.

(**NOTE:** For tenants of all projects, <u>except PRAC projects</u>, add the following sentence.) If you do not respond before (10 calendar days from the date of this notice), paragraph [17 or 24] of your lease gives us the right to terminate your assistance and charge you the (market rent/contract rent/110% of the BMIR rent) effective (insert the date that is the first day of the month following 10 calendar days from the date of this notice).

(**NOTE:** For tenants in PRAC projects add the following sentence.) If you do not respond before (insert 10 calendar days from the date of this notice), your tenancy may be terminated.

Sincerely,

(Managing Agent,
Resident Manager, etc.)

Exhibit 7-8: **Sample** Interim Adjustment Termination of Assistance

(Tenant's Name)
(Address) (Date)

Dear _____:

On (date of interim initial notice), we sent you a notice requesting that you arrange a meeting to discuss a change that (Resident Manager, Occupancy Clerk, etc.) believes occurred in your (income, family composition). Since you did not respond to that notice, your rent will be raised to $ _____(market rent/contract rent/110% of the BMIR rent) effective (first day of the month after the 10-day period stated in the initial notice has elapsed).

If you meet with (Resident Manager, Occupancy Clerk, etc.) by (10 calendar days from the date of this notice) and supply all required information or explain that no change occurred, we will not terminate your assistance unless your income shows you are no longer eligible for assistance. If you do not meet with (Resident Manager, Occupancy Clerk, etc.) and supply the required information by that date, we will be free to give your assistance to another tenant.

(**NOTE:** For tenants in PRAC projects add the following sentence.) If you do not meet with the (Resident Manager, Occupancy Clerk, etc.) and supply the required information by that date, we may terminate your tenancy.

If you have any questions, please call (Resident Manager, Occupancy Clerk, etc.) at _____ (phone #).

Sincerely,

(Managing Agent,
Resident Manager, etc.)

CHAPTER 8. TERMINATION

8-1 Introduction

A. Chapter 8 addresses terminating housing assistance and terminating tenancy. Under program regulations and leases, termination of assistance occurs when a tenant is no longer eligible for subsidy or to enforce HUD program requirements. It results in the loss of subsidy to the tenant. Tenants whose assistance is terminated may remain in the unit, but they must pay the market rent, full contract rent, or 110% of BMIR rent. Owners are authorized to terminate assistance only in limited circumstances and after following required procedures to ensure that tenants have received proper notice and an opportunity to respond.

B. Termination of tenancy is the first step in the eviction process and is often used interchangeably with the term *eviction*. When terminating tenancy, the owner gives the tenant notice to vacate the unit because of a lease violation(s). A tenant who fails to vacate the unit after receiving notice from the owner may face judicial action initiated by the owner to evict the tenant. The owner may only terminate tenancy in limited circumstances as prescribed by HUD regulations and the lease and must follow HUD and state/local procedures.

C. Owners are expected to enforce program requirements under the terms of the lease. Similarly, HUD expects tenants to comply with the program requirements as established in the lease. HUD encourages owners to work with tenants and utilize other corrective actions, such as repayment agreements or negotiated settlements, to resolve program/lease issues. Terminations represent only one of the tools available to owners for lease enforcement. Owners and tenants are advised that HUD termination policies and procedures must be followed when initiating a termination, including proper notices and documentation. Owners are also advised that terminations for reasons other than those permitted by HUD are prohibited.

D. The chapter is organized into the following four sections:

- **Section 1: Termination of Assistance** outlines key requirements and procedures regarding when and how a tenant's assistance must be terminated.

- **Section 2: Termination of Tenancy by Lessees** discusses the tenant's responsibilities when the tenant wishes to terminate tenancy.

- **Section 3: Termination of Tenancy by Owners** outlines allowable circumstances for terminating tenancy and the requirements and procedures that owners must follow to terminate a tenant's residency.

- **Section 4: Discrepancies, Errors, and Fraud** describe the circumstances when owners must investigate discrepancies and provides guidelines on how to distinguish tenant errors from fraud. It also identifies how to take action (e.g., documenting fraud and reimbursing HUD or the tenant).

8-2 Key Terms

A. There are a number of technical terms used in this chapter that have very specific definitions established by federal statute or regulations or by HUD. These terms are listed in Figure 8-1, and their definitions can be found in the Glossary to this handbook. It is important to be familiar with these definitions when reading this chapter.

B. The terms “disability” and “persons with disabilities” are used in two contexts – for civil rights protections, and for program eligibility purposes. Each use has specific definitions.

1. When used in context of protection from discrimination or improving the accessibility of housing, the civil rights-related definitions apply.

2. When used in the context of eligibility under multifamily subsidized housing programs, the program eligibility definitions apply.

NOTE: See the Glossary for specific definitions and paragraph 2-23 for an explanation of this difference.

Figure 8-1: Key Terms

• Adult • *Enterprise Income Verification (EIV)* • Eviction • Family • Fraud • Increased ability to pay • Law enforcement agency • Live-in aide	• Rural Housing Service (RHS) • Tenant • Tenant with a disability • Termination of assistance • Termination of tenancy • Unauthorized occupant • Unintentional program violation

Section 1: Termination of Assistance

8-3 Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 1: Termination of Assistance. The citations and their topics are listed below.

A. 24 CFR 5.218 (Penalties for failing to disclose and verify social security and employer identification numbers)

B. 24 CFR 5.232 (Penalties for failing to sign consent forms)

C. 24 CFR part 5, subpart E – Restrictions on Assistance to Noncitizens

D. 24 CFR 5.659 (Family information and verification)

E. 24 CFR 247.4 (Termination of tenancy notice procedures applied to the termination of assistance notice)

F. 24 CFR 880.603, 881.601, 883.701, 884.218, 886.124, 886.324, 891.410, 891.610, and 891.750 (Selection and admission of assisted tenants/re-examination of family income and composition)

8-4 Applicability

A. Termination of assistance is not applicable to Section 202 PRAC and Section 811 PRAC properties.

B An owner's authority to remove or terminate assistance is established by the HUD-required lease provision entitled "Removal of Subsidy."

8-5 Key Requirements: When Assistance Must Be Terminated

An owner must terminate a tenant's assistance in the following circumstances:

A. A tenant fails to provide required information at the time of recertification, including changes in family composition, or changes in income or social security numbers for new *household* members.

B. A tenant fails to sign/submit required consent and verification forms (form HUD-9887 and form HUD-9887-A).

1. Form HUD-9887, *Notice and Consent for the Release of Information to HUD and to a PHA* permits HUD to obtain wage and claim information from State Wage Information Collection Agencies (SWICAs), current tax information from the Internal Revenue Service (IRS), and wages and unemployment compensation information from the Social Security Administration (SSA) *and the Department of Health and Human Services' (HSS') National Directory of New Hires (NDNH).*

2. Form HUD-9887-A, *Applicant's/Tenant's Consent to the Release of Information – Verification by Owners of Information Supplied by Individuals Who Apply for Housing Assistance* allows an owner to obtain and verify information about income, assets, and allowances for items such as child care and medical expenses, which is needed to determine the amount of rent a tenant must pay.

C. An annual or interim recertification determines that the tenant has an increased ability to pay the full contract rent.

D. A tenant fails to move to a different-sized unit within 30 days after the owner notifies him/her that the unit of the required size is available. *As required by the HUD lease,* if the tenant remains in the same unit, the tenant must pay the market rent, full contract rent, or 110% of the BMIR rent.

***NOTE:** When assistance is terminated for a tenant with more than one form of subsidy, the tenant must pay the market rent, full contract rent, or 110% of BMIR rent. For example, if a tenant resides in a Section 236 property and receives Section 8 assistance, the tenant would pay *the full Section 8 contract rent if his or her assistance were terminated unless there is an eligible in-place Section 236 tenant or a vacant unit the Section 8 can be transferred to.*

E. A tenant has begun receiving assistance, but the owner is unable to establish citizenship or eligible immigration status for any family member from the information provided by the tenant and determines that the tenant does not meet the citizenship requirement. (See Chapters 3, 4, and 7 for other citizenship and eligible immigration status requirements. Restriction on assistance to noncitizens is addressed in paragraph 3-12, denial of assistance is addressed in paragraph 4-31, and changes in status are addressed in paragraph 7-11.)

The process for owners to verify and establish a tenant's eligible immigration status can be lengthy. Sometimes a tenant begins receiving assistance before the owner establishes citizenship or eligible immigration status; this happens when the owner encounters delays in verifying the information provided by the tenant. If the owner then determines that the tenant does not meet the requirement for citizenship or eligible immigration status, the assistance must be terminated. Refer to paragraph 3-12 K for further guidance.

NOTE: This requirement does not apply to the following programs covered by this handbook, Section 202 PRAC, Section 811 PRAC, Section 202 PAC and Section 221(d)(3) BMIR..

F. A student enrolled at an institution of higher education does not meet the eligibility requirements for assistance. (See Chapter 3, paragraph 3-13.)

G. **REMINDER:** Actions to terminate assistance must be based only on a change in the tenant's eligibility for assistance or a tenant's failure to fulfill specific responsibilities under program requirements. Owners must not take action to terminate assistance based on other factors.

8-6 Procedures for Terminating or Reinstating Assistance

To avoid the potential for discrimination, it is important for owners to ensure that the requirements and procedures described below are applied consistently to all tenants.

A. **Terminating Assistance**

1. When terminating a tenant's assistance, the owner increases the tenant's rent to market rent (or contract rent) and, where applicable, makes the assistance available to another tenant.

2. When terminating assistance, an owner must provide proper notice to the tenant of the increase in the tenant's rent.

   REMINDER: When provided to a tenant with a disability, this notice must be in a form accessible to the tenant (e.g., in Braille or audio form for a tenant with a vision impairment).

3. Written notice should include:

   a. The specific date the assistance will terminate;

   b. The reason(s) for terminating assistance;

   c. The amount of rent the tenant will be required to pay;

   d. Notification that if the tenant fails to pay the increased rent, the owner may terminate tenancy and seek to enforce the termination in court; and

   e. The tenant has a right to request, within 10 calendar days from the date of the notice, a meeting with the owner to discuss the proposed termination of assistance.

4. The notice should be served by:

   a. Sending a letter by first class mail, properly stamped and addressed and including a return address, to the tenant at the unit address; <u>and</u>

   b. Delivering a copy of the notice to any adult person answering the door at the unit. If no adult answers the door, the person serving the notice may place it under or through the door, or affix it to the door.

5. The date on which the notice is deemed <u>received</u> by the tenant is the later of:

   a. The date the first class letter is mailed; or

   b. The date the notice is properly given.

6. Service of the notice is deemed effective once the notice has been both mailed and hand delivered.

B. **Reinstating Assistance**

An owner may reinstate a tenant's terminated assistance if:

1. The original termination of assistance was due to:

   a. A tenant's failure to recertify, or

   b. A tenant's increased ability to pay;

2. The original termination of assistance was not due to fraud;

3. The tenant is eligible for assistance (based on the income and rent calculation, the tenant would pay less than market rent);

4. The tenant submits the required information; and

5. Assistance is available for the unit.

8-7 Termination of Assistance Related to Establishing Citizenship or Eligible Immigration Status

A. **Applicability**

As stated in paragraphs 3-12 F. and 4-31 A., the restriction on assistance to noncitizens applies to all properties covered by this handbook, except the following:

1. Section 221(d)(3) BMIR properties;

2. Section 202 PAC;

3. Section 202 PRAC; and

4. Section 811 PRAC.

B. **When Assistance Must Not Be Terminated**

An owner must not terminate assistance on the basis of ineligible immigration status of a family member if:

1. The primary (automated) and secondary (manual) verification search of any immigration documents that were submitted in time has not been completed by the DHS;

2. The family member for whom required evidence has not been submitted has moved from the assisted dwelling unit;

3. The family member who is determined not to have eligible immigration status following DHS verification has moved from the assisted dwelling unit;

4. The DHS appeals process under 24 CFR 5.514(e) has not been concluded (see subparagraph C below);

5. Assistance is prorated in accordance with 24 CFR 5.520;

6. Assistance for a mixed family is continued in accordance with 24 CFR 5.516 and 24 CFR 5.518; or

7. Deferral of termination of assistance is granted in accordance with 24 CFR 5.516 and 24 CFR 5.518.

C. **Termination of Assistance When Unable to Establish Citizenship or Eligible Immigration Status**

1. When an owner is unable to establish citizenship or eligible immigration status of family members, as discussed in paragraph 8-5 E, assistance to a tenant cannot be terminated until the completion of an informal hearing.

2. Within 30 days of a DHS appeal decision or a notice from the owner terminating assistance, a tenant may request that the owner provide a hearing. The hearing procedures are outlined below.

   a. The tenant must be provided a hearing before any person(s) designated by the owner, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

   b. The tenant must be provided the opportunity to examine and copy, at the tenant's expense and at a reasonable time in advance of the hearing, any documents in the possession of the owner pertaining to the tenant’s eligibility status, or in the possession of the DHS (as permitted by DHS requirements), including any records and regulations that may be relevant to the hearing;

   c. The tenant must be provided the opportunity to present evidence and arguments in support of eligible immigration status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

   d. The tenant must be provided the opportunity to argue against evidence relied upon by the responsible entity and to confront and cross-examine all witnesses on whose testimony or information the owner relies;

   e. The tenant must be entitled to be represented by an attorney, or other designee, at the tenant’s expense, and to have such person make statements on the tenant’s behalf;

f. The tenant must be entitled to arrange for an interpreter to attend the hearing, at the expense of the tenant, or owner, as may be agreed upon by the two parties; and

g. The tenant must be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to, be provided by the owner).

3. The owner must provide a written final decision, based solely on the facts presented at the hearing, to the tenant within 14 days of the date of the informal hearing. The decision must also state the basis for the determination. As with the notice, the decision must be in an accessible form if being provided to a tenant with a disability.

4. A decision against a tenant member issued in accordance with the requirements listed above does not preclude the tenant from exercising the right, which may otherwise be available, to seek redress directly through the judicial procedures.

5. The owner must retain for a minimum of 5 years the following documents that may have been submitted by the tenant or provided to the owner as part of the DHS appeal or the informal hearing process:

a. The application for financial assistance;

b. The form completed by the tenant for income re-examination;

c. Photocopies of any original documents (front and back), including original DHS documents;

d. The signed verification consent form;

e. The DHS verification results;

f. The request for an DHS appeal;

g. The final DHS determination;

h. The request for an informal hearing; and

i. The final informal hearing decision.

D. **Termination of Assistance When a Tenant Allows an Ineligible Individual to Reside in a Unit**

If the owner terminates assistance based on a determination that a tenant has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit:

1. Such termination must be for a period of not less than 24 months; and

2. This provision does not apply to a tenant if, when calculating any proration of assistance provided for the family, the individual's ineligibility was known and considered.

Section 2: Termination of Tenancy by Lessees

8-8 Key Regulations

This paragraph identifies the key regulatory citations pertaining to Section 2: Termination of Tenancy by Lessees. The citations and their title are listed below.

- 24 CFR 880.606, 884.215, 886.127, 886.327, 891.425, 891.625, and 891.765 Lease Requirements

8-9 Key Requirements

In order to terminate tenancy, the tenant must provide the owner with a written 30-day notice to vacate the unit, as required by the HUD lease.

NOTE: The regulations for RHS Section 515/8 properties permit either the tenant or the owner to terminate the lease with a 30-day written notice. This provision may be included in a one-year lease. The provision must be included in any multi-year lease.

8-10 Allowable Use of Security Deposits

If a tenant fails to pay the required rent or if there are tenant damages to the unit, an owner may use the tenant's security deposit to pay the outstanding rent and/or damages. Any remaining funds must be paid to the tenant. An owner must follow the requirements and guidelines for security deposits and other charges outlined in paragraph 6-18 regarding the refunding and use of the security deposit.

Section 3: Termination of Tenancy by Owners

8-11 Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 3: Termination of Tenancy by Owners. The citations and their titles (or topics) are listed below.

A. **Termination of Tenancy**

1. *24 CFR 5.218 (Penalties for failing to disclose and verify Social Security and Employer Identification Numbers)**

2. 24 CFR 5.850-5.852, 5.858-5.861, 5.901, 5.903, and 5.905 (Termination of tenancy in Screening and Eviction for Drug Abuse and Other Criminal Activity; Final Rule)

3. 24 CFR 247.3, 880.607, 881.601, and 883.701 (Fraud, minor violations, nonpayment of rent, state or local Landlord and Tenant Act)

4. 24 CFR 247.3, 880.607, 881.601, 883.701, and 884.216 (Substantial lease violations)

5. 24 CFR 880.607, 881.601, 883.701, and 247.3 (Other good cause)

6. 24 CFR 880.607, 881.601, 883.701, and 884.216 (Lease expiration)

B. **Eviction for Drug Abuse and Other Criminal Activity**

- 24 CFR 5.850-5.852, 5.858-5.861, 5.901, 5.903, and 5.905 (Eviction in Screening and Eviction for Drug Abuse and Other Criminal Activity; Final Rule)

  NOTE: These regulatory requirements do not apply to owners of housing assisted by the Rural Housing Service under Section 514 or Section 515 of the Housing Act of 1949.

C. **Providing Notice of Termination of Tenancy**

1. 24 CFR 247.4 Termination Notice

2. 24 CFR 247.6 Eviction

8-12 Overview

A. The requirements and procedures for terminating tenancy provide owners with a mechanism to ensure that a tenant is fulfilling his/her obligations under the lease. These obligations include abiding by the lease and the house rules attached to and incorporated into the lease, paying rent when due, maintaining the unit, and permitting other tenants peaceful enjoyment of their units and the common area.

Additionally, the termination of tenancy provides a mechanism to evict tenants who commit fraud or fail to provide the information required by HUD to establish their eligibility and/or appropriate rent.

B. The requirements and procedures also seek to ensure that owners provide tenants with proper notice and the opportunity to respond and treat all tenants in an equitable and consistent manner when terminating tenancy. Additionally, owners must be in compliance with applicable federal, state, and local requirements when pursuing termination of tenancy. Owners must:

1. Adhere to termination criteria consistently and equitably; and

2. Enforce the lease and house rules, and if lease obligations are not fulfilled, initiate termination proceedings to guarantee the other residents' health, safety, and peaceful enjoyment of the property.

C. An owner must not refuse to renew a lease solely because a lease term has expired. Figure 8-2 summarizes the allowable circumstances when an owner may terminate tenancy, either during or at the end of the lease term. Each circumstance will be discussed in detail in the paragraphs to follow.

Figure 8-2: Allowable Circumstances for Terminating Tenancy

- Material noncompliance
  - Substantial lease violations
  - Fraud
  - Repeated minor violations
  - Nonpayment of rent
  - *Failure to disclose and provide verification of SSN(s)*
  - *Failure to sign and submit consent forms*
- Drug abuse and other criminal activity
- Material failure to carry out obligations under a State Landlord and Tenant Act
- Other good cause

8-13 Material Noncompliance with the Lease

A. Key Requirements

Owners may terminate tenancy when a tenant is in material noncompliance with the lease, including:

1. Failure of the tenant to submit in time all required information on household income and composition. Examples include:

   a. The tenant's failure to:

      (1) Submit required evidence of citizenship or eligible immigration status;

      (2) Disclose and verify social security numbers; or

      (3) Sign and submit consent forms allowing verification of information regarding the tenant's income and eligibility.

   b. The tenant's knowingly providing incomplete or inaccurate information.

2. Extended absence or abandonment of the unit as defined in the house rules for the property, or in state or local law.

   a. House rules regarding extended absence or abandonment must be consistent with the requirements and guidelines for house rules described in paragraph 6-9. See that chapter for more information.

   b. The house rules must be attached to the lease for that unit.

3. Fraud, which is when a tenant knowingly provides inaccurate or incomplete information.

   a. If the owner determines that a tenant acted fraudulently, the owner may terminate tenancy under the lease. A fraudulent action is considered material noncompliance with the lease.

   b. The owner must handle fraud as a civil violation and may handle fraud as a criminal violation. When evicting for fraud, the owner must simultaneously file a civil action against the tenant to recover the subsidy overpayment. The owner may refer the case to a local, state, or federal prosecutor who may pursue the case as a criminal matter.

   c. The owner must take care not to confuse tenant error with fraud. Figure 8-3 below describes the difference between fraud and tenant errors. See paragraphs 8-17 and 8-18 for more information.

Figure 8-3: Tenant Errors versus Fraud

Fraud should not be confused with tenant errors, which HUD considers unintentional program violations. Tenant errors are usually infractions or oversights that do not involve intentional deceit (e.g., tenant misunderstands or forgets the rules).

Tenants who were not eligible for assistance because they mistakenly provided incorrect information must reimburse the owner for the difference between the rent the tenant should have paid and the actual rent the tenant was charged. This circumstance constitutes a tenant error and is not a basis for eviction.

4. Repeated minor violations that:

   a. Disrupt the livability of the property;

   b. Adversely affect the health or safety of any person, or the right of any tenant to the peaceful enjoyment of the property;

   c. Interfere with the management of the property; or

   d. Have an adverse financial effect on the property.

Example – Minor Violations

NOTE: This list is not comprehensive.

- Tenant keeps unauthorized occupants.
- Tenant fails to pay utilities.
- Tenant behaves or acts in a manner that continually disrupts the right of other residents to enjoy the property.
- Tenant damages, destroys, or defaces the unit or property.
- Tenant fails to pay the cost of all repairs caused by carelessness or neglect on the part of the tenant.

5. Nonpayment of rent due under the lease.

   a. The tenant is obligated to pay all amounts due under the lease or repayment agreement, including any portion thereof.

   b. The owner must not terminate tenancy until any grace period permitted by state law has expired.

NOTE: If the tenant pays all amounts due under the lease within the grace period, this is not material noncompliance, but rather a minor violation. Repeated minor violations constitute cause for eviction.

6. *Failure to disclose and provide verification of SSNs.

a. Termination of tenancy.

(1) The owner must terminate tenancy of a tenant and the tenant's household if the SSN disclosure and verification requirements for all household members are not met in the specified timeframe. This includes those households where a child under the age of six who did not have a SSN was added to the household with the understanding that the SSN would be disclosed and verification provided within 90 days after admission, or within the 90 day extension period, if applicable.

(2) There is no proration of assistance for those household members who are required to obtain a SSN but who fail to disclose and provide verification of their SSN.

(3) Termination of tenancy does not apply to those households with individuals who do not contend eligible immigration status or tenants who were age 62 or older as of January 31, 2010, whose initial determination of eligibility was begun before January 31, 2010, unless there are other members of the household who have not disclosed or provided verification of their SSNs.

b. Deferring termination of tenancy.

The owner may defer termination of tenancy and provide tenants with an additional 90 days past their next regularly scheduled recertification of income and family composition to become in compliance with the SSN disclosure and verification requirements in Chapter 3, Paragraph 3-9.

(1) The deferral is at the owner's discretion and must only be provided if failure to meet the SSN requirements was due to circumstances outside the control of the tenant and there is a likelihood that the tenant will be able to disclose and provide verification of the needed SSN(s) by the deadline date.

(2) After the 90-day deferral period, if the tenant has not disclosed and provided verification of the needed SSN(s), the owner will pursue termination of tenancy.

B. **Procedures for Terminating Tenancy and Providing Notice**

The following procedures are the minimum standards required by HUD. Most state and/or local laws are more restrictive than HUD's minimum requirements; therefore, an owner should be aware of state and local laws governing terminations.

1. Basis for termination.

To terminate tenancy, an owner must establish that the basis for the termination is consistent with:

a. HUD-required lease provisions;

b. Allowable lease provisions set forth in the lease for the unit occupied by the tenant; and

c. Applicable state and local laws.

2. Termination notice.

a. If the owner proposes to terminate a lease, the owner must give the tenant written notice of the proposed termination.

b. For tenants with a disability, the notice must be provided in a form accessible to the tenant (e.g., in Braille or audio form for a tenant with a vision impairment).

c. When an owner terminates tenancy, written notice must be provided to the tenant and must:

(1) State the specific date the tenancy will be terminated;

(2) State the reasons for the action with enough detail to enable the tenant to prepare a defense;

(3) Advise the tenant that remaining in the unit on the termination date specified in the notice may result in the owner seeking to enforce the termination in court, at which time the tenant may present a defense;

(4) Advise the tenant that he/she has 10 days within which to discuss termination of tenancy with the owner. The 10-day period begins on the day that the notice is deemed effective (see subparagraph B.3 below);

(5) Advise that persons with disabilities have the right to request reasonable accommodations to participate in the hearing process (see Chapter 2, Subsection 4 for information on Reasonable Accommodation)

(6) Be served on the tenant as described under subparagraph B.3.c below.

d. When terminating tenancy for material noncompliance, the time of service of the termination notice must be in accordance with the lease and state law.

e. In the case of the tenant's nonpayment of rent, the notice must include the dollar amount of the balance due on the rent account and the date of such computation.

3. Manner of service for Section 236, Section 221(d)(3) BMIR, Rent Supplement, Section 202/8, Section 202 PAC, Section 202 PRAC, Section 811 PRAC, Section 8 Loan Management Set-Aside, and Section 8 Property Disposition Set-Aside.

a. The notice must be served by:

(1) Sending a letter by first class mail, properly stamped and addressed and including a return address, to the tenant at the unit address; and

(2) Delivering a copy of the notice to any adult person answering the door at the unit. If no adult answers the door, the person serving the notice may place it under or through the door, or affix it to the door.

b. The date on which the notice is deemed received by the tenant is the later of:

(1) The date the first class letter is mailed; or

(2) The date the notice is properly given.

c. Service of the notice is deemed effective once the notice has been both mailed and hand delivered.

4. Manner of service for all other Section 8 programs.

The manner of service will be in accordance with the provisions of state and local laws.

5. Judicial action.

a. An owner must not evict any tenant except by judicial action pursuant to state and local laws.

b. In any judicial action to evict a tenant, the owner must rely on the grounds cited in the termination notice served to the tenant. However, the owner is not precluded from relying on grounds about which he/she had no knowledge of at the time the notice was sent to the tenant.

NOTE: For Section 8 New Construction, Substantial Rehabilitation, and State Agency properties, the owner must rely only on the grounds cited in the termination notice served to the tenant.

c. The tenant's failure to object to the notice does not constitute the tenant's waiver of his/her rights to contest the owner's action in a judicial proceeding.

d. A tenant may rely on state or local laws governing eviction procedures where such laws provide the tenant procedural rights that are in addition to those provided by the regulatory agreements, except where such laws have been preempted under CFR Part 246, Local Rent Control, or by other action of the United States.

8-14 Drug Abuse and Other Criminal Activity

A. Key Requirements

1. The authority to terminate tenancy of tenants is in accordance with the HUD model leases and state or local Landlord and Tenant Act(s).

2. Criminal activity. Owners may terminate tenancy for any of the following types of criminal activity by a covered person (a tenant, household member, guest, or other person under the tenant's control):

   a. Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises); or

   b. Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises.

   NOTE: Owners may terminate tenancy and evict tenants for criminal activity by a covered person if they determine that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying a criminal conviction standard of proof of the activity.

3. Illegal drug use. Owners may evict a family when they determine that a household member is illegally using a drug or when owners determine that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

4. Alcohol abuse. Owners may terminate tenancy if they determine that a household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

5. *Lifetime sex offender. Owners must terminate the tenancy of a participant who is subject to a lifetime registration requirement under a State sex offender registration program who was erroneously admitted (the household member was subject to a lifetime registration requirement at admission and was admitted after June 25, 2001) and is receiving housing assistance.

   NOTE: If an O/A erroneously admitted a lifetime sex offender, the O/A 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 O/A must terminate assistance for the household.*

6. Other circumstances. Owners may terminate tenancy during the term of the lease if a tenant is:

   a. Fleeing to avoid prosecution, or custody or confinement after conviction for a crime, or attempting to commit a crime that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or

   b. Violating a condition of probation or parole imposed under federal or state law.

7. Owners must consistently apply their eviction standards.

8. Eviction actions must be consistent with federal, state, and local civil rights laws, including the fair housing and equal opportunity laws described in 24 CFR 5.105.

B. **Factors to Consider When Terminating Tenancy for Drug Abuse and Other Criminal Activity**

NOTE: Owners should be careful to implement consistently all criminal background checks and decision-making procedures. Owners are required to have their procedures included as part of their Tenant Selection Plan (see Chapter 4, Figure 4-2.)

1. As part of their eviction standards, owners may consider all of the circumstances relevant to a particular eviction case, such as:

   a. The seriousness of the offending action;

   b. The effect on the community of terminating or not terminating tenancy;

c. The extent of the tenant's participation in the offending action;

d. The effect of termination of tenancy on household members not involved in the offending action;

e. The demand for assisted housing by families who will adhere to lease responsibilities;

f. The extent to which the tenant has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action; and

g. The effect of the owner's action on the integrity of the program.

2. In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member *who is no longer engaged in such behavior*, an owner may consider and may require evidence of whether the member:

a. Is participating in or has successfully completed a supervised drug or alcohol rehabilitation program; or

b. Has otherwise been rehabilitated successfully.

3. A tenant may be required to exclude a household member in order to continue to reside in the unit when that household member has participated in, or is responsible for, an action or a failure to act that warrants termination.

C. **Procedures for Accessing Criminal Records**

1. An owner may submit a request to a PHA (in the area where the property is located) to obtain the criminal records *and/or State lifetime sex offender registration records* of a member of a household for use in applicant screening, lease enforcement or eviction. Refer to Glossary for definition of Public Housing Agency (PHA).

2. Prior to performing or requesting a PHA to conduct a background check, an owner must do the following:

a. Obtain a signed consent form from the household member or applicant;

b. Provide the PHA with its selection criteria; and

c. Ensure that all criminal background checks are conducted consistently for every applicant or resident.

3. Upon request of the owner, the PHA must request the criminal conviction *or State lifetime sex offender registration* records from the state where the applicant resides and from other states where the applicant *or members of

the applicant's household have resided.* Owners and PHAs may rely on the applicant's declaration *on their application* regarding their residences and any other information.

4. If the PHA receives criminal conviction *and/or State lifetime sex offender registration* records requested by the owner, the PHA must determine whether criminal action by a household member, as shown by such criminal conviction records, may be a basis for lease enforcement or eviction. The

   PHA's determination with regard to the screening and admission of applicants is based upon the criminal conviction record and the owner's standards for prohibiting admission. All findings of a criminal background or sex offender status used to make determinations must be documented. If the owner's selection criteria are not clear, the PHA should contact the owner for clarity. The PHA will make a determination based on the information provided by the owner. Any decisions based on "reasonable belief" or other "determination" of the owner should be documented with the reason for the belief or determination. This documentation should not be only of specific behavior, but that the behavior would (or does) interfere with the health, safety, or peaceful enjoyment of other residents.

5. The PHA must notify the owner whether it has received criminal conviction *or State lifetime sex offender registration* records for the household member and its determination as to whether such records may be a basis for lease enforcement or eviction. Except as provided below, a PHA must not disclose the household member's criminal conviction *or State lifetime sex offender registration* records or the content of the records to the owner. A PHA may only make this disclosure if the following conditions are satisfied:

   a. The PHA determines that the criminal activity by the household member, as shown by records received from a law enforcement agency, may be a basis for eviction from a unit; and

   b. The owner certifies in writing that the criminal conviction records will be used only for the purpose and only to the extent necessary to seek eviction in a judicial proceeding of a tenant, based on the criminal activity by the household member that is described in the criminal conviction records.

6. If a PHA receives criminal conviction records from a state or local agency showing that a household member has been convicted of a crime relevant to lease enforcement or eviction, the PHA must notify the household of the proposed action and must provide the subject of the record and the tenant a copy of the information and an opportunity to dispute the accuracy and relevance of the information. This opportunity must be provided before alease enforcement or eviction action is taken on the basis of the information.

7. The owner may deny admission to an applicant using his/her standard for admission screening or may evict a tenant in accordance with his/her standard for termination of tenancy if the criminal background *or State lifetime sex offender registration* check indicates that the applicant or tenant provided false information. If the household is to be denied admission or evicted, the PHA /owner making the determination must:

   a. Notify the household of the proposed denial of admission or termination of tenancy.

   b. Provide the subject of the record and the applicant or tenant, with a copy of the information the action is based upon.

   c. Provide the applicant or tenant with an opportunity to dispute the accuracy and relevance of the information obtained from any law enforcement agency.

   ***NOTE:** Persons who are subject to a lifetime sex offender registration requirement who were admitted prior to June 25, 2001, the effective date of the Screening and Eviction of Drug Abuse and Other Criminal Activity final rule, must not be evicted unless they commit criminal activity while living in federally assisted housing or have some other lease violation, in which case the owner may terminate the tenancy and pursue eviction to the extent allowed by their lease and state or local law.*

8. A PHA may charge an owner reasonable fees for making a request, on behalf of the owner, for criminal conviction records. A PHA may require the owner to reimburse costs incurred by the PHA, including reimbursement of any fees charged to the PHA by a law enforcement agency, and the PHA's own related staff and administrative costs.

9. Owners may use sources other than the PHA to conduct criminal background checks, *including the State lifetime sex offender registration checks.* The owner may conduct his/her own background search of criminal records, or may secure a contractor. When the owner conducts his/her own criminal background searches or uses sources other than a PHA, the owner will make the determination, in accordance with the owner's standards for admission, if the applicant or tenant meets the screening criteria.

   ***NOTE:** O/As should verify the information provided by the applicant by searching the Dru Sjodin National Sex Offender Database. The Dru Sjodin National Sex Offender Database is an online, searchable database, hosted by the Department of Justice, which combines the data from individual state sex offender registries. The website for the database is located at: http://www.nsopw.gov. A record of this screening, including date performed, should be retained.*

10. The owner may not pass along the costs of the criminal records checks to the tenant.

11. Owners and PHAs have the discretion to contract out criminal background checks, *including State sex offender registration checks,* but will be responsible for the action and decisions made by their contractor. HUD does not prescribe the process the PHA uses to determine the source for obtaining the criminal background information. However, the criminal records must be requested from the appropriate law enforcement agency, National Crime Information Center (NCIC), police departments, or other law enforcement agencies that hold criminal conviction records.

12. Entities that obtain criminal records are not responsible for updating the criminal history of an applicant or tenant.

13. Criminal records obtained by the **PHA** are to be maintained confidentially, not misused or improperly disseminated; and destroyed upon completion of the originally intended use. When destroying records of criminal background in accordance with 24 CFR 5.903(g), the PHA should make a notation in the tenant file that includes the date the records are destroyed and a statement that the records were destroyed for purposes of confidentiality. *Owners must retain documentation in the tenant file showing the date, type and results of the criminal background check and/or State lifetime sex offender registration check performed by the PHA.*

14. Criminal records obtained by the **owner** are to be maintained confidentially, not misused or improperly disseminated, and destroyed three years after tenancy is terminated. Criminal records, *including State lifetime sex offender registration checks,* received for applicants who never move-in are to be retained with the application for three years.

15. Entities must handle any information from other records in accordance with applicable state and federal privacy laws and with the provisions of the consent forms signed by the applicant.

16. Penalties for improper release of information. Conviction for a misdemeanor and imposition of a fine of not more than $5,000 is the potential penalty for any owner who knowingly and willfully requests or obtains under false pretenses any information concerning a tenant under the authority of this rule or who discloses any such information in any manner to any individual not entitled under any law to receive the information.

D. Procedures for Terminating Tenancy and Providing Notice

See paragraph 8-13 B for information on the basis for termination, the termination notice, the manner of service, and judicial action.

8-15 Material Failure to Carry Out Obligations under a State or Local Landlord and Tenant Act

A. Key Requirements

State and local laws impose obligations on a landlord and tenant and provide that violations of the tenant's obligations constitute grounds for eviction.

Example – Material Failure to Carry Out Obligations under a State or Local Landlord and Tenant Act

Examples of a tenant's failure to fulfill his/her obligation under a State or Local Landlord and Tenant Act include but are not limited to:

- Overcrowding a unit in violation of the local housing code; and
- Damaging, destroying, or defacing a unit to such extent that the unit no longer is in compliance with the housing code.

B. **Procedures for Terminating Tenancy and Providing Notice**

1. See paragraph 8-13 B for information on the basis for termination, the termination notice, the manner of service, and judicial action.

2. When terminating tenancy for material failure to carry out an obligation under a State and Local Landlord and Tenant Act, the time of service of the termination notice must be in accordance with the lease and state law.

8-16 Other Good Cause

A. **Key Requirements**

1. Other good cause is defined by state and local laws, not by HUD. In addition, issues regarding the existence of other good cause may be resolved by the owner and tenant in court through an action for eviction of the tenant.

2. The conduct of a tenant may be deemed good cause, provided the owner has given the tenant prior written notice and stated the conduct would constitute a basis for termination of occupancy in the future. Such notice to the tenant must be served in the same manner as a notice of termination of tenancy. (See paragraph 8-13 B.)

Example – Other Good Cause

For all Section 8 New Construction, Substantial Rehabilitation, and State Agency properties, the regulations list the refusal of the tenant to accept an approved modified lease form as "Other Good Cause."

B. **Procedures for Terminating Tenancy and Providing Notice**

1. See paragraph 8-13 B for information on the basis for termination, the termination notice, the manner of service, and judicial action.

2. If the owner is terminating tenancy for other good cause, the notice must be effective at the end of the lease term, but in no case earlier than 30 days after receipt of the notice by the tenant. This notice period may run concurrently with any comparable notice period required by state or local law.

3. A termination notice for other good cause must provide that the proposed termination will be effective at the end of the lease term, but in no case earlier than 30 days after receipt of the notice by the tenant.

Section 4: Discrepancies, Errors, and Fraud

8-17 *Key Regulations

24 CFR 5.233 Mandated Use of HUD's Enterprise Income Verification (EIV) System *

8-18 Procedures for Addressing Discrepancies and Errors

A. **Overview**

To promote income and rent integrity, owners must investigate and research discrepancies and possible errors.

Owners must use HUD's EIV system as a tool to identify possible discrepancies in income reported by the tenant as well as identifying tenants who may be deceased or receiving assistance at more than one location or under more than one HUD rental assistance program.

B. **Program Violations**

When owners identify an error involving a tenant, they should first determine if the error constitutes a program violation.

A program violation occurs when the tenant by action or inaction breaches a lease, regulation, or other program requirement. Tenant errors occur because tenants misunderstand or forget rules. Tenant errors are thought of as unintentional program violations.

C. **Investigating and Discovering the Facts**

1. If an owner suspects that a tenant has inaccurately supplied or misrepresented information that affects the tenant's rent or eligibility, the owner must investigate and document the tenant's statements and any conflicting information the owner has received. To research questionable information, the owner may:

   a. Confront the tenant with the tenant's information and any conflicting information;

b. Obtain additional information from other persons or agencies; and

c. Take other actions to verify either the tenant's information or the conflicting information.

__NOTE:__ Owners may not suspend, terminate, reduce or make a final denial of any benefits of a tenant until they have taken appropriate steps to independently verify the tenant's information or the conflicting information.

2. If an intentional misstatement or withholding of information cannot be substantiated through documentation, the owner must treat the case as an unintentional program violation.

D. **Notifying and Meeting with the Tenant**

1. After gathering the documentation, the owner must notify the tenant in writing of the error and identify what information is believed to be incorrect.

2. The tenant must have an opportunity, within 10 days, to meet with the owner and discuss the allegations.

a. The owner must also inform the tenant that failure to do so may result in the tenant's termination of tenancy.

b. The meeting with the owner must be with a designated representative who has not been involved in any manner with the review of the allegedly false information.

c. The owner must provide a written final decision, based solely on the facts presented and discussed at the meeting to the tenant within 10 days of the date of the meeting. The decision must also state the basis for the determination.

3. For tenants with a disability, the notice must be in a form accessible to the tenant, and the meeting must be held in a location accessible to the tenant.

E. **Determining the Outcome of the Investigation**

1. If the tenant meets with the owner to discuss the error, and the owner is convinced the tenant's submissions were correct, the owner should document the file accordingly and close the investigation.

2. If, after meeting with the tenant, the owner determines that the provision of inaccurate information was an unintentional program violation, the owner should correct the tenant's rent, if applicable, and provide the tenant with notice of the change in rent. If the tenant is unable to repay the full amount, the owner and tenant should enter into a repayment agreement. *(See Paragraph 8-23 for information on repayment agreements.)*

a. If, after the income adjustment, the tenant no longer qualifies for assistance, the tenant may remain in the property subject to making repayments and paying market rent.

b. The owner may terminate tenancy if the tenant refuses to pay the new monthly rent or refuses to repay the previously overpaid subsidy pursuant to the repayment agreement.

c. If necessary, civil action may be filed to recover the funds.

Example – Unintentional Program Violation

A two-income household receives rental assistance payments. One individual works full time, which was fully disclosed during the last recertification. The other has a part-time job, but the work is on an as-needed basis. Because the income earnings were uncertain, small in amount, and infrequent, the tenant misunderstood the requirement to report income and did not report the uncertain income earnings.

3. If the owner determines the tenant knowingly provided inaccurate or incomplete information, and this can be substantiated through documentation, the owner needs to pursue the incident as fraud following the guidance in paragraph 8-18.

8-19 Procedures for Addressing Fraud

A. Overview

Some investigations may lead to the discovery of efforts by tenants or other parties to mislead the owner and, possibly, to commit fraudulent acts that result in the receipt of benefits or rent subsidies for which the tenant is not eligible. If after following the procedures in paragraph 8-17 for investigating and researching questionable information, the owner may determine that the tenant has knowingly provided inaccurate or incomplete information and will pursue the incident as fraud.

B. Criminal Violation (Fraud)

A criminal violation would be fraud, which is considered deceit or trickery deliberately practiced in order to gain some advantage dishonestly. Fraud is an intentional deception; it cannot be committed accidentally.

NOTE: A common error is to misuse or overuse the term “fraud” when a violation is suspected. A violation is not always fraudulent. It is important that owners first review and assess the circumstances before labeling a violation as fraud.

C. Documenting Fraud

In order to establish fraud, the tenant file must contain documentation showing the following:

1. The tenant was made aware of program requirements and prohibitions (i.e., all appropriate signatures are on the intake documents); and

2. The tenant intentionally misstated or withheld some material information. The strongest proof of fraud is an admission by the tenant. Fraudulent intent can also be demonstrated by documenting that:

   a. The act was done repeatedly (i.e., not a one-time or accidental occurrence), or there was prior determination of fraudulent intent or conviction (e.g., signing false HUD-50059s);

   b. False names or social security numbers were used;

   c. The tenant falsified, forged, or altered documents;

   d. The tenant omitted material facts that were known to the tenant (e.g., employment of self or other household members); or

   e. The tenant made admission to another person of the illegal action or omission (e.g., boasting that he/she cheated, or telling an employer or neighbor that an “absent” spouse has moved in with the tenant).

D. **Taking Action to Address Fraud**

1. When fraud is present, the authorized course of action for owners to take is termination of tenancy. An owner's authority to pursue eviction in cases of tenant fraud is grounded in the material noncompliance provision contained in both the model lease and in the regulations *[24 CFR 247.3]*. Material noncompliance includes "knowingly providing incomplete or inaccurate information.”

2. Fraud can be handled as a civil and/or criminal violation.

   a. Fraud can be handled as a civil violation by using it as grounds for a termination of tenancy. Providing false information is a material noncompliance with the lease. The owner must seek recovery for subsidy overpayment by asking the court for judgment against the tenant.

   b. Fraud is handled as a criminal violation when a local or federal prosecutor decides to prosecute the tenant for violation of a state or federal law. To convict the tenant, the prosecutor must show the court that the case contains all the elements of criminal fraud.

3. When a tenant is evicted for material noncompliance for submitting false, incomplete, or inaccurate information on household income or family composition required for certification or recertification, an owner must file a civil action against the tenant to recover improper subsidy payments. An

owner may consider referring the case for prosecution as a criminal violation, if applicable. Prosecution may be pursued on the local, state, or federal level.

8-20 *Discrepancies Reported in the EIV System*

A. Requirements Regarding Discrepancies *Reported in the EIV System*

*At the time of recertification, or at other times as stated in the owner's policies and procedures, owners must review and resolve any discrepancies reported in the EIV system that could result in errors in a tenant's rent and/or HUD assistance payments. This includes discrepancies in income reported on the EIV Income Discrepancy Report and discrepancies reported on the EIV Deceased Tenant Report and Multiple Subsidy Report. (See Chapter 9, Enterprise Income Verification (EIV), for more information on use of these reports.)

1. EIV Reports.

   a. Income Discrepancy Report:

      At the time of recertification, owners must review and resolve any discrepancies in income reported on the EIV Income Discrepancy Report. Using this report, the owner must identify any unreporting or underreporting of income by the tenant reported on current or historical HUD-50059s and transmitted to TRACS.

   b. EIV Verification Reports.

      Owners must review and resolve any discrepancies in the information reported on the following reports to identify tenants who may be receiving assistance they are not entitled to receive.

      (1) Deceased Tenant Report. Tenants reported by SSA as being deceased, and where HUD is continuing to pay subsidy.

      (2) Multiple Subsidy Report. Tenants who may be receiving rental assistance at more than one location.

   NOTE: The reports in EIV are a tool to alert owners of possible discrepancies. Not all EIV discrepancies reported are valid discrepancies.

2. Owners may not suspend, terminate, reduce or make a final denial of any benefits of a tenant until they have taken appropriate steps to independently verify information relative to any discrepancy reported. For example, if there is an income discrepancy, the owner must verify:

   a. The amount of the wages, unemployment compensation, or SSA benefits involved;

b. Whether such tenant actually has (or had) access to such wages or benefits for his or her own use; and

c. The period (or periods) when, or with respect to which the tenant actually received such wages or benefits.

See Chapter 9, Enterprise Income Verification (EIV) for more information on the EIV reports.

3. Owners must follow the instructions in Paragraph 8-18.D for notifying and meeting with the tenant when a valid discrepancy is discovered as a result of the owner's review.

a. If the owner determines the tenant is in noncompliance with his/her lease because he/she knowingly provided incomplete or inaccurate information, the owner must follow the guidance in Section 3 of this Chapter for terminating the tenant's tenancy and Paragraph 8-18 for the requirements on filing a civil action against the tenant to recover improper subsidy payments.

b. Where fraud is suspected, the owner should report this to the HUD OIG Office of Investigation in the district that has jurisdiction in the state the project is located.

B. Nondisclosure of Income Information

The Federal Privacy Act (5 USC 552a, as amended) prohibits the disclosure of an individual's information to another person without the written consent of such individual. As such, the EIV data of an adult household member may not be shared (or a copy provided or displayed) with another adult household member, unless the individual has provided written consent to disclose such information. However, the O/A is not prohibited from discussing with the head of household (HOH) and showing the HOH how the household's income and rent were determined based on the total income reported and verified. See Chapter 9, Paragraph 9-17, Disclosure of EIV Data.*

C. Opportunity to Contest

The owner *must* promptly notify a tenant in writing of any adverse findings made on the basis of the information verified. The tenant may contest the findings in the same manner as applies to other information and findings relating to eligibility factors under the applicable program. *Denial of assistance or termination of tenancy* must be carried out in accordance with requirements and procedures applicable to the individual covered program and will not occur until the expiration of any notice period provided by the statute or regulations governing the program.

8-21 Reimbursement to HUD for Overpayment of Assistance

A. Tenant's Obligation to Repay

1. The tenant must reimburse the owner for the difference between the rent the tenant should have paid and the rent he/she was actually charged, if the tenant:

   a. Fails to provide the owner with interim changes in income or other factors;

   b. Submits incorrect information on any application, certification, or recertification;

   c. *Fails to report income received*, and

   d. As a result, is charged a rent less than the amount required by HUD's rent formulas.

2. The tenant acknowledges his/her obligation to make such reimbursements:

   a. In paragraph 18 of the Model Lease for Subsidized Programs;

   b. In paragraph 14 of the Model Lease for Section 202/8 or Section 202 PAC; and

   c. In paragraph 12 of the Model Leases for Section 202 PRAC and Section 811 PRAC.

3. If the tenant does not pay in full, an owner should enter into a repayment *agreement* with the tenant to collect these funds over a specific period of time.

4. The tenant is not required to reimburse the owner for undercharges caused solely by the owner's failure to follow HUD's procedures for computing rent or assistance payments.

5. A tenant must reimburse the owner for the total overpayment back to the *time overpayment of assistance started, not to exceed the 5-year limitation that the tenant was receiving assistance discussed in forms HUD-9887 and HUD-9887-A. This 5-year limitation applies for all overpayments of assistance and is not limited to errors found using the EIV system.

6. The owner must have the form HUD-50059(s) on file that was in effect during the period(s) that the overpayment of assistance occurred, along with any supporting documentation, in order to calculate the amount the tenant must reimburse to the owner. The form HUD-50059(s) is the document whereby the tenant(s) certifies to the accuracy of the information recorded on the form. If the owner does not have this historical information, they cannot go back to the tenant for any overpayment of assistance.*

B. **Owner’s Obligation to Repay**

1. The owner is not required to reimburse HUD immediately for overpayments of assistance where the overpayment was caused by the tenant's

submission of incorrect information. Repayments are required when and as tenants repay in accordance with an agreed-upon repayment agreement.

2. *The owner may retain a portion of the repayments they actually collect from the tenants who have improperly reported their income at the time of certification or recertification to help defray the cost of pursuing these cases (this is not limited to cases where the owner has determined fraud).

   a. Owners may only retain an amount to cover their actual costs, which is the **lesser of**:

      (1) Their actual costs, or

      (2) 20 percent of the amount received from the tenant.

   b. Amounts retained by the owner must be deposited into the project's operating account to offset the expenses incurred for these cases.

   c. As with all income and expenses of the project, owners must keep records of the receipt and disbursement of all amounts collected from the tenant for audit purposes. At a minimum, the owner must record:

      (1) Date and amount(s) received from the tenant;

      (2) Expenses incurred;

      Examples of types of expenses incurred include staff time for verifying the unreported income; meeting with tenant; drafting repayment agreements; generating and sending monthly invoices to tenant; generating manual voucher adjustments; collection agency fees, if applicable; and, meeting state requirements.

      (3) Amount(s) retained; and

      (4) Voucher date(s) and amount(s) of reimbursement made to HUD.*

3. The owner must reimburse HUD for all other overpayments of assistance where such overpayments were due to the owner's error or the owner's failure to follow HUD's procedures. HUD or the Contract Administrator may permit the owner to repay such overpayments in one lump sum or over a period of time through reduction of normal housing assistance requisitions if immediate repayment in full would jeopardize the financial condition of the property.

8-22 *Tenant Repayment Options

A. Tenants can repay amounts due:

1. In a lump sum payment; or

2. By entering into a repayment agreement with the owner; or

3. A combination of 1 and 2, above.

For example, a tenant may owe $1,000, make a lump sum payment of $300 and enter into a repayment agreement for the remaining $700.

B. Tenants who do not agree to repay amounts due in accordance with a above, will be in noncompliance with their lease agreement and may be subject to termination of tenancy.

C. Tenants may also be required to repay funds to the owner due to a:

1. Civil action taken by the owner, or

2. Court action as a result of an Office of Inspector General (OIG) audit.

8-23 Repayment Agreements

A. The tenant and owner must both agree on the terms of the repayment agreement.

The tenant may wish to consult with HUD's Housing Counseling Agency in their area to assist them in working with the owner to reach agreeable terms for the repayment agreement. See the Housing Counseling Agency website for a listing of agencies for each state at: http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm.

1. Monthly Payment.

The tenant's monthly payment must be what the tenant can afford to pay based on the family's income.

The monthly payment plus the tenant's total tenant payment (TTP) at the time the repayment agreement is executed should not exceed 40 percent of the family's monthly adjusted income.

Example:

- Family's monthly adjusted income is $1,230.
- Family's monthly TTP is $369 (30% of the family's monthly adjusted income.
- 40% of the family's monthly adjusted income is $492.
- The monthly payments for the repayment agreement should not exceed $123 per month ($492 - $369 = $123) ($369 monthly TTP+ $123 repayment = $492, 40% of the family's monthly adjusted income.

2. Repayment Time Period.

   The time period for repayment by the tenant of the amount owed.

Example: The tenant agrees to repay $1,000 and agrees to monthly payments of $25.

$1,000/$25 = 40 months (time period).

B. The repayment agreement must:

1. Include the total retroactive rent amount owed, the amount of lump sum paid at time of execution of the agreement, if applicable, and the monthly payment amount.

2. Reference the paragraphs in the lease whereby the tenant is in noncompliance and may be subject to termination of their lease.

3. Contain a clause whereby the terms of the agreement can be renegotiated if there is a decrease or increase in the family's income of $200 or more per month.

4. Include a statement that the monthly retroactive rent repayment amount is in addition to the family's monthly rent payment, and is payable to the owner.

5. Late and missed payments constitute default of the repayment agreement and may result in termination of assistance and/or tenancy.

6. Be signed and dated by the tenant and the owner.

C. Owners must not apply a tenant's monthly rent payment towards the repayment amount owned that would result in an accumulation of late rent payments. The

monthly payment due on the repayment agreement is in addition to the tenant's monthly rent payment.*

8-24 Reimbursement to Tenant for Overpayment of Rent

A. *If, at the time of recertification, there is an Income Discrepancy Report in EIV that reflects a decrease of $2,400 or more in wage, unemployment and/or Social Security income reported in EIV and the wage, unemployment and/or Social Security income reported in TRACS for the period of income used for the discrepancy analysis, the owner must investigate the discrepancy.*

B. If, after investigating the discrepancy, the owner determines that an error was made in calculating the tenant's income (e.g., third party verification not obtained, third party verification received but an error was made in calculating the tenant's income) and the income was over-reported, the owner must complete corrections to the prior certification(s) affected by the income change. Once the corrections have been made, the owner must determine the difference between the amount of rent the tenant paid and the rent that the tenant should have paid.

C. *The owner must discuss the discrepancy in income reported with the tenant.*

1. The owner must provide the tenant with written notification, which includes:

a. A notice of the change in rent, effective retroactively to when the error occurred;

b. The new monthly rent the tenant is required to pay;

c. The amount of the overpayment of rent due to the tenant; and

d. A form for the tenant to execute and return to the owner stating whether the tenant wishes to:

(1) Receive a full, immediate refund; or

(2) Apply the overpayment to future monthly rent payments.

8-25 *Reimbursement for Errors Discovered During a Monitoring Review

If, during a review of the tenant files, the CA determines that an error was made in the income calculation based on the income verifications on file that results in an under- or over-payment of rent by the tenant, unless the overpayment was due to the owner's error or the owner's failure to follow HUD's procedures, the owner must make the necessary adjustments to the tenant's rent for the period the error occurred. The tenant must reimburse the owner for any underpayment of rent and the owner must reimburse the tenant for any overpayment of rent.*

CHAPTER 9. ENTERPRISE INCOME VERIFICATION (EIV)

9-1 Introduction

This chapter describes the requirements for using the information in the Enterprise Income Verification (EIV) system for verifying employment and income of tenants and for reducing administrative and subsidy errors.

- **Section 1: Enterprise Income Verification (EIV) System** introduces the EIV system and the mandatory use of EIV data.
- **Section 2: EIV Source Data** describes the sources providing EIV data.
- **Section 3: EIV Reports** describes each of the EIV Income and Verification Reports and how they are to be used.
- **Section 4: Security of EIV Data** describes disclosure of EIV data requirements and the importance of securing EIV data as well as the requirements for receiving annual security awareness training.
- **Section 5: Penalties for Failure to Have Access to or Failure to Use EIV** describes the penalties an owner and/or management agent may incur for failure to have access to the EIV system or failure to use the EIV system.
- **Section 6: EIV Resources** provides a listing of resources available to help owners get access to EIV and to understand and use the EIV system and EIV data.

9-2 Key Terms

A. There are a number of technical terms used in this chapter that have very specific definitions established by federal statute or regulations, or by HUD. These terms are listed in Figure 9-1, and their definitions can be found in the Glossary to this handbook. It is important to be familiar with these definitions when reading this chapter.

B. The terms disability and persons with disabilities are used in two contexts for civil rights protections, and for program eligibility purposes. Each use has specific definitions.

1. When used in context of protection from discrimination or improving the accessibility of housing, the civil rights-related definitions apply.

2. When used in the context of eligibility under multifamily subsidized housing programs, the program eligibility definitions apply.

NOTE: See the Glossary for specific definitions and paragraph 2-23 for an explanation of this difference.

Figure 9-1: Key Terms

- Enterprise Income Verification (EIV)
- Improper Payments

Section 1: Enterprise Income Verification (EIV) System

9-3 Key Regulations

This paragraph identifies the key regulatory citation pertaining to this Section. The citation and its title are listed below.

- 24 CFR 5.233 Mandated Use of HUD's Enterprise Income Verification (EIV) System

9-4 Introduction to the EIV System

The EIV system is a web-based application which provides owners with employment, wage, unemployment compensation and Social Security benefit information for tenants participating in HUD's assisted housing programs. Information in EIV is derived from computer matching programs initiated by HUD with the Social Security Administration (SSA) and the U.S. Department of Health and Human Services (HHS), for all tenants with valid personal identifying information (name, date of birth (DOB), and Social Security number (SSN)) reported on the form HUD-50059. Information in the EIV system is used by owners to verify employment and income at the time of recertification and to reduce errors in subsidy payments.

9-5 Mandatory Use of the EIV System

A. Use of EIV applies to all programs covered by this Handbook listed in Chapter 1, Figure 1-1.

B. Owners must use the EIV system in its entirety:

- As a third party source to verify tenant employment and income information during mandatory recertifications of family composition and income, in accordance with 24 CFR 5.236, and administrative guidance issued by HUD, and
- To reduce administrative and subsidy payment errors in accordance with HUD administrative guidance.

C. Contract Administrators (HUD staff, PBCAs and TCAs) must use EIV for monitoring the owner's compliance with obtaining access to and using the EIV system.

D. Independent Public Auditors (IPAs) and the Office of Inspector General (OIG) may use EIV for auditing purposes. See the Glossary for the definition for IPA.

Section 2: EIV Source Data

9-6 EIV Data

A. Data in the EIV system comes from several sources including the following:

1. Tenant information in the EIV system is data from current, active forms HUD-50059 transmitted to the Tenant Rental Assistance Certification System (TRACS).

2. Employment and income information comes from two sources, 1) the Department of Health and Human Services (HHS') National Directory of New Hires (NDNH) and 2) the Social Security Administration (SSA).

   a. <u>NDNH</u>

      1. New Hires (W-4)
      2. Quarterly wages for federal and non-federal employees
      3. Quarterly unemployment compensation

   b. <u>SSA</u>

      1. Social Security (SS) benefits
      2. Supplemental Security Income (SSI) benefits
      3. Dual Entitlement benefits
      4. Medicare premium information
      5. Disability status

B. Schedule of EIV Updates

1. SSA Updates

   a. A quarterly match is conducted against SSA records for tenants who pass the SSA identity test (See C.2 below).

   b. Each quarter the entire tenant population is matched with SSA. Each month during a quarter, a group of tenants are matched on their next recertification month. (See Figure 9-2 below.)

   c. The SSA match process begins at the beginning of each month with all of the data being loaded into EIV by the second week of the month.

   d. Records that are new or that have been significantly updated are matched in the next monthly SSA matching cycle.

   e. Benefits that include the cost of living adjustments (COLAs) are not available from SSA for uploading into EIV until the end of the calendar year.

When processing recertifications with an effective date of January 1, February 1, March 1 and April 1, in order to complete the Recertification Steps outlined in Chapter 7, Figure 7-3, and provide the tenant with the required 30-day notice of any increase in rent, the owner must use one of the methods below for determining the tenant's income.

(1) Use the benefit information reported in EIV that does not include the COLA as third party verification as long as the tenant confirms that the income data in EIV is what he/she is receiving;

(2) Use the SSA benefit, award letter or Proof of Income Letter provided by the tenant that includes the COLA adjustment if the date of the letter is within 120 days from the date of receipt by the owner;

(3) Determine the tenant's income by applying the COLA increase percentage to the current verified benefit amount and document the tenant file with how the tenant's income was determined; or

(4) Request third party verification directly from SSA when the income in EIV does not agree with the income the tenant reports he/she is receiving. (See Paragraph 9-15)

(5) All recertifications effective after April 1 **must** reflect the SSA benefit that includes the COLA.

f. EIV retains the last eight actions processed by SSA for a tenant.

Figure 9-2 Schedule of SSA Updates

Group	Recertification Month	Months Data Is Refreshed in EIV
I	April, May, June, July	January, April, July, October
II	August, September, October, November	February, May, August, November
III	December, January, February, March	March, June, September, December

For example, the SSA data for tenants with a recertification month of April, May, June or July is refreshed in EIV in January, April, July and October.

3. NDNH Updates

a. Tenants who pass the identity match with SSA are matched with the NDNH new hires (W-4), wage and unemployment data.

b. There are two matches performed:

(1) Monthly match:

(a) Entire eligible tenant base is matched with the new hires (W-4) data, and

(b) Newly admitted tenants are matched with the wage and unemployment benefit data.

(2) Quarterly match of the entire tenant base with the new hires (W-4), wage and unemployment benefit data.

See Figure 9-3 below.

c. The new hires (W-4), wage and unemployment benefit data is loaded into EIV by the 20th of each month.

d. EIV retains the last 8 actions processed by HHS of the NDNH employment and income data for a tenant.

Figure 9-3 Scheduled of NDNH Updates

Month	Type of Match
January	Monthly
February	Quarterly
March	Monthly
April	Monthly
May	Quarterly
June	Monthly
July	Monthly
August	Quarterly
September	Monthly
October	Monthly
November	Quarterly
December	Monthly

C. Screening of Personal Identifiers

1. EIV Pre-screening

Prior to sending tenant information to SSA for validation of a tenant's personal identifiers (last name, DOB and SSN), a pre-screening is conducted to identify tenants who are missing or have invalid personal identifiers. These tenants are not sent to SSA for the identity match until the personal identifier information has been corrected in TRACS.

2. SSA Identity Test

a. Tenants who pass the EIV pre-screening test are sent to SSA for verification of their personal identifiers against SSA records. Tenants whose personal identifiers do not match SSA's records cannot be matched against HHS' NDNH or SSA's records until the personal identifier information has been corrected in TRACS.

b. Tenants whose personal identifiers match SSA's records are matched against HHS' NDNH and SSA's records to obtain employment and income information.

See Paragraph 9-12.C for information on using the Failed EIV Pre-Screening and Failed SSA Identity Test Reports for correcting discrepant data.

Section 3: EIV Reports

9-7 Key Regulations

This paragraph identifies the key regulatory citations pertaining to this Section. The citation and its title are listed below.

- 24 CFR 5.233 Mandated Use of HUD's Enterprise Income Verification (EIV) System
- 24 CFR 5.236 Procedures for termination, denial, suspension, or reduction of assistance based on information obtained from a SWICA or Federal agency
- 24 CFR 5.659 Family information and verification.

9-8 Using EIV Reports

A. Owners must use the EIV system in its entirety. To do this, the owner must use:

1. EIV Income Report as a third party source to verify a tenant's employment and income during mandatory recertifications (annual and interim) of family composition and income, and

2. Other EIV Income Reports (Income Discrepancy Report, New Hires Report, No Income Reported on 50059, and No Income Reported by HHS or SSA) to identify issues or discrepancies which may impact a family's assistance; and

3. EIV Verification Reports (Existing Tenant Search, Multiple Subsidy Report, Identity Verification Reports, and Deceased Tenants Report) that further assists in reducing subsidy payment errors.

B. Owners must:

1. Use the Existing Tenant Search in EIV as part of their screening criteria for new tenants and must include written policies for using the search in their Tenant Selection Plan. (See Chapter 4, Section 1 for a discussion on requirements of the Tenant Selection Plan.)

2. Develop policies and procedures for staff to follow for using the EIV Income reports and remaining Verification Reports

3. Have current, signed consent forms HUD-9887 on file before accessing the employment and income information in EIV for a tenant. (See Chapter 3, Paragraph 3-11 for a discussion on the requirements on consent forms.)

C. Owners may not suspend, terminate, reduce, make a final denial of rental assistance, or take any other adverse action against an individual based solely on the date in EIV. See Chapter 8, Section 4 for information on investigating discrepancies and errors and determining fraud.

9-9 Documentation to Demonstrate Owners Compliance with Use of the Income Report

The following documentation is required to be in the tenant file to demonstrate the owner's compliance with mandated use of EIV as the third party source to verify tenant employment and income information.

A. **No Dispute of EIV Information:** EIV Income Report, current acceptable tenant-provided documentation and, if necessary (as determined by the owner), third party verification from the source.

B. **Disputed EIV Information:** EIV Income Report and third party verification from the source for disputed information.

C. **Tenant-reported Income Not Verified through the EIV System:** EIV Income Report, current acceptable tenant-provided documents or third party verification from the source.

See Paragraph 9-11 and Exhibit 9-5, Use of EIV Reports, for documentation requirements for all EIV reports.

9-10 Independent Third Party Verification

A. Owners must request and obtain independent third party verification directly from the source which is used to complement EIV data when the below occurs. In these situations, the owner must not use tenant-provided documentation even if generated from a third-party source.

1. The tenant is unable to provide acceptable and current employment and/or income documentation to support the wage and unemployment income in EIV;

2. The tenant disputes the EIV income information;

3. There is an EIV income discrepancy reported at the time of recertification (annual or interim) or at other times as specified in the owner's policies and procedures;

4. There is incomplete EIV employment or income data for a tenant and the owner needs additional information. Examples of additional information include but are not limited to:

(a) Effective date of income (i.e. employment, unemployment compensation or Social Security benefits).

(b) For new employment: pay rate, number of hours worked per week, pay frequency, hire date (not required to be reported to state so it may not be in EIV), etc. (See Exhibit 9-6 for data elements that are optional for employers to report to the state.)

(c) There is no EIV employment or income data for a tenant.

See Chapter 5, Paragraph 5-13 for information on acceptable verification methods.

B. When the owner is unable to obtain third party verification, e.g., the third party does not respond, the tenant file must be documented why third party verification was not available. (See Chapter 5, Paragraph 5-18 for documentation requirements.)

C. The owner may accept self-declaration from the tenant only if third party verification cannot be verified by another acceptable verification method. (See chapter 5, Paragraph 5-13.B for certification requirements.)

D. Owners always have the discretion to obtain additional third party verification of income or verification of other EIV data based on circumstances encountered during the recertification process.

9-11 EIV Income Reports

When selecting the Income Report for an individual tenant, either from the list of tenants for a particular project and/or contract or by querying by the head of household's SSN, there are three reports that the owner must use at the time of recertification. The reports can be accessed by clicking on the tab for a particular report.

A. Summary Report

This report is a summary of information taken from the current, active certifications contained in the TRACS file at the time of the income match. It also provides the Identity Verification Status for each household member.

1. Identity Verification Status

   There are four verification statuses identified:

   Verified personal identifiers (last name, DOB and SSN) match the SSA database

   Failed personal identifiers do not match the SSA database

   Not Verified personal identifiers have not yet been sent to SSA for validation or validation is in process by SSA

   Deceased SSA's records indicate the person is deceased

2. Owners must use this report:

   a. At the time of recertification to review and resolve the status of any household member(s) with a failed or deceased status.

      NOTE: Owners do not have to do anything at the time of recertification when the status is Not Verified . However, the owner must check the Failed SSA Identity Test report monthly as changes in the Identity Verification Status for these tenants may occur.

   b. As verification that a tenant's SSN has been Verified by SSA as being a valid SSN.

3. Owners must retain in the tenant file:

   a. The Summary Report(s) as verification of the SSN for all household members whose Identity Verification Status is Verified .

   b. If the Summary Report in the tenant file shows an Identity Verification Status of Verified for all household members

required to have a SSN, the owner does not have to continue to print out the Summary Report at recertification unless there is a change in household composition or in a household member's identity verification status.

NOTE: To minimize the risk of exposing a tenant's SSN, owners **may** remove and destroy, at the time of recertification, copies of verification documentation received from the tenant at the time of disclosure of their SSN once the Identity Verification Status shows Verified . Owners are encouraged to minimize the number of tenant records that contain documents that display the full nine-digit SSN. Owners must not include the full nine-digit SSN for a tenant in emails or other electronic communications.

See Chapter 3, Paragraph 3-9 for SSN disclosure and verification requirements.

c. Any correspondence or documentation received to resolve the Failed or Deceased status.

d. Documentation for household members not required to disclose and provide verification of a SSN:

Exempt from SSN disclosure and verification requirements:

- Tenants who were 62 years of age or older as of January 31, 2010, and whose initial determination of eligibility was begun before January 31, 2010, and

- Individuals who do not contend eligible immigration status.

These individuals will continue to have a TRACS generated identification number in the SSN field. No employment or income information will be provided in EIV for these individuals, therefore, third party verification from the income source will have to be obtained.

See Paragraph 9-12 for information on resolving data for tenants with the failed or deceased Identity Verification Status.

B. **Income Report**

Owners must use the Income Report at the time of recertification (annual and interim) of family composition and income and at other times as indicated in their policies and procedures.

The Income Report:

- Provides employment and income information reported in the NDNH and SSA databases for all household members who passed the SSA identity

test, and

- Identifies household members who may be receiving multiple subsidies by displaying the following message:
  This member may be receiving multiple subsidies. See the Multiple Subsidy Report for details.

1. Components of the Income Report

   The Income Report provides a variety of information about each member of a household. The components of the report are:

   a. TRACS certification information and tenant personal identifiers

   b. Employment information

   c. Quarterly wages

   d. Quarterly unemployment benefits

   e. Social Security benefits (SS)

   f. Dual Entitlement benefits

   g. Medicare data

   h. Supplemental Security Income (SSI)

   i. SSA disability status

   See Exhibit 9-3, EIV Income Report Information, for the types of information contained in each of the components of the report.

2. The Income Report does not include other income the household may receive such as welfare benefits, most pensions, child support, etc. It should also be noted that a tenant may have wages that the employer did not report to the State Workforce Agency (SWA), therefore, not contained in the NDNH database.

   See Chapter 5, Paragraph 5-6 for the elements of annual income and Exhibit 5-1 for Income Inclusions and Exclusions.

3. NDNH (New Hires (W-4), Wage and Unemployment Compensation)

   a. Owners must use the Income Report identifying the NDNH employment, wage and unemployment income information in the EIV system as third party verification of the tenant's employment and/or unemployment. The owner must *not* use the quarterly income reported in the EIV system to calculate the tenant's income.

b. The owner must confirm with the tenant that the employment and/or unemployment information in EIV is correct. If the tenant confirms that the employment and/or unemployment information in the EIV system is correct, the owner must:

(1) Print the Income Report and use the report as third party verification of the tenant's employment and/or unemployment.

(2) Request the tenant provide documentation, e.g., four current, consecutive check stubs, which will support his/her current income being received.

(3) Use the tenant provided documentation for determining the tenant's income unless additional information is needed or the owner has reason to reject the tenant provided documentation. In these instances, third party verification must be obtained from the income source. (See Chapter 5, Paragraph 5-13 for guidance on tenant provided documents.)

(4) Annualize the tenant's income using the current income projected forward for the next 12 months. (See Chapter 5, Section 1 for instructions on calculating income.)

(5) Make copies of any tenant provided documents for the tenant file and return the originals to the tenant.

(6) Retain the Income Report and supporting documentation in the tenant file along with the applicable form HUD-50059.

c. If the tenant disputes the employment, wage or unemployment information in the EIV system or when the tenant reports he/she is employed or receiving unemployment but there is no information in EIV, the owner must obtain third party verification from the employer or SWA.

NOTE: See Chapter 5, Paragraph 5-5.A for calculating income using the EIV system.

4. Social Security Benefits

a. Owners must use the Income Report identifying the SSA benefit information in the EIV system as third party verification of the tenant's receipt of SS benefits and to calculate the tenant's income. A copy of the SSA award or benefit letter or Proof of

Income Letter is *not* required unless the tenant disputes the SSA information in the EIV system.

b. The owner must confirm with the tenant that the SSA benefit information in the EIV system is correct. If the tenant confirms that the SSA information in the EIV system is correct, the owner must:

(1) Print the Income Report and use the report as third party verification of the tenant's SSA benefits.

(2) Annualize the tenant's income using the monthly gross benefit amount projected forward for the next 12 months. (See Chapter 5 for instructions on calculating income.)

NOTE: See Chapter 5, Paragraph 5-6.O for calculating the income for Intermediate Care Facility/Mentally Retarded (ICF/MR) or Intermediate Care Facility/Developmentally Disabled (ICF/DD) and Assisted Living Units in Elderly Projects and Paragraph 5-6.J for Adjustments to Prior Overpayments of Benefits

(3) Include the Medicare premium in the medical expense deduction calculation if the premium is being paid by the tenant. (See d below if the Medicare premium is not being paid by the tenant.)

(4) Retain the Income Report in the tenant file along with the applicable form HUD-50059.

c. If the tenant disputes the SSA information in the EIV system or when the tenant reports he/she is receiving SSA benefits but there is no SSA information in the EIV system, the owner must obtain third party verification by requesting the tenant provide a copy of their benefit or award letter or Proof of Income Letter, dated within the last 120 days from the date of receipt by the owner. If the tenant does not have a current letter from SSA, the owner should ask the tenant to request benefit information from SSA using SSA's website or using SSA's toll-free number.

NOTE: See Chapter 5, Paragraph 5-5.A for calculating income using the EIV system.

d. When the Medicare premium is being paid by the tenant, the premium is included as a medical expense. If the Medicare Premium is being paid by the tenant, the amount of the premium is listed under Premium and an N is in the Buy-in column of the Medicare Data section of the Income Report.

	Premium	Buy-in	Buy-in Start	Buy-in Stop
Hospital Insurance	$0.00	N	Not Available	Not Available
Supp. Med. Insurance	$110.50	N	Not Available	Not Available

e. When the Medicare premium is not being paid by the tenant but is being paid by the state or another entity, there should be a Y in the buy-in column and the date when the third party started paying the tenant's Medicare premium in the Buy-in Start column of the Medicare Data section of the Income Report.

	Premium	Buy-in	Buy-in Start	Buy-in Stop
Hospital Insurance	$0.00	N	Not Available	Not Available
Supp. Med. Insurance	$110.50	Y	10/10/09	Not Available

f. When the state or other entity no longer pays the tenant's Medicare premium, there should be a date in the Buy-in Stop column of the Medicare Data section of the Income Report.

	Premium	Buy-in	Buy-in Start	Buy-in Stop
Hospital Insurance	$0.00	N	Not Available	Not Available
Supp. Med. Insurance	$110.50	Y	10/10/09	03/01/10

NOTE: The Y indicator and dates in the Buy-in column is information received from SSA and is not always accurate. If the tenant disputes the EIV data and can provide current documentation as verification to support they are paying the Medicare premium themselves, then the tenant file must be documented with this additional information and the owner can include the Medicare premium in the tenant's medical expense deduction.

g. While the SSA provides information on Medicare premiums, it does not provide as part of the computer matching, information on additional deductions such as Medicare Part D (prescription drugs) premiums or garnishments. Therefore, the owner will need to request that tenants disclose any deductions they may have from their SSA benefits. For example, if the tenant is paying his/her Medicare premium and the difference between the gross and the net SSA benefits exceeds the amount of the Medicare premium, the owner must discuss this with the tenant to determine any deductions that may impact the tenant's income or allowable

expenses, e.g., Medicare Part D (prescription drugs) premiums are an allowable medical expense.

h. The SSA Disability Status is not always accurate, therefore, the owner must not use this status indicator for determining an applicant's or tenant's eligibility as disabled for a HUD program or for receiving the elderly/disabled household allowance.

5. New Admissions

For all new admissions, including Initial Certifications (IC), the owner must:

a. Review the Income Report within 90 days after transmission of the move-in certification to TRACS to confirm/validate the income reported by the household.

b. Resolve any income discrepancies with the household within 30 days of the Income Report date.

c. Print and retain the Income Report in the tenant file along with any documentation received to resolve income discrepancies, if applicable.

6. Applicants

The EIV system only contains employment and income information for tenants. Therefore, owners must request third party verification from the income source for determining an applicant's income for eligibility and rent calculation purposes.

C. **Income Discrepancy Report**

1. The Income Discrepancy Report identifies households where there is a difference of $2,400 or more annually in the wages, unemployment compensation and/or Social Security benefit income reported by NDNH and SSA and the wages, unemployment compensation and/or Social Security benefit income reported in TRACS for the period of income (POI) used for the discrepancy analysis.

The report identifies tenants whose income may have been under- or over-reported. Negative numbers on the report represent potential tenant under reporting of income while a positive number represents a potential decrease in a tenant's income. In either case, the owner must investigate all discrepancies identified to determine whether or not they are valid. The definition of improper payments includes payments for the incorrect amount, both overpayments and underpayments. (See the Glossary for the definition of improper payments. Also, see Exhibit 9-7, Income Discrepancy Report, for a description of the POI used for discrepancy

analysis.)

NOTE: Wage, unemployment and Social Security income in TRACS includes:

TRACS Income Code	Type of Income
B	Business
F	Federal Wage
M	Military Pay
W	Nonfederal Wage
U	Unemployment
SS	Social Security
SSI	Supplemental Security Income

NOTE: Other income the household receives, e.g., welfare benefits, most pensions, child support, etc., may be reported in annual income in TRACS but it is not used for the discrepancy analysis in the EIV system.

2. The Income Discrepancy Report is a tool to alert owners that there ***may*** be a discrepancy in the income reported by the tenant during the POI used for the discrepancy analysis. The owner must investigate all discrepancies identified on the report to determine whether or not the discrepancy is valid. The owner is not expected to reconcile dollar amounts to the penny when resolving discrepancies.

3. Owners must:

   a. Print the Income Discrepancy Report at the same time they print the Income Report.

      NOTE: It is important that the Income Discrepancy Report be printed at the same time as the Income Report as each week a completely new report is generated based on the current information in the system for a tenant. The old report is over-written with the current data.

   b. Review and resolve any discrepancies in income reported on the Income Discrepancy Report with the family at the time of recertification or within 30 days of the EIV Income Report date. Any unreporting, underreporting or over-reporting of income by the tenant and reported on current or historical forms HUD-50059 must be identified. (See Chapter 8, Paragraphs 8-18 and 8-19 for the procedures for addressing discrepancies, errors and fraud.)

c. Retain the Income Discrepancy Report along with detailed information on the resolution of the reported discrepancy in the tenant file. This includes information on resolution of the discrepancy regardless of whether the discrepancy was found to be valid or invalid.

d. Make sure the information in TRACS agrees with the information on the form HUD-50059 in the tenant file. If it is determined that the information in TRACS differs from the information found on the tenant's current HUD-50059, retransmit the current HUD-50059 to correct the TRACS database. This is important since the income discrepancies reported in the EIV system are determined by comparing the wage, unemployment and Social Security benefits income reported by NDNH and/or SSA with the wage, unemployment and Social Security benefits income reported by the household and transmitted to TRACS.

Example 1: Valid discrepancy

The EIV Income Discrepancy Report shows the tenant had Reported Annual Wages and Benefits during the period of income used for the discrepancy analysis. However, there are no Projected Annual Wages or Benefits reported on the form HUD-50059. The owner must investigate this to determine if the tenant did not report his/her income at the time of recertification. If the tenant did not report his/her income, this would be a valid discrepancy. The owner must obtain third party verification of the tenant's income, process corrected form HUD-50059(s) to include any unreported or underreported income, notify tenant of funds due and their obligation to reimburse the owner, collect funds due from tenant and/or enter into a repayment agreement and reimburse HUD for funds collected from the tenant less the amount retained for pursuing collection. If not a valid discrepancy, the owner will document the file with the results of the investigation supporting this determination.

Projected Annual Wages and Benefits from Form HUD-50059:	$0	
Period Of Income for Discrepancy Analysis	06/01/2008 - 05/31/2009	
Discrepancy Analysis	**Actuals**	**Annualized Last Quarter**
Reported Annual Wages and Benefits from EIV Data:	$22,018.70	$19,518.57
Amount of Annual Income Discrepancy:	($**22,018.70**)	**($19,518.57)**
Amount of Monthly Income Discrepancy:	($1,834.89)	($1,626.55)
Percentage of Income Discrepancy:	(100%)	(100%)

Example 2: Valid discrepancy

The EIV Income Discrepancy Report shows that the tenant had Reported Annual Wages and Benefits during the period of income used for the discrepancy analysis of $15,957.03 actual and $17,210.18 annualized. The Projected Annual Wages reported on the form HUD-50059 are $14,472.00. The annualized last quarter income exceeds the $2,400 discrepancy threshold ($17,210.18-$14,472.00 = $2,738.18). The owner must investigate this to determine if the tenant should have reported a cumulative increase of $200 per month ($2,400 annually) or more in the household's income. If the tenant should have reported the increase in income as required by his/her lease, this would be a valid discrepancy. If valid, the owner would obtain third party verification, process an interim recertification in accordance with Chapter 7, Paragraph 7-13.D of Handbook 4350.3 REV-1, notify tenant of funds due and their obligation to reimburse the owner, collect funds due from tenant and/or enter into a repayment agreement and reimburse HUD for funds collected from the tenant less amount retained for pursuing collection. If not a valid discrepancy, the owner will document the file with the results of the investigation supporting this determination.

Projected Annual Wages and Benefits from Form HUD-50059:	$14,472.00
Period Of Income for Discrepancy Analysis	06/01/2008 - 05/31/2009

Discrepancy Analysis	Actuals	Annualized Last Quarter
Reported Annual Wages and Benefits from EIV Data:	$15,957.03	$17,210.18
Amount of Annual Income Discrepancy:	($1,485.03)	($2,738.18)
Amount of Monthly Income Discrepancy:	($123.75)	($228.18)
Percentage of Income Discrepancy:	9.31%	15.910000%

Example 3: Invalid discrepancy

The EIV Income Discrepancy Report shows that the tenant had Reported Annual Wages and Benefits during the period of income used for the discrepancy analysis. However, there are no Reported Annual Wages or Benefits on the form HUD-50059 for the same period of time. The form HUD-50059 used in the discrepancy analysis was the tenant's move-in form HUD-50059. The owner must investigate this discrepancy to determine if the tenant accurately reported his/her income at the time of move-in. If verification is received that the tenant was not working at the time of move-in and the wages reported on the EIV Income Report were earned prior to move-in, this would be an invalid discrepancy. No action is required of the owner except to document the tenant's file of the findings as a result of the investigation.

Projected Annual Wages and Benefits from Form HUD-50059:	$0
Period Of Income for Discrepancy Analysis	06/01/2008 - 05/31/2009

Discrepancy Analysis	Actuals	Annualized Last Quarter
Reported Annual Wages and Benefits from EIV Data:	$10,341.38	$7,507.72
Amount of Annual Income Discrepancy:	($10,341.38)	($7,507.72)
Amount of Monthly Income Discrepancy:	($861.78)	($625.64)
Percentage of Income Discrepancy:	(100%)	(100%)

D. Other EIV Income Reports

The EIV system contains the following stand-alone income reports. Owners must use these reports as discussed below and at times as established in their policies and procedures. Owners must retain a Master file that contains a copy of the report and documentation and/or notations as indicated in the report discussions below.

Caution: Any detail reports retained in a tenant's file must only contain information for members of that tenant's household. Many of the reports do not have page breaks between households; therefore, owners will need to separate the reports by household by cutting the reports apart until page breaks are inserted in the EIV system.

1. Additional Income Reports

There are three additional income reports that owner must use: the No Income Reported on 50059, the No Income Reported by HHS or SSA, and the New Hires Report. These reports are accessed from the Monthly Summary Report when querying by project number and/or contract number. Additionally, the New Hires Report can be found in the EIV system as a Verification Report. If the report is underlined, this indicates that the report is an active link. Just click on the report name to obtain data about households identified where no income was reported or where a household member is reported as having new employment.

a. No Income Reported on 50059

This report is a tool for owners to use to identify tenants who passed the identity match against SSA's records but have zero income represented in the TRACS system.

(1) Owners must use this report only as identified and described in their policies and procedures. When running the report, the owner must select the recertification month All .

(2) Owners are not required to retain copies of this report

NOTE: It is recommended that owners have a policy to re-verify the status of tenants reporting zero income at least quarterly. As part of the procedures for implementing the policy, the owner must use the EIV Income Report to determine if the tenant or any family members have income reported by HHS or SSA.

b. No Income Reported by HHS or SSA

This report is a tool for owners to use to identify tenants who passed the SSA identity test but no employment or income information was received from the match against either the SSA or NDNH records.

(1) Owners must use this report as identified and described in their policies and procedures. When running the report, the owner must select recertification month All .

(2) Because no income was reported as a result of the match against SSA and NDNH records does not mean that the tenant(s) does not have income.

(3) Owners must make sure when they interview the tenants at the time of recertification that the right questions are asked so that the tenants are given the opportunity to disclose any income they receive.

(4) Owners are not required to retain copies of this report.

NOTE: It is recommended that owners have a policy to re-verify the status of tenants reporting zero income at least quarterly. As part of the procedures for implementing the policy, the owner must use the EIV Income Report to determine if the tenant, or any family members, has income reported by HHS or SSA.

c. **New Hires Report**

This report identifies tenants who have started new jobs within the last six months. The information in this report is updated monthly. The New Hires Report can also be found in the EIV system as a Verification Report.

(1) Owners must use this report at least quarterly to determine if any of their tenants have started new employment whereby the tenant has not reported a change in income to the owner between recertifications and/or the new employment was not reported at the time of recertification. When running the report, the owner must select recertification month All .

(2) Because tenants participating in one of Multifamily Housing's rental assistance programs are required to report changes in income when the household's income cumulatively increases by $200 or more per month, owners must reach out to their tenants to report the income changes so that rent adjustments can be made in a timely manner, thus eliminating/reducing the amount of retroactive rent repayments. (See Chapter 7, Paragraph 7-12.B.)

(3) Owners must:

(a) Contact the tenant regarding his/her new employment.

(b) Confirm with the tenant that they have a new job and that the employment information in the EIV system is correct. If the tenant agrees that the employment information in the EIV system is correct, request the tenant provide documents, e.g., four current, consecutive pay stubs, employment confirmation letter specifying rate of pay, number of hours worked each week, pay frequency, etc., for use in determining the tenant's income or, if necessary, request third party verification from the employer.

If the tenant disputes the information in the EIV system, the owner must obtain third party verification from the employer.

(c) Process a recertification in accordance with program requirements that includes the employment income.

(d) Retain a copy of the report in a master New Hires Report file along with notations as to the outcome of the contact with the tenant (e.g., J. Jones interim recertification processed to include income from new employment). All correspondence with the tenant third party verifications, etc., must be retained in the tenant file.

See Paragraph 7-10.A and the HUD Model Leases in Appendix 4 for change in income reporting requirements.

9-12 EIV Verification Reports

The EIV system contains the following stand-alone reports that identify potential issues which may impact the family's assistance. Owners must use these reports as discussed below and at times as established in their policies and procedures to reduce subsidy payment errors. Owners must retain a Master file that contains a copy of the report and documentation and/or notations as indicated in the report discussions below.

Caution: Any detail reports retained in a tenant's file must only contain information for members of that tenant's household. Many of the reports do not have page breaks between households; therefore, owners will need to separate the reports by household by cutting the reports apart until page breaks are inserted in the EIV system.
The Verification Reports can be accessed from the EIV Homepage, left sidebar.

A. **Existing Tenant Search**

This report identifies applicants applying for assisted housing that may be receiving rental assistance at the time of application at another Multifamily Housing or Public and Indian Housing (PIH) location.
Owners must:

1. Use this report at the time they are processing an application to determine if the applicant or any applicant household members are currently being assisted at another Multifamily Housing or PIH location.

2. Discuss with the applicant if the report identifies that the applicant or a member of the applicant's household is residing at another location, giving the applicant the opportunity to explain any circumstances relative to his/her being assisted at another location. This may be a case where the applicant wants to move from his/her present location or where two assisted families share custody of a minor child.

3. Follow up with the respective Public Housing Agency (PHA) or owner to confirm the individual's program participation status before admission, if necessary, depending on the outcome of the discussion with the applicant. The report gives the owner the opportunity to coordinate move-out and move-in dates with the PHA or owner of the property at the other location.

4. Retain the search results with the application along with any documentation obtained as a result of contacts with the applicant and the PHA and/or owner at the other location.

B. **Multiple Subsidy Report**

This report identifies individuals who may be receiving multiple HUD rental subsidies.

1. Owners must:

   a. Use the Multiple Subsidy Report at least quarterly to identify any tenants who are receiving assistance at another location. Owners must follow up with tenants identified on the report where the discrepancy was not identified and resolved at the time of recertification.

   b. Perform a search to determine if possible multiple subsidies exist.

   c. Discuss with the tenant if the results of the search shows that a tenant is being assisted at another location. The tenant must be given the opportunity to explain any circumstances relative to his/her being assisted at another location.

d. Follow up with the respective PHA or owner, if necessary, to confirm if the tenant is being assisted at the other location. Depending on the results of this investigation, the owner may need to take action to terminate the tenant's assistance or tenancy. (See Chapter 8, Sections 1 and 2 for procedures for terminating assistance or tenancy.)

e. Print out and retain a copy of the search results along with any documentation supporting any contacts made or information obtained to determine if a household and/or household member is receiving multiple subsidies. Additional documentation to support any action taken if a household or a household member is receiving multiple subsidies will be retained in the tenant file and should be noted on the report.

If a tenant's multiple subsidy was discussed and resolved at the time of recertification, this should be noted on the printed report and no further action is required.

NOTE: HUD does not prohibit owners of partially subsidized projects from housing tenants who are receiving assistance through the Housing Choice Voucher program. While these tenants may appear on the Multiple Subsidy Report, HUD does not consider them as receiving double subsidy. (See Paragraph 3-21 for a discussion on Applicants with Housing Choice Vouchers.) In these instances, owners should print out a copy of the Multiple Subsidy Report and note that the tenant has a Housing Choice Voucher and is not receiving double subsidy, e.g., tenant is residing in a Section 236 unit and receiving rental assistance through the Housing Choice Voucher program.

C. Identity Verification Report

There are three reports that are accessed from the Identity Verification Report link. Owners must use the Failed EIV Pre-Screening and the Failed Verification Report (Failed the SSA Identity Test) reports monthly to clear up any invalid, discrepant or missing information in the TRACS database that was not identified and corrected at the time of recertification. When running the report, the owner must select recertification month All . There will not be any employment or income information in EIV for tenants who fail either the EIV Pre-Screening or SSA Identity Test so it is essential that any discrepancies are corrected within 30 days from the date of the reports. Owners must conduct third party verifications to obtain employment and income data for these tenants. The Number of households Not-Verified (verification in process) Report is not required to be used by owners.

If the report name is underlined, this indicates it is an active link. Just click on the report name to obtain data about household members who meet the characteristics of the reports.

1. **Failed EIV Pre-Screening Report**

This report identifies tenants who fail the EIV pre-screening test because of invalid or missing personal identifiers (last name, DOB or SSN). The tenants identified in this report will not be sent to SSA for the SSA identity test until the personal identifier information is corrected in TRACS.

Owners must:

a. Use this report monthly to identify tenants that did not pass the pre-screening test and the reason(s) they did not pass so that the errors can be corrected. Owners must follow up with tenants identified on the report where discrepant personal identifiers were not corrected at the time of recertification.

b. Before contacting the tenant, confirm accuracy of data entry in TRACS, e.g., has a number been transposed when entering the SSN.

c. Confirm with the affected tenant their SSN, last name, and/or DOB.

d. Obtain documentation from the tenant to verify any discrepant personal identifiers.

e. Correct any discrepancies in TRACS so that the tenant will be included in the TRACS file provided to the EIV system for inclusion in the SSA identity test.

f. Print and retain a copy of the report in a master Failed EIV Pre-screening Report file. The report must be documented with action taken to resolve invalid or discrepant personal identifiers.

See Exhibit 9-1 for the EIV Failed Pre-screening Report Error Messages and corrective action.

NOTE: This report will include those persons who are exempt from the SSN disclosure and verification requirements. In these instances, the owner will note on the copy of the report retained in the Failed EIV Pre-Screening Report master file that the tenant(s) is exempt from SSN requirements.

Exempt from SSN disclosure and verification requirements:

- Tenants who were 62 years of age or older as of January 31, 2010, and whose initial determination of eligibility was begun before January 31, 2010; and

- Individuals who do not contend eligible immigration status.

2. **Failed Verification Report (Failed the SSA Identity Test)**

This report identifies household members who failed the SSA identity test because their personal identifiers (last name, DOB or SSN) do not match SSA's records, as well as, identifies deceased household members.

Owners must:

a. Use this report monthly to identify those tenants that did not pass the SSA identity verification test and the reason(s) they did not pass so that the errors can be corrected.

b. Follow up with tenants identified on the report where discrepant personal identifiers were not corrected at the time of recertification.

c. Before contacting the tenant, confirm accuracy of data entry in TRACS, e.g., has a number been transposed when entering the SSN.

d. Confirm with the affected tenant their last name, SSN and/or DOB.

e. Obtain verification or documentation to support the tenant's personal identifiers and the accuracy of the form HUD-50059 and TRACS data.

f. Correct any discrepancies in TRACS so that the tenant will be included in the match against SSA and NDNH data.

g. Encourage the tenant to contact SSA to correct any inaccurate data in their databases if the personal identifiers on the form HUD-50059 and in TRACS are accurate. The tenant can request SSA to correct his/her record by completing and submitting form SS-5, *Application for a Social Security Card*, and verifying documentation to the local SSA office.

h. Print and retain a copy of the report. The report must be documented with action taken to resolve invalid or discrepant personal identifiers.

NOTE: If a tenant's information was corrected at the time of recertification but the EIV data has not yet been updated, this should be noted on the printed report and no further action is required.

See Exhibit 9-2 for the Failed Verification Report (Failed the SSA Identity Test) Error Messages and corrective action.

D. **Deceased Tenant Report**

This report identifies tenants who are participating in one of Multifamily Housing's rental assistance programs who are reported by SSA as being deceased.

1. Owners must:

   a. Use this report at least quarterly to identify those tenants reported by SSA as being deceased. When running the report, the owner must select recertification month All .

   b. Confirm, in writing, with the head of household, next of kin or contact person/entity provided by the tenant whether or not the person is deceased.

   c. If the person is deceased:

      (1) Update the household composition and income and allowances, if applicable, on the form HUD-50059. The effective date of the form HUD-50059 should be in accordance with Chapter 7, Paragraph 7-13.D.

      (2) In the case of a deceased single member of a household, process a Move-out using form HUD-50059-A. The effective date of the form HUD-50059-A will be retroactive to the earlier of 14 days after the tenant's death or the date the unit was vacated (see Chapter 9, Paragraph 9-12.E).

      NOTE: Single member deceased households are denoted on the report with a red asterisk (*) after the member's deceased date.

      (3) Any overpayment of subsidy that was paid on behalf of the deceased tenant must be repaid to HUD.

   d. Discrepancies must be corrected in the TRACS system within 30 days from the date of the report.

   e. Encourage the tenant to contact the SSA to correct any inaccurate data in their databases if the person identified as being deceased in the SSA database is not deceased.

   f. Print and retain a copy of the report in a master Deceased Tenant file. The report must be documented with action taken to resolve any discrepancies. All correspondence or action taken for a particular tenant must be retained in the tenant file.

   NOTE: If action was taken to remove the deceased tenant from the household at the time of recertification but the EIV data has not yet been updated, note this on the printed report and no further action is required.

2. The Deceased Tenants Report is updated every weekend. See examples below addressing when a deceased individual will be removed from the report.

Example 1: Mr. Jones was listed on the Deceased Tenants Report dated December 14, 2009, with a deceased date of November 20, 2009. On December 1, 2009, the owner confirmed that Mr. Jones was actually alive and advised Mr. Jones to visit his local SSA office to have the error corrected. SSA corrected the error on December 20, 2009. When HUD conducted computer matching with SSA on January 6, 2010, HUD obtained new SSA data which indicated that Mr. Jones was not deceased. The Deceased Tenants Report was updated on the weekend of January 8, 2010. When the owner accessed the Deceased Tenants Report on January 11, 2010, Mr. Jones was no longer on the report.

Example 2: Mr. Williams was listed on the Deceased Tenants Report dated December 14, 2009, with a deceased date of June 10, 2009. On January 6, 2010, the owner confirmed that Mr. Williams was deceased. The owner then completed and submitted the move-out on form HUD-50059-A on January 7, 2010. The Deceased Tenants Report was updated on the weekend of January 8, 2010. When the owner accessed the Deceased Tenants Report on January 11, 2010, Mr. Williams was no longer on the report.

E. New Hires Report

For a description of the New Hires Report, see Paragraph 9-11.D.

9-13 Reimbursement of Over- or Under-payment of Subsidy

A. Unreported or Underreported Income

If the owner determines the tenant unreported or underreported his/her income, the owner must go back to the time the unreported or underreporting of income started, not to exceed the 5-year limitation that the tenant was receiving assistance described on forms HUD-9887 and HUD-9887-A. The owner must follow the instructions in Chapter 8 for meeting with the tenant to discuss reimbursement of funds due the owner and repayment agreement requirements.

B. Over-reported income

If, at the time of recertification, there is an Income Discrepancy Report in the EIV system that reflects a decrease of $2,400 or more in wages, unemployment and/or Social Security income reported in the EIV system and the wage, unemployment and/or Social Security income in TRACS for the POI used for the discrepancy analysis, the owner must investigate the discrepancy. If, after investigating the discrepancy, the owner determines that an error was made in calculating the tenant's income, the owner must follow the instructions in Chapter 8, Paragraph 8-24 to reimburse the tenant for any overpayment in rent. It is important that the owner determine whether the income appearing on the EIV

Income Discrepancy Report should be included as income and does not meet one of the income exclusions represented in Exhibit 5-1.

9-14 Retention of EIV Reports

A. Owners must retain:

1. The Income Report, the Summary Report(s) showing Identity Verification Status as Verified and the Income Discrepancy Report(s) and supporting documentation must be retained in the tenant file for the term of tenancy plus three years.

2. Any tenant provided documentation, or other third party verification of income, received to supplement the SSA or NDNH data must be retained in the tenant file for the term of tenancy plus three years.

3. Results of the Existing Tenant Search must be retained with the application:

   (a) If applicant is not admitted, the application and search results must be retained for three years.

   (b) If applicant is admitted, the application and search results must be retained in the tenant file for the term of tenancy plus three years.

4. The master files for the New Hires Report, Identity Verification Reports, Multiple Subsidy Report and Deceased Tenants Report must be retained for three years.

   See Exhibit 9-5, Use of EIV Reports.

B. Once the retention period has expired, owners must dispose of the data in a manner that will prevent any unauthorized access to personal information, e.g., burn, pulverize, shred, etc.

9-15 Requesting Verification of Information from SSA

Owners must not send the tenant to the SSA office if they do not have information needed to verification Social Security benefits. Instead, the owner must ask the tenant to request benefit information from SSA using SSA's website or toll-free number.

A. The owner may assist the tenant in requesting benefit information from SSA, if the tenant requests their assistance in accessing the SSA website or has questions on completing the request. To request a Proof of Income Letter from SSA's website go to http://www.socialsecurity.gov. From the left side bar:

- Select What you can do online
- Select If you get benefits
- Select Request a Proof of Income Letter

Tenants should check the box All Benefit Information Available to make sure all benefits received are provided.

B. To request a Proof of Income Letter from SSA's toll-free number call 1-800-772-1213.

C. This information is free and the tenant should receive the letter in the mail within 10 days. The tenant will provide the Proof of Income Letter to the owner for use in calculating their income. A copy of the letter will be retained in the tenant's file and the original returned to the tenant for their records.

9-16 EIV Income Incorrect or Does Not Belong to the Tenant

There may be times when the source or originator of the EIV information makes an error when submitting or reporting information about tenants. **HUD cannot correct data in the EIV system, only the originator of the data can correct the information**. When data is corrected by the source or originator, HUD will obtain the updated information with its next computer matching process. Below are procedures to follow regarding incorrect EIV information.

A. **TRACS** data reported in the EIV system originates from the owner. Once data is corrected in the owner's software, the corrected data must be transmitted to TRACS.

B. **Employment and wage information** reported in the EIV system originates from the employer. The employer reports this information to the local State Workforce Agency (SWA), who in turn, reports the information to HHS' NDNH database. If the tenant disputes the accuracy of the information in the EIV system that was provided by the employer and after additional third party verification is obtained by the owner it is determined that the information is not accurate, the tenant should contact the employer directly, in writing, to dispute the employment and/or wage information and request that the employer correct erroneous information. The tenant should provide the owner a copy of this written correspondence to maintain in the tenant file.

C. **Unemployment benefit information** reported in the EIV system originates from the local SWA. If the tenant disputes the accuracy of the information in the EIV system that was provided by the SWA and after additional third party verification is obtained by the owner it is determined that the information is not accurate, the tenant should contact the SWA directly, in writing, to dispute the unemployment benefit information, and request that the SWA correct erroneous information. The tenant should provide the owner a copy of this written correspondence to maintain in the tenant file.

D. **SS and SSI benefit information** reported in the EIV system originates from the SSA. If the tenant disputes the accuracy of the information in the EIV system that was provided by the SSA and after additional third party verification is obtained by the owner it is determined that the information is not accurate, the tenant should contact the SSA at (800) 772-1213, or visit the local SSA office and request that the erroneous information be corrected. SSA office information

is available in the government pages of the local telephone directory or online at http://www.socialsecurity.gov.

E. **Identity Theft**. Incorrect information in the EIV system may be a sign of identity theft. Sometimes someone else may use an individual's SSN, either on purpose or by accident. SSA does not require an individual to report a lost or stolen SSN card, and reporting a lost or stolen SSN card to SSA will not prevent the misuse of an individual's SSN. A person using an individual's SSN can get other personal information about that individual and apply for credit in that individual's name.

If the tenant suspects someone is using his/her SSN, he/she should:

1. Check their Social Security records to ensure their records are correct (call SSA at 1-800-772-1213);

2. File an identity theft complaint with the Federal Trade Commission (call FTC at 1-877-438-4338, or visit their website at: http://www.ftc.gov/bcp/edu/microsites/idtheft/); and

3. Monitor his/her credit reports with the three national credit reporting agencies (Equifax, TransUnion, and Experian).

   Tenants may request their credit report and place a fraud alert on their credit report with the three national credit reporting agencies at: http://www.annualcreditreport.com or by contacting the credit reporting agency directly. Each agency's contact information is listed below:

   National Credit Reporting Agencies Contact Information

   Equifax Credit Information Services, Inc.
   P.O. Box 740241
   Atlanta, GA 30374
   Website: http://www.equifax.com
   Telephone: (800) 685-1111

   Experian
   P.O. Box 2104
   Allen, TX 75013
   Website: http://www.experian.com
   Telephone: (888) 397-3742

   TransUnion
   P.O. Box 6790
   Fullerton, CA 92834
   Website: http://www.transunion.com
   Telephone: (800) 680-7289 or (800) 888-4213

Section 4: Security of EIV Data

9-17 Disclosure of EIV Data

A. Disclosure of an Individual's EIV Information to Another Person or Entity

The Federal Privacy Act (5 USC 552a, as amended) prohibits the disclosure of an individual's information to another person without the written consent of such individual. As such, the EIV data of an adult household member may not be shared (or a copy provided or displayed) with another adult household member or to a person assisting the tenant with the recertification process, unless the individual has provided written consent to disclose such information.
The owner, however, is not prohibited from discussing with the head of household and showing the head of household how the household's income and rent were determined based on the total income reported and verified.
See Exhibit 9-4, for a Sample Tenant Consent to Disclose EIV Income Information for use by the owner in obtaining the tenant's consent to disclose information to another adult household member.

B. Disclosure to Persons Assisting Tenants with the Recertification Process

With the written consent of the tenant, EIV data may be shared with persons assisting the tenant with the recertification process. Tenants who require assistance during the recertification process may have a representative present to assist them in their ability to participate in the recertification process; this includes review and explanation of the written third party income verifications. Disclosure of EIV information to these parties must be employment or income information pertaining only to the tenant who has provided his/her consent. These parties must not have access to EIV information for any other household members.

Parties to whom the tenant can provide written consent include:

- Service coordinators (only if they are present at and assisting the tenant with the recertification process)
- Translators/Interpreters
- Individuals assisting an elderly individual or a person with a disability
- Guardians
- Powers of Attorney
- Other Family Members

See Exhibit 9-4, for a Sample Tenant Consent to Disclose EIV Income Information for use by the owner in obtaining the tenant's consent to disclose information to persons assisting the tenant with the recertification process.

C. Disclosure for Official Purpose

The data in the EIV system contains personal information on individual tenants that is covered by the Privacy Act. The information in the EIV system may only

be used for limited official purposes:

1. Official Purpose Includes:

   a. Owners, in connection with the administration of Multifamily Housing programs, for verifying the employment and income at the time of recertification and for reducing administrative and subsidy payment errors.

   b. CAs (PBCAs and TCAs) and HUD staff for monitoring and oversight of the access and mandatory use of the EIV system.

   c. IPAs, when hired by an owner to perform the financial audit of the project, for use in determining the owner's compliance with verifying income and determining the accuracy of the rent and subsidy calculations.

      Restrictions on disclosure requirements for IPAs:

      (1) Can only access EIV income information within hard copy files and only within the offices of the owner or management agent;

      (2) Cannot transmit or transport EIV income information in any form;

      (3) Cannot enter EIV income information on any portable media;

      (4) Must sign non-disclosure oaths (Rules of Behavior for Non-system Users) that the EIV income information will be used only for the purpose of the audit; and

      (5) Cannot duplicate EIV income information or re-disclose EIV income information to any user not authorized by Section 435(j)(7) of the Social Security Act to have access to the EIV income data.

      NOTE: See the Glossary for the definition of Independent Public Auditor.

   d. OIG investigators for auditing purposes.

   e. Disclosure of EIV information to individuals who are assisting in the recertification process and who are present during the recertification interview and process. (See Section B above)

2. Official Purpose Does NOT Include:

a. Sharing the information with governmental entities not involved in the recertification process used for HUD's assisted housing programs, e.g., the Low Income Housing Tax Credit (LIHTC) program and Rural Housing Services (RHS') Section 515 program. EIV data must not be shared with state officials monitoring the owner for LIHTC compliance or by owners for completion of the LIHTC Tenant Income Certification (TIC). EIV data also must not be shared with RHS staff for monitoring an owner's compliance for tenants receiving Section 8 assistance or by owners for certifying tenants who do not receive Section 8 assistance.

Disclosing the EIV information to owners for use under the LIHTC and RHS Section 515 programs is not allowed since neither the Internal Revenue Service (IRS) nor RHS are a party to the computer matching agreements with HHS and SSA. The fact that there is financing through other federal agencies involved in a particular property under one of the authorized HUD programs does not then permit that federal agency to use or view information in the EIV system that is covered by the computer matching agreements. The computer matching agreements are governed by the Privacy Act and the Social Security Act. For example, Sections 453(j)(7)(E)(ii) and (iv) of the Social Security Act limit disclosure of the data matched between HUD and HHS' NDNH to public housing agencies, the IG, the Attorney General, private owners, management agents and CAs. HHS subsequently approved disclosure of NDNH information to IPAs hired by an owner to conduct the financial audit of their property.

b. Disclosure of the EIV information to Service Coordinators even though the tenant signs a release of information consent form authorizing the Service Coordinator to have access to their file is not allowed unless the Service Coordinator is present during the interview and assisting the tenant with the recertification process. The statute authorizing the computer matching identifies those parties to whom the information can be disclosed and the statute does not include Service Coordinators.

D. Penalties for Willful Disclosure or Inspection of EIV Data

1. **Unauthorized Disclosure** felony conviction and fine up to $5,000 or imprisonment up to five (5) years, as well as civil damages.

2. **Unauthorized Inspection** misdemeanor penalty of up to $1,000 and/or one (1) year imprisonment, as well as civil damages.

9-18 EIV Rules of Behavior (ROB)

A. With EIV System Access ROB Requirements

All EIV users who have access to the EIV system must adhere to the EIV ROB signed at the time of requesting access to the EIV system.

1. Instructions for requesting access to the EIV system for both internal HUD users and external users are posted on the Multifamily EIV website at: http://www.hud.gov/offices/hsg/mfh/rhiip/eiv/eivapps.cfm

2. External users. The signed initial and current online (unsigned) access authorization forms containing the ROB must be kept on file along with the owner approval letters. Upon request, the forms must be made available to the entity monitoring EIV system compliance.

3. Internal users. A copy of the signed ROB will be kept on file by the TRACS/EIV Security Officer and a signed copy should also be retained by the EIV user.

4. Each HUD Program Center and Contract Administrator must have at least two staff members with access to the EIV system who can provide other staff members with EIV reports used for monitoring purposes.

B. **Without EIV System Access ROB Requirements**

1. Owner and management agent staff, service bureau staff, HUD staff and CA staff who do not have access to the EIV system but who view or use EIV data/reports provided by authorized EIV Coordinators or EIV Users in order to perform their job functions, must adhere to the EIV ROB posted on the Multifamily EIV website at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/rhiip/eiv/eivapps.

   The ROB must be signed and kept on file. Upon request, the signed ROB must be made available to the entity monitoring EIV system compliance.

   NOTE: HUD staff will check the "CA" box at the bottom of the form.

2. IPAs hired by the owner to perform a financial audit must adhere to the ROB posted on the Multifamily EIV website at: http://www.hud.gov/offices/hsg/mfh/rhiip/eiv/rulesofbehavior.pdf.

   The ROB must be signed by the IPA and kept on file. Upon request, the signed ROB must be made available to the entity monitoring EIV system compliance.

Section 5: Penalties for Failure to Have Access to or Failure to Use EIV

9-19 Penalties for Failure to Have Access To and/or Failure to Use EIV

A. Owners who do not have access to or are not using the EIV system in its entirety:

1. Will receive a finding on the Management and Occupancy Review (MOR) report, if the violation was identified during the MOR. The violation can be identified at times other than at the time of the MOR.

2. Will incur a penalty of a five percent decrease in the voucher payment for the month following the date the violation was found and each subsequent voucher payment until the violation is cured.

3. Must make an adjustment on the next scheduled voucher to adjust for the five percent decrease.

4. Will be monitored by the CA to ensure the adjustment is made.

B. The owner will have 30 days to cure the violation.

1. The violation will be cured by obtaining access to and/or using the EIV system and the owner will then make an adjustment to the next scheduled voucher to collect the funds previously returned to HUD even if the owner takes longer than 30 days to cure the finding.

2. If the violation is not cured during the 30 day period, both the owner and the management agent, if applicable, will be flagged in HUD's Active Partners Performance System (APPS). Once the violation is cured, the flag will be removed.

C. When there is a change in ownership or management at a property, the new owner or management agent must obtain access to and begin using the EIV system within 90 days from the date the owner takes possession of the property or the effective date of the management agreement with the owner. Owners and/or management agents who fail to obtain access and begin using the EIV system within this timeframe may be subject to the penalties described above.

9-20 Security Training

A. EIV users are required to complete online security training annually. To meet this requirement, EIV users must complete the online Cyber-Awareness Challenge (for DoD and Federal Personnel) training program. At the end of the training, EIV users must print and maintain the *Certificate of Completion* provided. The training can be found at http://iase.disa.mil/eta/index.html#onlinetraining.

EIV users authorized by owners to have access to EIV on their behalf may also need to complete the applicable online Security Awareness Training Questionnaire for Multifamily Housing Programs upon initial access to the system and annually thereafter.

B. EIV users should**:**

1. Review Section 4 on Security contained in the Multifamily EIV User Manual for Multifamily Housing Program Users posted at: http://www.hud.gov/offices/hsg/mfh/rhiip/eiv/usermanual.pdf,

2. Review the EIV Security Administration Manual posted at: http://www.hud.gov/offices/hsg/mfh/rhiip/eiv/securityadminmanual.pdf

3. View the Security training provided during the most recent EIV webcast, posted at: http://portal.hud.gov/hudportal/HUD?src=/webcasts/archives/multifamily

C. Owner and management agent staff who do not have access to EIV but who use EIV reports to perform their job function must have security training annually.

9-21 Safeguarding EIV Data

A. Technical Safeguards

1. All individuals who have access to the EIV system must have a valid WASS User ID and password and must use this ID and password for accessing the EIV system. Upon receipt of the assigned WASS User ID, an individual must then apply to be approved for access to the EIV system.

2. To assist in ensuring that only those individuals who have a need to use the EIV system to perform their job function have access to the EIV system, users must be certified to use the system:

   a. EIV Coordinators are certified at initial access and annually thereafter.

   b. EIV Users are certified at initial access and bi-annually thereafter.

   If this certification is not made, the user's EIV access is terminated.

3. A Security Awareness Training Questionnaire, which supplements required annual security training, may be completed at the time of initial access to the system and annually thereafter. The EIV system is designed with the ability to block the entry of those individuals who have not successfully completed the questionnaire (i.e., answered 90 percent of the questions correctly).

B. Administrative Safeguards

1. Policies and procedures must be established to govern the use of the EIV system. These procedures should address:

a. Authorized use of the EIV system;

b. How to handle security breaches; and

c. Destruction of EIV data.

2. EIV manuals and the instructions in this handbook should be reviewed when implementing these administrative safeguards.

3. Posting of bulletins and flyers can assist in communicating how sensitive EIV data is and how this data should be handled.

C. **Physical Safeguards**

Physical safeguarding of EIV data refers to steps that must be taken to help ensure the data is safe when stored electronically or in hardcopy and when transmitting data electronically.

1. Storing and Transmitting of Electronic EIV Data

a. EIV data stored electronically must be in a restricted access directory or, if placed on portable media, labeled appropriately and encrypted using a NIST compliant vendor. Similarly, all emails containing EIV data must be encrypted using a NIST compliant vendor. A list of compliant vendors can be found at: http://csrc.nist.gov/groups/STM/cmvp/documents/140-1/1401vend.htm.

b. The full nine-digit SSN for a tenant must not be included in emails or other electronic communications.

NOTE: The downloading of EIV data to mobile devices is not allowed for IPAs.

2. Hardcopy EIV Data

EIV data that is printed out must not be left unattended. The documents should be retrieved as soon as they are printed and, if possible, use a restricted printer, copier, or facsimile machine. When faxing EIV data, ensure there is someone waiting and ready to retrieve the fax as soon as it is received (printed). When mailing EIV data, the data must be sent to an office of the owner/management agent. EIV data must not be mailed to Independent Public Auditor offices.

3. Computer Security

The EIV system is set up to time out after 30 minutes of inactivity. This automatic safeguard should not be the only security measure taken. Individuals who use the EIV system should use a password protected screensaver and lock their computer when leaving their workspace. A

user should not leave a computer unattended with EIV data displayed on the screen. It is also recommended that the EIV system be exited using the at the top right of the screen which will remove the user from the entire WASS system.

4. Destroying EIV data

EIV data must be destroyed as soon as it has served its purpose as prescribed by HUD's policies and procedures and in accordance with HUD's prescribed retention period. Shredding, burning or pulverizing are all examples of acceptable ways to destroy EIV data.

Section 6: EIV Resources

9-22 Resource Materials

This section summarizes some of the resources available to EIV users. Owners should visit the Multifamily EIV website often for updated documents and/or announcements.

- Multifamily EIV website:
  http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/rhiip/eiv/eivhome

- EIV Multifamily Help Desk
  Telephone: 1-800-767-7588
  Email: Mf_Eiv@hud.gov

- Enterprise Income Verification System User Manual for Multifamily Housing Program Users http://www.hud.gov/offices/hsg/mfh/rhiip/eiv/usermanual.pdf

- Rental Housing Integrity Improvement Project (RHIIP) website:
  http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/rhiip/mfhrhiip

- Resolving Income Discrepancies Between Enterprise Income Verification (EIV) System Data and Tenant-Provided Income Information
  http://www.hud.gov/offices/hsg/mfh/rhiip/eiv/reqnguide.cfm

- EIV webcasts
  http://portal.hud.gov/portal/page/portal/HUD/webcasts/archives/multifamily

- EIV training provided to HUD RHIIP Help Desk Representatives and Contract Administrators.
  http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/rhiip/mfhrhiip

- A Guide to Interviewing for Owners of HUD Subsidized Multifamily Housing Projects

http://www.hud.gov/offices/hsg/mfh/rhiip/interviewguide.pdf

- Rent and Income Determination Quality Control Monitoring Guide for Multifamily Housing Programs
  http://www.hud.gov/offices/hsg/mfh/rhiip/qcguide.pdf

- *EIV & You* brochure
  http://www.hud.gov/offices/hsg/mfh/rhiip/eivbrochure.pdf

- EIV Multifamily Housing Programs Security Administration Manual
  http://www.hud.gov/offices/hsg/mfh/rhiip/eiv/eivapps.cfm

- Mf_eiv_comments@hud.gov mailbox to provide suggestions on how to improve the EIV system

Chapter 9 Exhibits

Exhibit 9-1 Failed EIV Pre-screening Report Error Messages
http://portal.hud.gov/hudportal/documents/huddoc?id=43503e9-1HSGH.pdf

Exhibit 9-2 Failed Verification Report (Failed the SSA Identity Test) Error Messages
http://portal.hud.gov/hudportal/documents/huddoc?id=43503e9-2HSGH.pdf

Exhibit 9-3 EIV Income Report Information
http://portal.hud.gov/hudportal/documents/huddoc?id=43503e9-3HSGH.pdf

Exhibit 9-4 Sample Tenant consent to Disclose EIV Income Information
http://portal.hud.gov/hudportal/documents/huddoc?id=43503e9-4HSGH.pdf

Exhibit 9-5 Use of EIV Reports
http://portal.hud.gov/hudportal/documents/huddoc?id=43503e9-5HSGH.pdf

Exhibit 9-6 National Directory of new Hires (NDNH) Data Elements
http://portal.hud.gov/hudportal/documents/huddoc?id=43503e9-6HSGH.pdf

Exhibit 9-7 How EIV Calculates Income Discrepancies
http://portal.hud.gov/hudportal/documents/huddoc?id=43503e9-7HSGH.pdf

Exhibit 9-1: Failed EIV Pre-screening Report Error Messages

Failed EIV Pre-screening Report Error Messages			
	Error Message Description	**Explanation**	**Corrective Action**
1	Failed DOB check	The date of birth is blank or null in line 42 of form HUD-50059.	Enter DOB on line 42 of form HUD-50059. Ensure only numbers are recorded.
2	Failed last name check	The last name is blank or null in line 35 of form HUD-50059.	Enter last name on line 35 of form HUD-50059. Ensure only alpha characters are recorded.
3	Failed SSN check	The SSN is not numeric or all 9s or LIKE (000%) or LIKE (__00%) or LIKE (%0000).	Enter valid SSN on line 45 of form HUD-50059. Do not use repetitive numbers if tenant has not disclosed a SSN. An alternate ID will be generated by TRACS for household members without a SSN. O/A should follow-up with those households who have members with a TRACS generated ID to obtain documentation of the members SSN, if applicable.
4	Failed effective date check	The effective date of action is more than 15 months old.	Transmit a current recertification to TRACS.

Exhibit 9-2: Failed Verification Report (Failed the SSA Identity Test) Error Messages			
	Error Description	**Explanation**	**Corrective Action**
1	No benefits reported by SSA MM/DD/YYYY	No benefits reported by SSA. The date of birth (DOB) recorded on line 42 of the form HUD-50059 is not the same DOB reflected in SSA's records.	Request the tenant provide documentation (i.e. birth certificate or state issued identification card) to verify DOB. Update line 42 of form HUD-50059 with the SSA provided DOB.
2	SSN is verified; individual is deceased or SSN is verified; individual is deceased MM/DD/YYYY	The tenant's SSN has been verified by SSA and the individual is deceased. If a date follows the error message, this is the date of death as reflected in SSA's records.	Contact tenant's adult family member, next of kin or contact person/entity provided by tenant on form HUD-92006. Upon confirmation of death, update family composition on form HUD-50059, or If a single member household, take appropriate action to terminate tenancy in accordance with program instructions and transmit move-out form HUD-50059-A to TRACS. If applicable, return any overpayment of assistance to HUD.
3	Surname matched, but DOB did not match	The DOB recorded on line 42 of form HUD-50059 is not the same DOB reflected in SSA's records.	Ask tenant to provide documentation (i.e. birth certificate or state issued identification card) to verify DOB. Update line 42 of form HUD-50059 with the SSA provided DOB
4	Verification failed DOB matched but surname did not match with SSA records or Surname does not match; DOB was checked	The surname recorded on line 35 of form HUD-50059 is not the same surname reflected in SSA's records.	Ask tenant to provide documentation (i.e. SSN card, birth certificate, state issued identification card, marriage license or court documents) of the other name he/she is using. Update line 35 of form HUD-50059 with the correct surname.
5	Verification failed SS/SSI benefits cannot be disclosed due to discrepancy in DOB MM/DD/YYYY	Tenant is receiving SS/SSI benefits; however, SSA cannot disclose the benefit amount because the DOB recorded on line 42 of form HUD-550059 is incorrect. The DOB reflected in SSA's records is listed at	Request the tenant provide a current SS/SSI benefit letter. Request tenant provide documentation (i.e. birth certificate or state issued identification card)

Exhibit 9-2: Failed Verification Report (Failed the SSA Identity Test) Error Messages			
	Error Description	**Explanation**	**Corrective Action**
		the end of the error message.	to verify DOB, Update line 42 of form HUD-50059 with the SSA provided DOB, if applicable
6	Verification failed SS/SSI benefits cannot be disclosed due to discrepancy in name.	Tenant is receiving SS/SSI benefits; however, SSA cannot disclose the benefit amount because the surname recorded on line 35 of form HUD-50059 is not the same surname reflected in SSA records.	Request tenant provide a current SS/SSI benefit letter. Ask tenant to provide documentation (i.e. SSN card, birth certificate, state issued identification card, marriage license or court documents) of the other name he/she is using. Update line 35 of form HUD-50059 with the correct surname.
7	Verification failed SSN not found in SSA's records Or SSN is not in file Or The input SSN was not verified	The tenant's SSN recorded on line 45 of form HUD-50059 is not a valid number issued by SSA or listed in SSA records.	Request original SSN card from tenant. Confirm SSN displayed on the card matches the SSN reported on line 45 of form HUD-50059. For continued SSN failures, notify HUD OIG or other law enforcement agency.
8	Verification failed SSN not found in SSA records XXXXXXXXX	Tenant SSN recorded on line 45 of form HUD-50059 is not a valid number issued by SSA. However, the SSN reflected in SSA records is listed at the end of the error message.	Update line 45 of form HUD-50059 with the SSA provided SSN.
9	Verification failed surname matched but DOB did not match with SSA records MM/DD/YYYY	The DOB recorded on line 42 of form HUD-50059 is incorrect. However, the DOB reflected in SSA records is listed at the end of the error message.	Update line 42 of form HUD-50059 with the SSA provided DOB.

NOTE: If the SSA records are wrong, only the tenant can request SSA to correct his/her record by completing and submitting form SS-5, *Application for a Social Security Card.*

Exhibit 9-3: EIV Income Report Information

a. TRACS certification information
b. Personal Identifiers: name, date of birth and SSN
c. Employment information
   1. New Hire Information (W-4)
      (a) Date hired
      (b) Employer name
   2. Employer name, address and employer identification number (current and past employers)
   3 Quarterly earnings
d. Quarterly unemployment compensation
e. Social Security benefit information
   1. Social Security benefits (SS)
      (a) Payment status code
      (b) Date of current entitlement
      (c) Current net monthly benefit amount (if payable)
      (d) Gross monthly benefit history (last 8 changes in benefit amount)
      (e) Lump sum payment amount and date
      (f) Payee name and address
   2. Dual Entitlement (Social Security benefits under another person's SSN)
   3. Supplemental Security Income (SSI)
      (a) Payment status code
      (b) Alien indicator
      (c) Current net monthly benefit amount
      (d) Current monthly state supplement benefit amount
      (e) Gross monthly benefit history (last 8 changes in benefit amount)
      (f) Payee name and address
   4. Medicare data
      (a) Payee name and address
      (b) Monthly hospital insurance premium amount, buy-in status and buy-in start and end dates
      (c) Monthly supplemental medical insurance premium amount, buy-in status and buy-in start and end dates
   5. Disability status and onset date

All EIV Income Reports contain the date the report was generated and by whom and the date EIV received each type of information.

SAMPLE
TENANT CONSENT TO DISCLOSE EIV INCOME INFORMATION

Print name of tenant authorizing release	*Print name of third party being authorized to view information*

A. Third party to view and/or discuss information for the sole purpose of recertification assistance is an:

- ☐ Adult Household Member
- ☐ Translator / Interpreter
- ☐ Service Coordinator
- ☐ Guardian
- ☐ Temporarily Absent Family Member
- ☐ Individual Assisting Elderly Individual or Person with a Disability
- ☐ Other Individual (Include Relationship): _____

B. Enterprise Income Verification (EIV) information to be viewed and/or discussed for the sole purpose of recertification assistance:

- ☐ EIV Income Report
- ☐ EIV Income Discrepancy Report
- ☐ EIV No Income Report
- ☐ EIV New Hires Report
- ☐ Other EIV information: _____

C. Penalties for Misuse of Information:

The following federal law prohibits the misuse of the information viewed or discussed pursuant to this consent and certification. Tenants, authorized third parties, and HUD or authorized entities employees may be subject to these penalties.

"[W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully - (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years." 18 U.S.C. 1001.

"Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000. 5 U.S.C. 552a(i).

"The Secretary [of Health and Human Services] shall require the imposition of an administrative penalty (up to and including dismissal from employment), and a fine of $1,000, for each act of unauthorized access to, disclosure of, or use of, information in the National Directory of New Hires established under subsection (i) of this section by any officer or employee of the United States or any other person who knowingly and willfully violates this paragraph." 42 U.S.C. 653(l).

Federal law also provides penalties for misusing Social Security numbers. 42 U.S.C. 408 (a) (6), (7) and (8).

Any applicant or participant affected by negligent disclosure of information may bring civil action for damages and seek other relief, as may be appropriate, against the officer or employee of HUD or the owner responsible for the unauthorized disclosure or improper use.

D. Certifications:

I hereby authorize the third party listed on this consent to view and/or discuss the EIV information identified above for the sole purpose of assisting in the recertification of my housing assistance in accordance with the rights afforded to me by the Privacy Act of 1974. I understand further use of such information is prohibited by the Privacy Act and Social Security Act, and that it may not be disclosed, redisclosed, copied, duplicated, or removed from the property for any reason. I also have read and understand the penalties for such misuse of the information, as provided on this form.

Signature of tenant authorizing release	*Printed name of tenant authorizing release*	*Date*

I hereby acknowledge and certify that I am permitted to view and discuss tenant information pertaining to the above named individual for the sole purpose of assisting the tenant in the recertification of his/her subsidy. I understand further use of such information is prohibited by the Privacy Act and Social Security Act, and that it may not be disclosed, redisclosed, copied, duplicated, or removed from the property for any reason. I also have read and understand the penalties for such misuse of the information, as provided on this form.

Signature of authorized third party	*Printed name of authorized third party*	*Date*

EQUAL HOUSING OPPORTUNITY

We Do Business in Accordance With the Federal Fair Housing Law
(The Fair Housing Amendments Act of 1988)

USE OF EIV REPORTS					
REPORT	***UPDATE**		**REPORT USE**	**FILE DOCUMENTATION**	**RETENTION**
	TSP	**P&P**			
Summary Report Summary of household information from the current, active certification in the TRACS file at the time of the income match. Provides Identity Verification Status by identifying tenants whose personal identifiers: • Match the SSA database - "Verified" • Does not match the SSA database – "Failed" • Have not been sent by HUD to SSA for validation or have not yet been matched by SSA for validation – "Not Verified" • SSA's records indicate the person is deceased – "Deceased" **See Paragraph 9-12.A**		X	Must be used at recertification (annual and interim) • To validate a tenant's SSN • To review and resolve discrepant or invalid personal identifiers of tenants with a "failed" or "deceased" status **Note**: Nothing has to be done at the time of recertification with those tenants with an Identity Verification Status of "Not Verified". However, the Failed SSA Identity Test report must be checked monthly as a change in the Identity Verification Status may occur.	Summary Report(s) as verification of the SSN for all household members whose Identity Verification Status is "Verified". Correspondence or documentation received to resolve a tenant's "Failed" or "Deceased" status. Documentation for household members identified as exempt from disclosing and providing verification of a SSN: • Tenants who were 62 years of age or older as of January 31, 2010, and whose initial determination of eligibility was begun before January 31, 2010; and • Individuals who do not contend eligible immigration status If the Summary Report in the tenant file shows an Identity Verification Status of "Verified" for all household members required to have a SSN, the Owner does not have to continue to print out the Summary Report at recertification unless there is a change in household composition or in a household member's identity verification status	**Tenant file** Summary Report and supporting documentation must be retained in the tenant's file for term of tenancy plus 3 years. **Note:** O/As may remove and destroy copies of verification documentation received from the tenant to verify their SSN once the Identity Verification Status shows "Verified". O/As are encouraged to minimize the number of tenant records that contain documents that display the full nine-digit SSN.

***TSP = Tenant Selection Plan P&P = Policies and Procedures**

USE OF EIV REPORTS					
REPORT	***UPDATE**		**O/A REPORT USE**	**FILE DOCUMENTATION**	**RETENTION**
	TSP	**P&P**			
INCOME REPORTS **Note: A current, signed form HUD-9887 must be on file to view and/or use the income reports.** **A current, signed form HUD-9887-A must be on file to obtain written third party verification of income.**					
Income Report Provides employment and income reported by HHS and SSA for each household member that passes the SSA identity test. Identifies tenants who: • May not have reported complete and accurate income information • May be receiving multiple subsidies **See Paragraph 9-12.B**		X	Mandatory use at Recertification - Annual and Interim May be used at other times as indicated in O/A's policies and procedures. • Serves as third party verification of employment and income. New Admissions: • Review new admissions within 90 days after the move-in information is transmitted to TRACS to confirm/validate the income reported by the household. Resolve discrepancies in reported income with the family within 30 days of the EIV Income Report date.	No Dispute of EIV Information: • EIV Income Report • Current, acceptable tenant provided documents • Third party verification from the source, if necessary Disputed EIV Information: • EIV Income Report • Third party verification from the source for the disputed information Tenant-reported income not verified through the EIV system: • EIV Income Report • Current, acceptable tenant-provided documents, and/or • Third party verification from the source Any correspondence with/from tenant relating to disputes of the employment or income reported in EIV. Form HUD-50059(s)	**Tenant File** Retain copy of Income Report and supporting documentation with applicable form HUD-50059 for term of tenancy plus 3 years. **Note:** The O/A must make copies of any tenant provided documents and return the originals to the tenant.

***TSP = Tenant Selection Plan P&P = Policies and Procedures**

USE OF EIV REPORTS					
REPORT	***UPDATE**		**O/A REPORT USE**	**FILE DOCUMENTATION**	**RETENTION**
	TSP	**P&P**			
INCOME REPORTS Cont'd. **Note: A current, signed form HUD-9887 must be on file to view and/or use the income reports.** **A current, signed form HUD-9887-A must be on file to obtain written third party verification of income.**					
Income Discrepancy Report Identifies households where there is a difference of $2,400 or more in the wage, unemployment and SSA benefit information reported in EIV and wage, unemployment and SSA benefit information reported in TRACS for the period of income used for discrepancy analysis. The report serves as a tool to alert O/As that there may be a discrepancy in the income reported by the tenant during the period of income used for the discrepancy analysis. **See Paragraph 9-12.C**		X	Mandatory use at Recertification - Annual and Interim Report may be used at other times as indicated in O/A's policies and procedures. **Must print the report at the same time the Income Report is printed.** Discrepancies must be reviewed and resolved at the time of recertification or within 30 days of the EIV Income Report date. Review data in TRACS to make sure it agrees with the form HUD-50059 data. Correct any discrepant data in the TRACS database.	All correspondence to/from the tenant regarding the income discrepancy. Documentation received to resolve the discrepancy, including written third party verification of income, if applicable. The file must be documented regardless of whether the O/A determines the discrepancy to be valid or invalid. Corrected form HUD-50059(s), if applicable. Repayment Agreement, if applicable.	**Tenant file** Retain copy of Income Discrepancy Report and any documentation related to the resolution of the discrepancy, including any repayment agreements for term of tenancy plus 3 years.

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USE OF EIV REPORTS					
REPORT	***UPDATE**		**O/A REPORT USE**	**FILE DOCUMENTATION**	**RETENTION**
	TSP	**P&P**			
INCOME REPORTS Cont'd. **Note: A current, signed form HUD-9887 must be on file to view and/or use the income reports.** **A current, signed form HUD-9887-A must be on file to obtain written third party verification of income.**					
No Income Reported on 50059		X	As identified in O/As policies and procedures.	Correspondence/documents received for re-verification of zero income tenants	**Tenant File** Any correspondence/documents received when re-verifying zero income tenants.
No Income Reported by HHS or SSA Identifies tenants who passed the SSA identity test but no income was reported by HHS or SSA. This does not mean that the tenant does not have any income. O/A must obtain written third party verification of any income reported by the tenant. Recommend "zero" income tenants be required to disclose and O/A re-verify income at least quarterly. These are tenants who report no income at all. **See Paragraph 9-12.D.1.a**		X	As identified in O/A's policies and procedures. Interview tenants, asking the right questions to provide the tenant the opportunity to disclose any income.	Third party verification from income sources of other income reported by tenant, if applicable. Correspondence/documents received for re-verification of zero income tenants. .	**Tenant file** Any documentation or third party verifications for other income reported by the tenant for term of tenancy plus 3 years.

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USE OF EIV REPORTS					
REPORT	***UPDATE**		**O/A REPORT USE**	**FILE DOCUMENTATION**	**RETENTION**
	TSP	**P&P**			
INCOME REPORTS Cont'd. **Note: A current, signed form HUD-9887 must be on file to view and/or use the income reports.** **A current, signed form HUD-9887-A must be on file to obtain written third party verification of income.**					
New Hires Report Identifies tenants who have new employment within the last 6 months. Report is updated monthly. **See Paragraph 9-12.D.1.b**		X	At least quarterly Contact tenant regarding new employment Confirm new employment with tenant. Request tenant provided documents to support current income and/or third party verification from employer, as applicable. Process Interim Recertification to include new income, if applicable.	New Hires Report with notation of action(s) taken. No Dispute of EIV Information: • EIV Income Report • Current, acceptable tenant provided documents • Third party verification from the source, if necessary. Disputed EIV Information: • EIV Income Report • Third party verification from the source for disputed information Any correspondence with/from tenant relating to new employment and/or disputes of the employment or income reported in EIV. Form HUD-50059(s) .	**Master file** Retain New Hires Summary Report in a master "New Hires Report" file for 3 years. **Tenant file** Retain New Hires Detail Report for the tenant along with any correspondence with tenant, third party verifications, form HUD-50059(s), etc., .for term of tenancy plus 3 years.

***TSP = Tenant Selection Plan P&P = Policies and Procedures**

USE OF EIV REPORTS					
REPORT	***UPDATE**		**O/A REPORT USE**	**FILE DOCUMENTATION**	**RETENTION**
	TSP	**P&P**			
VERIFICATION REPORTS **Note: A form HUD-9887 is not required to view and/or use verification reports.**					
Existing Tenant Search Identifies applicants who may be receiving assistance at another Multifamily or PIH location. **See Paragraph 9-13.A**	X		At the time of processing an applicant for admission Search each applicant and applicant household member to see if receiving assistance at another location. Discuss with tenant regarding circumstances relative to being assisted at another Multifamily or PIH property. Follow up with respective PHA or O/A to confirm the individual's program participation status before admission. Coordinate move-in/out dates with PHA or O/A.	Search results for each member of the household. Results of any contact with applicant must be recorded on and/or with the search results for affected household member. Results of any contact with PHA, owner, management agent where applicant is reported as receiving assistance must be recorded on and/or with the search results for affected household member.	**Application file** If not admitted – retain search results and any supporting documentation with the application for 3 years. **Tenant file** If admitted – retain search results and any supporting documentation with the application for term of tenancy plus 3 years.

***TSP = Tenant Selection Plan P&P = Policies and Procedures**

USE OF EIV REPORTS					
REPORT	***UPDATE**		**O/A REPORT USE**	**FILE DOCUMENTATION**	**RETENTION**
	TSP	**P&P**			
VERIFICATION REPORTS Cont'd. **Note: A form HUD-9887 is not required to view and/or use verification reports.**					
Multiple Subsidy Report Identifies tenants who may be receiving rental assistance at more than one location. **See Paragraph 9-13.B**		X	At least quarterly Must search both queries: • Search within MF • Search within PIH Provide tenant opportunity to explain any circumstances relative to his/her being assisted at another location. Follow up with respective PHA or O/A, if necessary, to confirm tenant is being assisted at the other location. Depending on the results, may need to take action to terminate the assistance or tenancy and repay subsidy to HUD.	Search results Documentation supporting any contacts made or information obtained to determine if household and/or household member is receiving multiple subsidies. Documentation to support any action taken if household and/or household member is receiving multiple subsidies. **Note:** If a tenant's multiple subsidies were discussed and resolved at the time of recertification, this must be noted on the printed report and no further action is required.	**Master file** Retain Multiple Subsidy Summary Report and supporting documentation in a master "Multiple Subsidy Report" file for 3 years. **Tenant file** Retain a copy of the Multiple Subsidy Detail Report for the tenant along with any documentation of action taken for a household member for term of tenancy plus 3 years.

***TSP = Tenant Selection Plan P&P = Policies and Procedures**

USE OF EIV REPORTS					
REPORT	***UPDATE**		**O/A REPORT USE**	**FILE DOCUMENTATION**	**RETENTION**
	TSP	**P&P**			
VERIFICATION REPORTS Cont'd. **Note: A form HUD-9887 is not required to view and/or use verification reports.**					
Failed EIV Pre-screening Report Identifies tenants who have missing or invalid personal identifiers (last name, date of birth, SSN) in TRACS. These tenants will not be sent to SSA from EIV for the SSA identity test. Identifies tenants who need to disclose a SSN, e.g., replace TRACS generated ID number. **See Paragraph 9-13.C.1**		X	Monthly Follow up with tenants identified on the report where discrepant personal identifiers were not corrected at the time of recertification. Check accuracy of data entry, e.g., numbers not transposed in SSN. Contact tenant and confirm to verify discrepant personal identifiers Correct TRACS data within 30 days of the date of the report.	Failed EIV Pre-screening Report documented with action taken to resolve invalid or discrepant personal identifiers. **Note:** This report will include those persons who are exempt from the SSN disclosure and verification requirements. In these instances the O/A will note on the copy of the report retained in the "Failed EIV Pre-Screening Report" master file that tenant(s) is exempt from SSN requirements. **Note:** If a tenant's information was corrected at the time of recertification but the EIV data has not yet been updated, this must be noted on the printed report and no further action is required.	**Master file** Retain copy of report in a master "Failed EIV Pre-screening Report" file for 3 years. **Tenant file** Documentation to verify discrepant personal identifiers for term of tenancy plus 3 years.
Failed Verification Report (Failed SSA Identity Test) Identifies tenants whose personal identifiers (last name, date of birth, SSN) do not match the SSA database. **See Paragraph 9-13.C.2**		X	Monthly Follow up with tenants identified on the report where discrepant personal identifiers were not corrected at the time of recertification. Check accuracy of data entry, e.g., numbers not transposed in SSN. Contact tenant and confirm to verify discrepant personal identifiers. Correct TRACS data within 30 days of the date of the report.	Failed Verification Report (Failed SSA Identity Test) report documented with action taken to resolve invalid or discrepant personal identifiers **Note:** If a tenant's information was corrected at the time of recertification but the EIV data has not yet been updated, this must be noted on the printed report and no further action is required.	**Master file** Retain copy of report in a mater "Failed EIV SSA Identity Test" file for 3 years. **Tenant file** Documentation to verify discrepant personal identifiers for term of tenancy plus 3 years. .

***TSP = Tenant Selection Plan P&P = Policies and Procedures**

USE OF EIV REPORTS					
REPORT	***UPDATE**		**O/A REPORT USE**	**FILE DOCUMENTATION**	**RETENTION**
	TSP	**P&P**			
VERIFICATION REPORTS Cont'd. **Note: A form HUD-9887 is not required to view and/or use verification reports.**					
Deceased Tenants Report Identifies tenants reported by SSA as being deceased. **See Paragraph 9-13.D**		X	At least quarterly Confirm, in writing, with head of household, next of kin or contact person or entity provided by the tenant to determine whether or not the person is deceased. If deceased, within 30 days from date of report: • Update family composition, and, if applicable, income and allowance, on the form HUD-50059. See Paragraph 7-13D of Handbook 4350.3 REV-1 for effective date. • Single member of a household, process move-out using form HUD-50059-A. Effective date retroactive to earlier of 14 days after date of death or date unit vacated. **Note:** Overpayment of subsidy must be returned to HUD. Any discrepant data in TRACS must be updated within 30 days from the date of the report. Encourage tenant to contact SSA if SSA's data is incorrect.	Deceased Tenants Report Documentation obtained to resolve discrepancy. Form HUD-50059 with change of family composition. Form HUD-50059-A for move-out. **Note:** If action was taken to remove the deceased tenant from the household or to terminate tenancy of a deceased single member of a household at the time of recertification but the EIV data has not yet been updated, this must be noted on the printed report and no further action is required.	**Master file** Retain copy of report in a master "Deceased Tenants Report" file for 3 years. **Tenant file** Form HUD-50059 and/or form HUD-50059-A plus any other documentation received for a particular tenant must be retained for term of tenancy plus 3 years.

***TSP = Tenant Selection Plan P&P = Policies and Procedures**

Exhibit 9-6: National Directory of New Hires (NDNH) Data Elements

The following data elements are requested by HUD from the NDNH database. The following provides information on those data elements that are optional for employers to provide to the various states. All of these data elements may not be elements normally displayed in EIV. For those data elements that are displayed in EIV, information may not be made available because the employer is not required to report the data to the state, therefore, no information is available in the NDNH database.

Quarterly Wage File

- Employee SSN
- Employee Name
- Employer Name
- Employer Address
- Quarterly employee wage amount
- Date quarterly wage record processed by NDNH
- Federal Employee Identification Number (EIN) (optional for an employer to report)
- State EIN (optional for an employer to report)
- Department of Defense indicator, if any

New Hire File

- Employee SSN
- Employee Last Name
- Employee First Name
- Employee Address (optional for an employer to report)
- Employer Name
- Employer Address
- Employee Date of Hire (optional for an employer to report)
- Employee State of Hire (optional for an employer to report)
- Employer Federal EIN (optional for an employer to report)
- Employer State EIN (optional for an employer to report)
- Employer's Second Address, if any (optional for an employer to report)
- Department of Defense indicator, if any
- Date New Hire Record processed by NDNH

Unemployment Insurance File

- Claimant SSN
- Claimant Last Name
- Claimant First Name
- Claimant's Address (optional for an employer to report)
- Benefit Amount
- Unemployment reporting period

Exhibit 9-7: How EIV Calculates Income Discrepancies

The Income Discrepancy Report compares the tenant's projected **next year's** income as reported in TRACS to the actual income data compiled by EIV. **The O/A is not expected to reconcile dollar amounts to the penny when resolving discrepancies.**

1. Identifying the Period of Income (POI) for Discrepancy Analysis

The period of income provides the timeline reference governing the collection of the data used to determine whether or not a discrepancy exists between projected household income (as reported in TRACS) and actual income (EIV income data that was available at the time the projection was made). This period of income is determined in order to gather the actual income data needed to make a comparison to the projected income and determine whether a discrepancy exists.

The period of income uses the following timeline of events to assist in determining the specific time span that is taken into consideration when collecting and calculating income data.

- **Effective Date of Action** This value represents the effective date appearing on the form HUD-50059 reported in TRACS for the identified tenant. It is used to calculate the Period of Income Start and End Date values selected for the Period of Income for Discrepancy Analysis.
- **Period of Income Start Date** This date represents the starting point for the income period. It is calculated by EIV based on the effective date associated with the form HUD-50059 reported in TRACS for the tenant. It is assumed that the Period of Income Start date is 15 months prior to the effective date on the form HUD-50059 reported in TRACS.
- **Period of Income End Date** This date represents the end of the period of income and is assumed to be 3 months prior to the effective date on the form HUD-50059 reported in TRACS. (This is the approximate time frame for the tenant interview.) The Period of Income End Date is 12 months from the Period of Income Start Date.

2. Identifying Projected Income

Projected income information is used as the baseline for discrepancy calculations. It is derived from the form HUD-50059 records stored in the TRACS database. The income projected information is used to determine whether or not a given household should have an Income Discrepancy Report. The determination is made using the following evaluation criteria.

- Selected form HUD-50059 records will come directly from the current TRACS database. There is no need to access the TRACS database to obtain projected household income information.
- EIV will review the current TRACS database to locate the most current form HUD-50059 record for a household that falls in the timeline of 3 to 15 months.
- Prior to the Effective Date of Action. The most recent record falling within that timeline is used as the source for projected income information.
- Form HUD-50059 records in TRACS with an effective date that falls within the specified 3 to 15 months timeline, and includes an action type of MI, AR, IR or IC, is included in the Income Discrepancy Report calculations.

Action Types – Included in the Income Discrepancy Report Calculations	**Definition**
MI	Move In
AR	Annual Recertification
IR	Interim Recertification
IC	Initial Certification

- Data from households that lack SSA verification or that fails the SSA verification will not be included in the calculations.
- If a form HUD-50059 record in TRACS does not meet the qualification criteria, the household is excluded from the Income Discrepancy Report.

3. Identifying the Actual Income Reported during the Period of Income

Actual income information is used to evaluate the accuracy of an income projection. It is compared to the projected income value stored on the form HUD-50059 in TRACS associated with the household. These values are:

Income Code	**Type of Income**
B	Business
F	Federal Wage
M	Military Pay
W	Nonfederal Wage
U	Unemployment
SS	Social Security
SI	Supplemental Security Income

Note: Other income the household receives, e.g., welfare benefits, most pensions, child support, etc., may be reported in annual income in TRACS but it is not used for the discrepancy analysis in EIV.

EIV income information is not considered to be conclusive proof if a tenant challenges that it is not current or complete. One factor is time lag in the collection of SSA and NDNH data. In such cases, the employment information, including the new hires information will help the O/A research the tenant's income.

4. Prorating Actual Income

When the period of income includes a Period of Income Start Date that coincides with income reporting quarters, the income is simply added for those quarters. In those cases where an income record overlaps the start or end of the period of consideration, the income is prorated, based on the following calculation.

- First Quarter income = (quarter income value / period of time) x length of time in period. For example, if the income is within the period of consideration for 2 or 3 months, the calculation would be (quarter income value / 3 months) x 2 months.
- Sum the quarter income that occurs within the period of consideration. This should be 3 quarters of data.
- Add the final quarter of income data. Quarter income = (quarter income value / period of time) x (length of time considered).

5. Calculating Income Discrepancies

Once projected and actual income data have been captured, the discrepancy evaluation process begins. EIV conducts two separate evaluations during the Income Discrepancy Report generation process. The outcome determines whether or not the results should be included in the Income Discrepancy Report.

Income discrepancies are calculated in the following manner:

Discrepancy 1 Entire period of consideration versus income projected is calculated as follows:

(Projected Annual Wages and Benefits from form HUD-50059 data in TRACS) (Reported Annual Wages and Benefits as derived from EIV data.)

Discrepancy 2 Last quarter of period of consideration annualized against projection is calculated as follows:

- ❖ Actual EIV Income = final quarter income data (prorated as first and final quarter income in calculating total income for period of income against projection) x 4 quarters.
- ❖ Projected Annual Wages and Benefits from form HUD-50059 data in TRACS Actual EIV Income

6. Discrepancy Analysis

Once the income discrepancy calculations are completed, EIV analyzes the results to determine whether an Income Discrepancy Report should be generated. The analysis compares the results to a pre-defined EIV system value Discrepancy Cutoff.

The Discrepancy Cutoff variable establishes the monetary value that the calculated discrepancy must exceed in order for the household to be included on the Income Discrepancy Report. By default, this value is set to $2,400. This means that the discrepancy between the actual annual income value and the projected income must be at least $2,400 or greater in order for a discrepancy report to be generated. (The $2,400 is based on the requirement that tenants must report to the O/A when the family's income cumulatively increases by $200 or more per month see Paragraph 7-10.A and the HUD Model Leases in Appendix 4 of Handbook 4350.3 REV-1.)

For example, if the projected income for a household was $10,000 but the actual income was $14,000, the difference of $4,000 is greater than the established cutoff value of $2,400, qualifying it to appear on the report. Conversely, if the projected income for a household was $10,000 but the actual income was $12,000, the difference of $2,000 is less than that of the established cutoff value of $2,400, disqualifying it from appearing on the report.

The Discrepancy Analysis section of the Income Discrepancy Report provides results of the income analysis process. It provides actual and annualized last quarter data. There is a column for each type of data Actual and Annualized Last Quarter Data.

- **Reported Annual Wages and Benefits from EIV Data** This field identifies the actual income reported to EIV for the designated period of Income for Discrepancy Analysis.
- **Amount of Annual Income Discrepancy** This field identifies the value of the discrepancy in the annual income that caused the household to be included in the report data. Negative currency values are represented in parentheses. For example, -$800 is represented as ($800). When this value caused the household to be included on the report, it appears in a bold typeface.
- **Amount of Monthly Income Discrepancy** This field identifies the value of the discrepancy in the monthly income that caused the household to be included in the report data. Negative currency values are represented in parentheses. For example, -$800 is represented as ($800). When this value causes the household to be included on the report, it appears in a bold typeface.
- **Percentage of Income Discrepancy** This field identifies the percentage by which the threshold cutoff value has been exceeded for this household.

Negative percentage values are represented in parentheses. For example, -75% is represented as (75%).

7. Report Generation

The Income Discrepancy Report data gathering and calculations are computed automatically on a weekly basis. The data is collected, analyzed, and stored in the EIV database according to the previously specified criteria. The obsolete data set is overwritten with the current data. Users relying on data from a particular Income Discrepancy Report are advised to print that report before it is overwritten.

Glossary

Accessible (FH Act)

When used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical impairments (handicaps).[1] The phrase *readily accessible to*, and *usable by*, is synonymous with accessible. A public or common use area that complies with the appropriate requirements of *ICC/ANSI A117.1-2003, ICC/ANSI A117.1-1998, CABO/ANSI A117.1-1992,* ANSI A117.1-1986 or a comparable standard is accessible within the meaning of this paragraph. *[24 CFR 100.201]*

Accessible (Section 504)

When used with respect to the design, construction, or alteration of a *facility or a portion of a facility other than an individual dwelling unit*, means that the facility or portion of the facility, when designed, constructed, or altered, can be approached, entered, and used by individuals with a physical impairment (handicaps).[1] The phrase *accessible to*, and *usable by*, is synonymous with accessible. *[24 CFR 8.3]*

Accessible, when used with respect to the design, construction, or alteration of an *individual dwelling unit*, means that the unit is located on an accessible route and when designed, constructed, altered or adapted can be approached, entered, and used by individuals with a physical impairment (handicaps).[1] A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in 24 CFR 8.32 is accessible within the meaning of this paragraph. When a unit in an existing facility which is being made accessible as a result of alterations is intended for use by a specific qualified person with a disability (handicaps)[1] (e.g., a current occupant of such unit or of another unit under the control of the same recipient, or an applicant on a waiting list), the unit will be deemed accessible if it meets the requirements of applicable standards that address the particular disability or impairment of such person. *[24 CFR 8.3]*

Accessible Route (FH Act)

A continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators, and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps, and lifts. A route that complies with the appropriate requirements of *ICC/ANSI A117.1-2003, ICC/ANSI A117.1-1998, CABO/ANSI A117.1-1992,* ANSI A117.1-1986 or a comparable standard is an accessible route. *[24 CFR 100.201]*

Accessible Route (Section 504)

A continuous unobstructed path connecting accessible elements and spaces in a building or facility that complies with the space and reach requirements of applicable standards prescribed by 24 CFR 8.32. An accessible route that serves only accessible units occupied by persons with hearing or vision impairments need not comply with those requirements intended to effect accessibility for persons with mobility impairments. *[24 CFR 8.3]*

Adaptability (Section 504)

The ability of certain elements of a dwelling unit, such as kitchen counters, sinks, and grab bars, to be added to, raised, lowered, or otherwise altered, to accommodate the needs of persons with or without disabilities (handicaps),[1] or different types or degrees of disability. For example, in a unit adaptable for a hearing-impaired person, the wiring for visible emergency alarms may be installed, but the alarms need not be installed until such time as the unit is made ready for occupancy by a hearing-impaired person. *[24 CFR 8.3]*

Adjusted Income

Annual income (as determined by the owner) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions.

In determining adjusted income, the owner must deduct the following amounts from annual income:

1. $480 for each dependent;
2. $400 for any elderly family or disabled family;
3. The sum of the following, to the extent the sum exceeds 3% of annual income:
    a. Unreimbursed reasonable medical expenses of any elderly family or disabled family; and

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

4. Any reasonable child care expenses necessary to enable the family member to be employed or to further his or her education. *[24 CFR 5.611]*

Adult

An individual who is 18 years of age or older or a minor under the age of 18 who has been emancipated to act on his/her own behalf, including the ability to execute a contract or lease.

Alteration (Section 504)

Any change in a facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts, and extraordinary repairs. It does not include normal maintenance or repairs, reroofing, interior decoration, or changes to mechanical systems. *[24 CFR 8.3]*

Annual Income

All amounts, monetary or not, which:

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

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

3. Which are not specifically excluded [by regulation].

Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access. *[24 CFR 5.609]*

Applicant

A person or a family that has applied for housing assistance. *[24 CFR 5.403]*

Application

A written request for occupancy in a subsidized housing unit that includes the information required to determine eligibility for assistance and suitability for tenancy. Owners generally develop a standardized form that is completed by the prospective applicant. The application must be signed and dated by the applicant and include the applicant's certification that the information provided is complete and accurate.

***As-Paid Locality** A state, county or city whose public assistance program specifies an amount for shelter and utilities the family will receive, and adjusts the amount based upon the family's actual payment for shelter and utilities.*

Assets For more information on what is considered an asset and what is not an asset, see Exhibit 5-2.

Assistance Payment The amount HUD pays the owner for a unit occupied by a Section 8, RAP, Rent Supplement, or PAC tenant. It includes HUD's share of the contract rent and any utility reimbursement due the tenant. It is the gross rent for the unit minus the Total Tenant Payment (TTP). The assistance payment for an occupied PRAC unit is the operating rent minus the TTP.

Assisted Rent Any rent less than the market rent. Includes Section 236 rents that are greater than the basic rent.

Assisted Tenant A tenant who pays less than the market rate. Includes tenants:

1. Receiving Rent Supplement, RAP, PAC, or Section 8 assistance;
2. Living in a Section 202 PRAC or Section 811 PRAC development paying equal to or less than the operating rent;
3. Living in a Section 202 PRAC or Section 811 PRAC development paying more than the operating rent, which generates excess income;
4. Paying the BMIR contract rent;
5. Paying the Section 236 basic rent; or
6. Paying above basic rent, which generates excess income, but less than market rent, in a Section 236 project.

Assistance Animals Assistance animals are *animals that are used to assist, support, or provide service to persons with disabilities. Assistance animals often referred to as service animals , assistive animals , support animals , or therapy animals perform many disability-related functions including but not limited to guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing minimal protection, or rescue assistance , pulling a wheelchair, fetching items, alerting persons to impeding seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support.*

Auxiliary Aids (Section 504)

Services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities receiving Federal financial assistance. For example, auxiliary aids for persons with impaired vision may include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids for persons with impaired hearing may include telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TTYs), interpreters, note takers, written materials, and other similar services and devices. *[24 CFR 8.3]*

Basic Rent

The minimum rent all tenants in a Section 236 project must pay. It is HUD approved and represents the amount of rent the owner needs to receive in order to operate the property with the mortgage interest rate reduced to as low as 1%.

***Bifurcate**

With respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.*

Briefing

A meeting between the owner and the tenant prior to signing the lease during which the owner discusses various topics related to living in the unit. Topics include, but are not limited to, tenant rights, house rules, and lease terms.

Chronically Mentally Ill

Use this definition for the Section 202 and Section 811 programs only.

An adult who has a chronic mental illness, i.e., if he or she has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently (e.g., by limiting functional capacities relative to primary aspects of daily living such as personal relations, living arrangements, work, recreation, etc.), and whose impairment could be improved by more suitable housing conditions. See 24 CFR 891.305 and 891.505

Citizen

A citizen or national of the United States*. [24 CFR 5.504]* (See definition of National.)

Co-Head of Household

An adult member of the family who is treated the same as a head of the household for purposes of determining income, eligibility, and rent. (See paragraph 5.6 for explanation of *emancipated minor*.)

Common Household Pet

A domesticated animal, such as a dog, cat, bird, rodent (including a rabbit), fish, or turtle, that is traditionally kept in the home for pleasure rather than for commercial purposes. Common household pets do not include reptiles (except turtles). If this definition conflicts with any applicable State or local law or regulation defining the pets that may be owned or kept in dwelling accommodations, the State or local law or regulations shall apply. This definition does not include animals that are used to assist persons with disabilities. *[24 CFR 5.306]*

Contract Rent

The rent HUD or the Contract Administrator has approved for each unit type covered under an assistance contract. The rent may be paid by the tenant, HUD, or both. Refer to the project's rental schedule (form HUD-92458) or Rental Assistance contract for exact amounts.

Covered Person

A tenant, any member of the tenant's household, a guest, or another person under the tenant's control. *[24 CFR 5.100]*

Currently Engaging In

With respect to behavior such as illegal use of a drug, other drug-related criminal activity, or other criminal activity, *currently engaging in* means that the individual has engaged in the behavior recently enough to justify a reasonable belief that the individual's behavior is current. *[24 CFR 5.853]*

***Dating Violence**

Violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship.*

Deductions

In determining adjusted income, the owner must deduct the following from annual income:

1. $480 for each dependent;
2. $400 for any elderly family or disabled family;
3. The sum of the following to the extent the sum exceeds 3% of annual income:
    a. Unreimbursed medical expenses of any elderly or disabled family; and

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

4. Any reasonable child care expense necessary to enable the family member to be employed or to further his or her education. *[24 CFR 5.611]*

Denial of Tenancy or Assistance

The process of rejecting an applicant's request for either occupancy or assistance because the household does not meet eligibility criteria for the program or the owner's criteria for suitability for tenancy.

Dependent

A member of the family other than the head, spouse, or co-head, who is under 18 years of age or is a person with disabilities or a full-time student. For the purposes of this Handbook, a foster child, a foster adult, or a live-in aide may never be a dependent regardless of age or disability.

Dependent Child

Dependent child in the context of the student eligibility restrictions, means a dependent child of an enrolled student who meets the criteria of 24 CFR 5.612. In this context, dependent child is defined in HUD's income eligibility regulations at 24 CFR 5.603 is a member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or a person with a disability, or is a full-time student.

Developmentally Disabled

Meets the conditions of paragraph 2 under the definition for Person with a Disability. *[24 CFR 891.505]*

NOTE: The referenced definition also appears as Definition H in Figure 3-6 in this handbook.

Disability (Handicap)[1] (Section 504) [as defined for Civil Rights Protections]

Any condition or characteristic that renders an individual *a person with disabilities* (handicaps).[1] *[24 CFR 8.3]*

Disabled Family

[Also appears as Definition D Disabled Family in Figure 3-6.]

A family whose head, spouse, or sole member is a person with disabilities (as defined by 24 CFR 5.403). It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides. *[24 CFR 5.403]* (See definition of Person with Disabilities as defined for program eligibility purposes.)

Disabled (Handicapped)[1] Family [Also appears as G Disabled (Handicapped) Family in Figure 3-6.]

1. Families of two or more persons the head of which (or his or her spouse) is a person with disabilities (handicapped)[1];

2. The surviving member or members of any family described in paragraph (1) of this definition living in a unit assisted under 24 CFR 891, subpart E (Section 202 loans) with the deceased member of the family at the time of his or her death;

3. A single person with disabilities (handicapped person)[1] over the age of 18; or

4. Two or more persons with disabilities (handicapped person)[1] living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well-being**.** *[24 CFR 891.505]*

Disabled Household [Also appears as F Disabled Household in Figure 3-6.]

Disabled household *is* a household composed of:

1. One or more persons at least one of whom is an adult (18 years or older) who has a disability;

2. Two or more persons with disabilities living together, or one or more such persons living with another person who is determined by HUD, based upon a certification from an appropriate professional (e.g., a rehabilitation counselor, social worker, or licensed physician) to be important to their care or wellbeing; or

3. The surviving member or members of any household described in paragraph (1) of this definition who were living in a unit assisted under this part with the deceased member of the household at the time of his or her death*. [24 CFR 891.305]*

Displaced Family A family in which each member, or whose sole member, is a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to federal disaster relief laws. *[24 CFR 5.403]*

Displaced Person A person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws. *[24 CFR 5.403]*

***Domestic Violence** Includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.*

Drug A controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802). *[24 CFR 5.100]*

Drug-related Criminal Activity The illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute, or use the drug. *[24 CFR 5.100]*

Elderly Family [Also appears as Definition B Elderly Family in Figure 3-6.]

1. Families of two or more persons, the head of which (or his or her spouse) is 62 years of age or older;

2. The surviving member or members of a family described in paragraph (1) living in a unit assisted under 24 CFR part 891, subpart E (Section 202 loans) with the deceased member of the family at the time of his or her death;

3. A single person who is 62 years of age or older; or

4. Two or more elderly persons living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well being. *[24 CFR 891.505]*

Elderly Family [Also appears as Definition A Family & Elderly Family in Figure 3-6.]

A family (as defined in 24 CFR 5.403) whose head, spouse, or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more live-in aides. *[24 CFR 5.403]*

Elderly Person [Also appears as Definition C Elderly Person in Figure 3-6.]

An elderly person is a household composed of one or more persons, at least one of whom is 62 years of age or more at the time of initial occupancy. *[24 CFR 891.205]*

Elderly Person A person at least 62 years of age. *[24 CFR 5.100]*

Eligible Noncitizen A person who has eligible immigration status in one of the following categories:

1. A noncitizen lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and U.S.C. 1101(a)(15), respectively) [immigrants]. (This category includes a noncitizen admitted under section 210 or 210A of the INA (8 U.S.C. 1160 or 1161) [special agricultural worker], who has been granted lawful temporary resident status);

2. A noncitizen who entered the United States before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

3. A noncitizen who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) [refugee status]; pursuant to the granting of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) [asylum status]; or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

4. A noncitizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) [parole status];

5. A noncitizen who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) [threat to life or freedom];

6. A noncitizen lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) [amnesty granted under INA 245A]; or

7. A noncitizen who is a lawful resident in the United States and its territories and possessions under section 141 of the Compacts of Free Association between the government of the United States and the Governments of the Marshall Islands, the Federated States of Micronesia and Palau (collectively referred to as the Freely Associated States (FAS)) [Section 3(b) of Public Law 106-504].

A nonimmigrant student, while lawfully admitted to the United States, is not eligible.

***Enterprise Income Verification (EIV)**

HUD's computer system that must be used by owners as third party verification of employment and income during mandatory recertifications of family composition and income and to reduce administrative and subsidy payment errors.*

Eviction

The dispossession of the tenant from the leased unit as a result of the termination of tenancy, including a termination prior to the end of a lease term. *[24 CFR 247.2]*

Evidence of Citizenship or Eligible Status

The documents that must be submitted to evidence citizenship or eligible immigration status. *[24 CFR 5.504]* See paragraph 3-12 of this handbook for further information.

Expected to Reside

In applying lead-safe housing requirements, actual knowledge that a child will reside in a dwelling unit reserved for the elderly or designated exclusively for persons with disabilities. If a female resident is known to be pregnant, there is actual knowledge that a child will reside in the dwelling unit. *[24 CFR 35.110]*

Extremely Low-Income Family

A family whose annual income does not exceed 30% of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30% of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes. *[24 CFR 5.603]*

Fair Housing Act

Title VIII of the Civil Rights Act, 42 U.S.C. 3601. The Fair Housing Act is a broad statute that prohibits discrimination based upon race, color, religion, sex, national origin, disability, or familial status in most housing and housing-related transactions.

Familial Status (FH Act)

One or more individuals (who have not attained the age of 18 years) being domiciled with:

1. A parent or another person having legal custody of such individual or individuals (regardless of age or number of children); or

2. The designee of such parent or other person having such custody, with the written permission of such parent or another person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. [24 CFR 100.20]

Family

[Also appears as Definition A Family & Elderly Family of Figure 3-6.]

A family includes but is not limited to:

1. A family with or without children (the temporary absence of a child from the home due to placement in foster care shall not be considered in determining family composition and family size);

2. An elderly family;

3. A near-elderly family;

4. A disabled family;

5. A displaced family;

6. The remaining member of a tenant family; and

7. A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family. *[24 CFR 5.403]*

Family Composition

The specific individuals who are included in the assisted family. Information on family composition includes names, ages, sexes, and citizenship status of all members and their relationship to one another.

Federal Financial Assistance (Section 504)

Any assistance provided or otherwise made available by the Department through any grant, loan, contract, or any other arrangement, in the form of:

1. Funds;

2. Services of Federal personnel; or

3. Real or personal property or any interest in or use of such property, including:

   a. Transfers or leases of the property for less than fair market value or for reduced consideration; and

   b. Proceeds from a subsequent transfer or lease of the property if the Federal share of its fair market value is not returned to the Federal Government.

Federal financial assistance includes community development funds in the form of proceeds from loans guaranteed under Section 108 of the Housing and Community Development Act of 1974, as amended, but does not include assistance made available through direct federal procurement contracts or payments made under these contracts or any other contract of insurance or guaranty. *[24 CFR 8.3]*

Federally Assisted Housing

Includes housing assisted under any of the following programs:

1. Public housing;

2. Housing receiving project-based or tenant-based assistance under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f);

3. Housing that is assisted under section 202 of the Housing Act of 1959, as amended by section 801 of the National Affordable Housing Act (12 U.S.C. 1701q);

4. Housing that is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the National Affordable Housing Act;

5. Housing that is assisted under section 811 of the National Affordable Housing Act (42 U.S.C. 8013);

6. Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act of (12 U.S.C. 1715/(d)(3)) that bears interest at a rate determined under the proviso of section 221(d)(5) of such Act (12 U.S.C. 1715/(d)(5));

7. Housing insured, assisted, or held by HUD or by a State or local agency under section 236 of the National Housing Act (12 U.S.C. 1715z-1); or

8. Housing assisted by the Rural Housing Service under section 514 or section 515 of the Housing Act of 1949 (42 U.S.C. 1483, 1484). *[24 CFR 5.100]*

Foster Adult A foster adult is usually an adult with a disability who is unrelated to the tenant family and who is unable to live alone.

Foster Children Children that are in the legal guardianship or custody of a State, county, or private adoption or foster care agency, yet are 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. These children will generally remain in foster care until they are reunited with their parents, or until their parents voluntarily consent to their adoption by another family, or until the court involuntarily terminates or severs the parental right of their biological parents, so that they can become available to be adopted by another family. Therefore, the parental rights of the parents of these children may or may not have been terminated or severed, and the children may or may not be legally available for adoption.

Fraud Deceit or trickery deliberately practiced to gain some advantage dishonestly. Fraud is an intentional deception and cannot be committed accidentally.

NOTE: This is not necessarily the legal definition in particular cases.

Full-Time Student A person who is attending school or vocational training on a full-time basis. *[24 CFR 5.603]*

Gross Rent The gross rent for a unit equals the contract rent plus the utility allowance, if the property has a utility allowance. For Section 202 PRAC and Section 811 PRAC, the gross rent is referred to as the operating rent.

Gross Rent Change Any HUD-approved change in the contract rent or the utility allowance for a unit.

Guest A person temporarily staying in a unit with the consent of the tenant or another member of the household who has express or implied authority to consent on behalf of the tenant. *[24 CFR 5.100]* A guest is a temporary visitor of the tenant's and should not be confused with an unauthorized occupant. Additionally, a guest is not a party to the lease agreement.

Hardship Exemption An exemption from the $25 minimum rent an owner must provide for any household unable to pay the Section 8 minimum rent due to a long-term financial hardship as defined in the regulation. *[24 CFR 5.630]*

Head of Household The adult member of the family who is the head of the household for purposes of determining income eligibility and rent. (See paragraph 5.6 for explanation of emancipated minor.) *[24 CFR 5.504]*

Household The family and live-in aide, if applicable.

Housing Assistance Payment (HAP) The payment made by HUD or the Contract Administrator to the owner of an assisted unit as provided in the contract. Where the unit is leased to an eligible family, the payment is the difference between the contract rent and the tenant rent. An additional payment is made to the family when the utility allowance is greater than the total tenant payment. A housing assistance payment, known as a vacancy payment, may be made to the owner when an assisted unit is vacant, in accordance with the terms of the contract. *[24 CFR 880.201]*

***Immediate Family Member** Means, with respect to a person: (A) a spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in loco parentis: or (B) any other person living in the household of that person and related to that person by blood or marriage.*

***Improper Payment** An improper payment is any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. Incorrect amounts are overpayments and underpayments (including inappropriate denials of payment or service). An improper payment includes any payment that was made to an ineligible recipient or for an ineligible service, duplicate payments, payments for services not received, and payments that are for the incorrect amount. In addition, when an agency's review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation, this payment must also be considered an error.*

Income Limit

HUD establishes income limits that are used to determine whether housing applicants qualify for admission to HUD-subsidized properties. These income limits are based on HUD estimates for area median family income with certain statutorily permissible adjustments. Different programs use different income limits. (See paragraph 3-6 for applicability.)

Income-Targeting

A statutory requirement that at least 40% of new admissions to a Section 8 property in each fiscal year be households with incomes at or below 30% of the area median income. The law ensures that a significant portion of federal housing assistance goes to families with the greatest need. *[24 CFR 5.601, 5.603, 5.653]*

Increased Ability to Pay

An increase in the tenant's income to a point where the total tenant payment is equal to or greater than the contract rent, plus any utility allowance, for the unit. An increased ability to pay does not apply to Section 202 PRAC or Section 811 PRAC properties.

***Independent Public Auditor**

Independent public auditor is a Certified Public Accountant or a licensed or registered public accountant, having no business relationship with the private owner except for the performance of audit, systems work and tax preparation. If not certified, the Public Accountant must have been licensed or registered by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. In States that do not regulate the use of the title public accountant, only Certified Public Accountants may be used.*

Independent Student

To be classified as an independent student, the student must meet the Independent Student definition for Title IV aid. The student must meet one or more of the following criteria:

1. Be at least 24 years old by December 31 of the award year for which aid is sought;
2. Be an orphan or a ward of the court through the age of 18;
3. Be a veteran of the U.S. Armed Forces;
4. Have legal dependents other than a spouse (for example, dependent children or an elderly dependent parent);
5. Be a graduate or professional student; or
6. Be married.

Institution of Higher Education

Institution of Higher Education shall have the meaning given this term in the Higher Education Act of 1965 in 20 U.S.C. 1001 and 1002.

From 20 U.S.C. 1001:

(a) For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term institution of higher education means an educational institution in any State that:
(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;
(2) Is legally authorized within such State to provide a program of education beyond secondary education;
(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;
(4) Is a public or other nonprofit institution; and
(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

(b) Additional institutions included. For purposes of this chapter, other than subchapter IV and part C of subchapter 1 of chapter 34 of Title 42, the term institution of higher education also includes:
(1) Any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provision of paragraphs (1), (2), (4) and (5) of subsection (a) of this section; and
(2) A public or nonprofit private educational institution in any State that, in lieu of the requirement in subsection (a)(2) of this section, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

(c) List of accrediting agencies. For purposes of this section and section 1002 of this title, the Secretary shall publish a list of nationally recognized accrediting agencies or associations that the Secretary determines, pursuant to subpart 2 of part G of subchapter IV of this chapter, to be reliable authority as to the quality of the education or training offered.

From 20 U.S.C. 1002

(a) Definition of institution of higher education for purposes of student assistance programs.
(1) Inclusion of additional institutions. Subject to paragraphs (2) through (4) of this subsection, the term institution of higher education for purposes of subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 includes, in addition to the institutions covered by the definition in section 1001 of this title:

(A) A proprietary institution of higher education (as defined in subsection (b) of this section);
(B) A postsecondary vocational institution (as defined in subsection (c) of this section); and
(C) Only for the purposes of part B of subchapter IV of this chapter, an institution outside the United States that is comparable to an institution of higher education as defined in section 1001of this title and that has been approved by the Secretary for the purpose of part B of subchapter IV of this chapter.
(2) Institutions outside the United States
(A) In general. For the purpose of qualifying as an institution under paragraph (1)(C), the Secretary shall establish criteria by regulation for the approval of institutions outside the United States and for the determination that such institutions are comparable to an institution of higher education as defined in section 1001 of this title (except that a graduate medical school, or a veterinary school, located outside the United States shall not be required to meet the requirements of section 1001 (a)(4) of this title). Such criteria shall include a requirement that a student attending such school outside the United States is ineligible for loans made, insured, or guaranteed under part B of subchapter IV of this chapter unless -
(i) In the case of a graduate medical school located outside the United States -
(I)(aa) at least 60 percent of those enrolled in, and at least 60 percent of the graduates of, the graduate medical school outside the United States were not persons described in section 1091(a)(5) of this title in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; and
(bb) at least 60 percent of the individuals who were students or graduates of the graduate medical school outside the United States or Canada (both nationals of the United States and others) taking the examinations administered by the Educational Commission for Foreign Medical Graduates received a passing score in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; or
(II) the institution has a clinical training program that was approved by a State as of January 1, 1992; or
(ii) in the case of a veterinary school located outside the United States that does not meet the requirements of section 1001(a)(4) of this title, the institution's students complete their clinical training at an approved veterinary school located in the United States.
(B) Advisory panel
(i) In general For the purpose of qualifying as an institution under paragraph (1)(C) of this subsection, the Secretary shall establish an advisory panel of medical experts that shall—
(I) evaluate the standards of accreditation applied to applicant foreign medical schools; and
(II) determine the comparability of those standards to standards for accreditation applied to United States medical schools.

(ii) Special rule If the accreditation standards described in clause (i) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 1001 of this title.
(C) Failure to release information
The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may be required by subparagraph (A) shall render such institution ineligible for the purpose of part B of subchapter IV of this chapter.
(D) Special rule
If, pursuant to this paragraph, an institution loses eligibility to participate in the programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, then a student enrolled at such institution may, notwithstanding such loss of eligibility, continue to be eligible to receive a loan under part B [1] while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.
(3) Limitations based on course of study or enrollment
An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution—

(A) offers more than 50 percent of such institution's courses by correspondence, unless the institution is an institution that meets the definition in section 2471 (4)(C) of this title; [1]
(B) enrolls 50 percent or more of the institution's students in correspondence courses, unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2- or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;
(C) has a student enrollment in which more than 25 percent of the students are incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2- or 4-year program of instruction (or both) for which the institution awards a bachelor's degree, or an associate's degree or a postsecondary diploma, respectively; or
(D) has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2- or 4-year program of instruction (or both) for which the institution awards a bachelor's degree or an associate's degree, respectively, except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that the institution exceeds such limitation because the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.
(4) Limitations based on management

An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if—
(A) the institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1998, and December 1, 1998; or
(B) the institution, the institution's owner, or the institution's chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, or has been judicially determined to have committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(5) Certification

The Secretary shall certify an institution's qualification as an institution of higher education in accordance with the requirements of subpart 3 of part G of subchapter IV of this chapter.

(6) Loss of eligibility
An institution of higher education shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution is removed from eligibility for funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 as a result of an action pursuant to part G of subchapter IV of this chapter.

(b) Proprietary institution of higher education
(1) Principal criteria
For the purpose of this section, the term proprietary institution of higher education means a school that—
(A) provides an eligible program of training to prepare students for gainful employment in a recognized occupation;
(B) meets the requirements of paragraphs (1) and (2) of section 1001(a) of this title;
(C) does not meet the requirement of paragraph (4) of section 1001(a) of this title;
(D) is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part G of subchapter IV of this chapter;
(E) has been in existence for at least 2 years; and
(F) has at least 10 percent of the school's revenues from sources that are not derived from funds provided under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, as

determined in accordance with regulations prescribed by the Secretary.
(2) Additional institutions
The term proprietary institution of higher education also includes a proprietary educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

(c) Postsecondary vocational institution
(1) Principal criteria
For the purpose of this section, the term postsecondary vocational institution means a school that—
(A) provides an eligible program of training to prepare students for gainful employment in a recognized occupation;
(B) meets the requirements of paragraphs (1), (2), (4), and (5) of section 1001 (a) of this title; and
(C) has been in existence for at least 2 years.
(2) Additional institutions
The term postsecondary vocational institution also includes an educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

Law Enforcement Agency

The National Crime Information Center (NCIC), police departments, and other law enforcement agencies that hold criminal conviction records. *[24 CFR 5.902]*

Lease

A written agreement between an owner and a family for the leasing of a decent, safe, and sanitary dwelling unit to the family. *[24 CFR 886.102 and 884.102]*

Lease Term

The period of time for which a lease agreement is written.

Legitimate Tenant Organization

An organization established by the tenants of a multifamily housing project covered by this handbook, whose purpose includes addressing issues related to terms and conditions of their tenancy, and which meets regularly, operates democratically, is representative of all residents in the development, and is completely independent of owners, management, and their representatives. *[CFR 24 245.110]*

Live-in Aide A person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities, and who:

1. Is determined to be essential to the care and well-being of the persons;
2. Is not obligated for the support of the persons; and
3. Would not be living in the unit except to provide the necessary supportive services. *[24 CFR 5.403]*

Low-Income Family A family whose annual income does not exceed 80 percent of the area median income, as determined by HUD, with adjustments for smaller and larger families. *[24 CFR 5.603]*

Management Agent An entity that has day-to-day frontline responsibilities for a HUD-insured and/or assisted multifamily housing property. The project owner is responsible for seeking out and selecting a management agent that meets the standards outlined in Handbook 4381.5, Chapter 2. The HUD-owner-management agent relationship is defined and subject to the requirements and procedures set forth in HUD Handbook 4381.5.

Market Area The geographic area from which a project owner could reasonably expect to draw applicants, based on the services and amenities offered by the development and the needs of the community.

Market Rent The rent HUD authorizes the owner to collect from families ineligible for assistance. For Section 236 units, the market rent is shown on the project's HUD-approved rent schedule. For Rent Supplement, Section 202, and Section 8 units, the market rent is the same as the contract rent. For BMIR units, market rent varies by whether the project is a rental or cooperative.

1. BMIR Rentals. Market rent equals 110% of the BMIR rent.
2. BMIR Cooperatives. Cooperatives use the term carrying charge to describe the amount charged a cooperative member for occupying a unit. Market carrying charges equal the contract carrying charge plus any surcharge established by the cooperative and approved by HUD. If the cooperative has not received HUD approval of a plan for surcharging its over-income members, the market carrying charge equals 110% of the contract carrying charge.

Minimum Rent The lowest total tenant payment permitted for tenants receiving Section 8 assistance. The minimum rent is $25 and is used when 30% of adjusted monthly income and 10% of gross monthly income and the welfare rent (where applicable) are all below $25. The minimum rent covers the tenant's contribution for rent and utilities.

Mixed Family A family whose members include those with citizenship or eligible immigration status and those without citizenship or eligible immigration status. *[24 CFR 5.504]* (See also Prorated Assistance.)

National A person who owes permanent allegiance to the United States; for example, as a result of birth in a United States territory or possession. *[24 CFR 5.504]*

Near-Elderly family A family whose head, spouse, or sole member is a person who is at least 50 years of age, but below the age of 62; two or more persons who are at least 50 years of age, but below the age of 62, living together; or one or more persons who are at least 50 years of age, but below the age of 62, living with one or more live-in aides. *[24 CFR 5.403]*

Noncitizen A person who is neither a citizen nor a national of the United States. *[24 CFR 5.504]*

Nonelderly Disabled (Handicapped[1]) Family [Also appears in Definition I Nonelderly Disabled (Handicapped) Family in Figure 3-6.]

A disabled (handicapped[1]) family in which the head of the family (and spouse, if any) is less than 62 years of age at the time of the family's initial occupancy of a project. *[24 CFR 891.505]*

Operating Rent (PRAC) The *operating* rent *(gross rent) is the rent* approved by HUD to cover the operating expenses at a PRAC project.

Other Person Under the Tenant's Control The person, although not staying as a guest in the unit, is, or was at the time of the activity in question, on the premises because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not under the tenant's control. *[24 CFR 5.100]*

PAC (Project Assistance Contract) The contract entered into by the borrower and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the PAC. See paragraph 1-3 of this handbook for further description. *[24 CFR 891.655]*

Parents

For purposes of the Section 8 student eligibility restrictions, and consistent with long-standing HUD policy regarding eligibility for the Section 8 programs, means the biological or adoptive parents, or guardians (e.g., grandparents, aunt/uncle, godparents, etc.), or such other definition as may be adopted by the PHA, Owner, or Manager through appropriate amendment to its admissions policies.

Person with Disabilities [as defined for Civil Rights Protections]

[**NOTE:** The *definition of an individual or person with a disability in the* Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the Americans With Disabilities Act and their implementing regulations *are generally similar.* Section 504's definition of disability (handicap) is found at *29 U.S.C. 705 and* 24 CFR 8.3. The Fair Housing Act definition is found at 24 CFR 100.201, and the ADA definition is found at 28 CFR 35.104.]

A person with a disability is any person who:

1. Has a physical or mental impairment that substantially limits one or more major life activities;

2. Has a record of such an impairment; or

3. Is regarded as having such an impairment.

The definition 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 physical or mental impairment includes:

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

2. 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.

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

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

Is regarded as having an impairment means:

1. Has a physical or mental impairment that does not substantially limit one or more major life activities but is treated by a person as constituting such a limitation;

2. Has a physical or mental impairment that substantially limits one or more major life activities, only as a result of the attitudes of others toward that impairment; or

3. Has none of the impairments defined in this section but is treated by a *recipient* as having such an impairment.

Person with Disabilities [as defined for program eligibility purposes]

[Also appears as Definition E Person with Disabilities in Figure 3-6.]

1. A person who:

   a. Has a disability, as defined in 42 U.S.C. 423;

      1) 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; or

      2) In the case of an individual who has attained the age of 55 and is blind, inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he/she has previously engaged with some regularity and over a substantial period of time. For the purposes of this

definition, the term blindness, as defined in section 416(i)(1) of this title, means central vision acuity of 20/200 or less in the better eye with use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for the purposes of this paragraph as having a central visual acuity of 20/200 or less.

b. Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:

1) Is expected to be of long-continued and indefinite duration;

2) Substantially impedes his or her ability to live independently; and

3) Is of such nature that the ability to live independently could be improved by more suitable housing conditions; or

c. Has a developmental disability, as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(8)), i.e., a person with a severe chronic disability that

1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

2) Is manifested before the person attains age 22;

3) Is likely to continue indefinitely;

4) Results in substantial functional limitation in three or more of the following areas of major life activity:

a) Self-care,
b) Receptive and expressive language,
c) Learning,
d) Mobility,
e) Self-direction,
f) Capacity for independent living, and
f) Economic self-sufficiency; and

5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

2. Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome;

3. For purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence; and

4. Means person with disabilities (individual with handicaps)[1] as defined by 24 CFR 8.3 (Section 504), for purposes of reasonable accommodation and program accessibility for persons with disabilities. *[24 CFR 5.403]*

Person with Disabilities (Handicapped person)[1]
[as defined for program eligibility purposes]

[Also appears in Definition H Person with a Disability (Handicapped Person) in Figure 3-6.]

A person with disabilities means:

1. Any adult having 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 a nature that such ability could be improved by more suitable housing conditions.

2. A person with a developmental disability, as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(8)), i.e., a person with a severe chronic disability that:

   a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;

   b. Is manifested before the person attains age 22;

   c. Is likely to continue indefinitely;

   d. Results in substantial functional limitation in three or more of the following areas of major life activity:

      (1) Self-care;
      (2) Receptive and expressive language;
      (3) Learning;
      (4) Mobility;
      (5) Self-direction;
      (6) Capacity for independent living;
      (7) Economic self-sufficiency; and

e. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

3. A person with a chronic mental illness, i.e., person who has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently, and whose impairment could be improved by more suitable housing conditions.

4. Persons infected with the human acquired immunodeficiency virus (HIV) who are disabled as a result of infection with the HIV are eligible for occupancy in the Section 202 projects designed for the physically disabled, developmentally disabled, or chronically mentally ill depending upon the nature of the person's disability.

   NOTE: A person whose sole impairment is alcoholism or drug addiction (i.e., who does not have a developmental disability, chronic mental illness, or physical disability that is the disabling condition required for eligibility in a particular project) will not be considered to be disabled for the purposes of the Section 202 and Section 811 programs. *[24 CFR 891.305 and 891.505]*

Pet Deposit An owner may require tenants who own or keep pets in their units to pay a refundable pet deposit.

NOTE: For complete information on pet deposits see 24 CFR 5.318.

Physical Disability A physical impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his or her ability to live independently, and (C) is of such a nature that such ability to live independently could be improved by more suitable housing conditions.

PRAC (Project Rental Assistance Contract) The contract entered into by the owner and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the PRAC. PRAC is used for Section 202 and Section 811 projects. See paragraph 1-3 of this handbook for further description. *[24 CFR 891.105]*

PRAC Operating Rent See Operating Rent (PRAC).

Preferences

Established criteria used to determine the order applicants are selected from the waiting list for housing assistance or an assisted housing unit. Preferences may be established by federal law, HUD regulations, State or local law, or written owner policy. *[24 CFR 5.601; 5.655; 236.715; 880.603; 880.612a; 881.601; 883.701; 884.214; 884.223a; 886.132; 886.337; 886.329a; 891.230; 891.750]*

Preliminary Application

An abbreviated application form that is used by some owners when the waiting time for an available unit is extensive and requires only enough information to assess apparent program eligibility, place the applicant on a waiting list, and contact the applicant when a unit becomes available or additional information is required.

Premises

The building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds. *[24 CFR 5.100]*

Prohibited Bases

Civil rights statutes establish the demographic categories by which discrimination is prohibited. HUD refers to these categories as prohibited bases. For instance, under the Fair Housing Act, the prohibited bases are race, color, religion, sex, national origin, familial status, and disability. It is more inclusive and explanatory than the term protected classes, because it does not categorize people into sets of classes (e.g., male, female, White, Black, Asian, Native American, Pacific Islander, Hispanic, Non-Hispanic, Christian, Jewish, Muslim, Buddhist).

Project Assistance Payment

The payment made by HUD to the borrower for assisted units as provided in the PAC. The payment is the difference between the contract rent and the tenant rent. An additional payment is made to a family occupying an assisted unit in an independent living complex when the utility allowance is greater than the total tenant payment. A project assistance payment, known as a vacancy payment, may be made to the borrower when an assisted unit (or resident space in a group home) is vacant, in accordance with the terms of the PAC. *[24 CFR 891.655]*

Project Rental Assistance Payment

The payment made by HUD to the owner for assisted units as provided in the PRAC. The payment is the difference between the total tenant payment and the HUD-approved per-unit operating expenses, except for expenses related to items not eligible under design and cost provisions. An additional payment is made to a household occupying an assisted unit when the utility allowance is greater than the total tenant payment. A project rental assistance payment, known as a "vacancy payment," may be made to the owner when an assisted unit is vacant, in accordance with the terms of the PRAC. *[24 CFR 891.105]*

Prorated Assistance

Partial rental assistance, or reduced housing assistance payments received by mixed families. In mixed families, the level of assistance is calculated at the ratio of eligible family members to ineligible family members.

Protected Classes

Demographic categories of persons established by civil rights statutes against whom discrimination is prohibited. (See also Prohibited Bases.)

Public Housing Agency (PHA)

Any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of public housing; Defined in Section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437 a (b)(6).

PHAs include Performance-based Contract Administrators (PBCAs) and State Housing Finance Agencies (HFAs).

Qualified Persons with Disabilities (Individual with Handicaps)[1]

An individual with disabilities (handicaps)[1] who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity. "Essential eligibility requirements" include stated eligibility requirements such as income as well as other explicit or implicit requirements inherent in the nature of the program or activity, such as requirements that an occupant of multifamily housing be capable of meeting the recipient's selection criteria and be capable of complying with all obligations of occupancy with or without supportive services provided by persons other than the recipient. For example, a chronically mentally ill person whose particular condition poses a significant risk of substantial interference with the safety or enjoyment of others or with his or her own health or safety in the absence of necessary supportive services may be "qualified" for occupancy in a project where such supportive services are provided by the recipient as part of the assisted program. The person may not be "qualified" for a project lacking such services. *[Relevant language excerpted from 24 CFR 8.3]*

RAP (Rental Assistance Payment) A rental assistance subsidy program established by the Housing and Community Development Act of 1974 to provide additional rental assistance subsidy to project owners on behalf of very low-income tenants. RAP was available only to Section 236 projects and was the predecessor to the project-based Section 8 program.

Recertification Anniversary Date Generally, the recertification anniversary date is the first day of the month a tenant moved into a project receiving HUD assistance. As long as an owner processes an annual recertification according to the procedures and deadlines required in Chapter 7, changes in the TTP, tenant rent, and assistance payment take effect on the recertification anniversary date.

Recipient (Section 504) Any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which federal financial assistance is extended for any program or activity directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. An entity or person receiving housing assistance payments from a recipient on behalf of eligible families under a housing assistance payments program or a voucher program is not a recipient or subrecipient merely by virtue of receipt of such payments. *[24 CFR 8.3]*

Remaining Member of a Tenant Family See paragraph 3-15 for a discussion of the eligibility of a remaining member of a tenant family.

Rent Supplement A project-based assistance program for mortgages insured by HUD. These contracts were available to Section 221(d)(3) BMIR, Section 231, Section 236 (insured and noninsured), and Section 202 projects for the life of the 40-year mortgage. The program was suspended under the housing subsidy moratorium of January 5, 1973. Owners of insured projects with Rent Supplement were allowed to convert to project-based Section 8 assistance.

Residency Preference A preference for admission of persons who reside in a specified geographic area (residency preference area). *[24 CFR 5.655 (c)(1)(ii)]*

Rural Housing Service (RHS) U.S. Department of Agriculture, Rural Housing Services.

Screening A review of an applicant's history to identify patterns of behavior that, if exhibited at the assisted housing development, would make the applicant an unsuitable tenant. Screening criteria may include consideration of drug-related or criminal activity, tenancy, credit and rent payment history, or other behaviors that may affect the rights of other residents and management.

Section 504 Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, as it applies to programs or activities receiving Federal financial assistance. *[24 CFR 8.3]*

Section 8 The housing assistance payments program that implements Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f note). *[24 CFR 891.505]*

Security Deposit A payment required by an owner to be held during the term of the lease (or the time period the tenant occupies the unit) to offset damages incurred due to the actions of the tenant. Such damages may include physical damage to the property, theft of property, and failure to pay back rent. Forfeiture of the deposit does not absolve the tenant of further financial liability.

***Security Personnel** A qualified security professional with adequate training and experience to provide security services for project residents.*

Service Animals See Assistance Animals.

Service Bureaus These organizations prepare:

1. Monthly subsidy voucher facsimiles based on the 50059 data requirements, and

2. Approved special claims and transmit them to the user's Contract Administrator or TRACS for processing and payment.

Otherwise, the service bureau will follow instructions received from HUD or the Contract Administrator on special claim payments. In instances where the software being used to double-check calculations before transmission discovers errors in the 50059 data requirements provided, these organizations print out revised 50059 data requirements and return the revised documentation to their sites for appropriate action.

Service bureaus may provide their users with the monthly benefit history reports used in annual recertifications, as well as returning TRACS messages received from the Contract Administrator or TRACS.

NOTE: Service bureaus are organizations that provide a number of different services and are paid a fee to do so. Their users (owners

and management agents) are responsible for the verification of information contained on the 50059 facsimiles they provide to their service bureau. The bureaus transmit tenant certifications to TRACS or to Contract Administrators using TRACS-compliant software. If a service bureau determines that data elements provided by the site are incorrect, the bureau will transmit the correct data to TRACS and return a correct facsimile to the sites for signature by the household and management and for copying and filing in the tenant file.

***Stalking**

(A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; or (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and (B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (i) that person, (ii) a member of the immediate family of that person, or (iii) the spouse or intimate partner of that person.*

Student

Student for Section 8 eligibility purposes means all students enrolled either full-time or part-time at an institution of higher education.

Student Financial Assistance

For the Section 8 program, student financial assistance included in annual income is any financial assistance that a student receives in excess of tuition (e.g., athletic and academic scholarships) and that the student receives (1) under the Higher Education Act, (2) from private sources, or (3) from an institution of higher education as defined by the Higher Education Act of 1965. Financial assistance does not include loan proceeds.

a. Higher Education Act Assistance under the Higher Education Act of 1965 includes Pell Grants, Federal Supplement Educational Opportunity Grants, Academic Achievement Incentive Scholarships State Assistance Partnership Program, the Robert G. Byrd Honors Scholarship Program, and Federal Work Study programs.

b. Assistance from Private Sources is non-governmental sources of assistance, including assistance that may be provided to a student from parent, guardian or other family member, whether residing within the family in the section 8 assisted unit or not, and from other persons not residing in the unit.

c. Assistance from an Institution of Higher Education requires reference to the particular institution and the institution's listing of financial assistance. (See definition for Institution of Higher Education.)

d. Loans are not financial assistance, and, therefore, the loan programs cited in the Higher Education Act of 1965 (the Perkins,

Stafford and Plus loans) are not included in the term financial assistance in determining student eligibility for section 8 assistance.

Tenant An individual or a family renting or occupying an assisted dwelling unit. *[24 CFR 5.504]*

Tenant Consultation Tenants or tenant representatives may submit written comments on the proposed pet rules to the project owner by the date specified in the notice of proposed rules. In addition, the owner may schedule one or more meetings with tenants during the comment period to discuss the proposed rules. Tenants and tenant representatives may make oral comments on the proposed rules at these meetings. This process is called Tenant Consultation. *[24 CFR 5.353]*

Tenant Rent The amount payable monthly by the family as rent to the owner.

1. Where all utilities (except telephone) and other essential housing services are supplied by the owner, tenant rent equals total tenant payment.

2. Where some or all utilities (except telephone) and other essential housing services are not supplied by the owner, tenant rent equals total tenant payment less the utility allowance.

Tenant Selection Plan A formal written policy statement, developed by the owner and available to the public, that clearly states the procedures and criteria the owner will consistently apply in drawing applicants from the waiting list, screening for suitability for tenancy, implementing income targeting requirements, and offering housing assistance and/or assisted housing units. The Tenant Selection Plan also includes policies applied to residents of the property such as how unit transfers are carried out.

Tenant with a Disability See the three definitions of Person with Disabilities.

Termination of Assistance When a tenant fails to comply with certain HUD program requirements, the owner, under agreements with HUD, is obligated to terminate the assistance provided by HUD on behalf of that tenant.

Termination of Tenancy

Termination of tenancy occurs when a tenant violates specific provisions of the lease agreement, and the owner notifies the tenant that he/she no longer has the right to occupy the unit as a result of lease violations. The HUD model leases have very specific conditions under which tenancy may be terminated and procedures that must be followed during the termination process. (See model leases in Appendix 4 and guidance in Chapter 8, Termination.)

Title VI-D

Title VI, Subtitle D of the Housing and Community Development Act of 1992 authorizes owners of certain HUD multifamily assisted developments to elect to serve elderly families, to limit the numbers of disabled families residing in a project or to adopt preferences for elderly families, depending upon the type of project and whether certain requirements are met. See paragraph 2-10 for a discussion on the applicability of this Act.

Total Tenant Payment

The total amount the HUD rent formula requires the tenant to pay toward the gross rent. Total Tenant Payment is computed in accordance with the formula in Exhibit 5-8.

Total Tenant Payment (Resident Rent Payment)

Each family or individual who receives PRAC subsidy must make a total tenant payment of 30% of adjusted income, 10% of gross income, or Welfare Rent, whichever is greater, for housing costs, i.e., rent and utilities. In some cases, a resident's monthly rent payment may exceed the PRAC operating rent. As with HAP contracts:

1. The monthly amount a resident pays the owner should be the Total Tenant Payment less any HUD-approved utility allowance the tenant pays; and

2. The resident may receive a utility reimbursement from the owner if the resident's Total Tenant Payment is less than the HUD-approved utility allowance.

Tuition

Tuition shall have the meaning given this term by the institution of higher education in which the student is enrolled.

Unauthorized Occupant

A person who, with the consent of a tenant, is staying in the unit, but is not listed on the lease documents or approved by the owner to dwell in the unit. An owner must follow State or local law regarding an unauthorized occupant and establish an equitable and consistent policy and incorporate that policy into the house rules.

Unearned Income

Income received that is not wages, tips, or other compensation for work performed.

Unintentional Program Violation An error or oversight by the tenant that does not involve deliberate, intentional deceit. (See also Fraud.)

Unit Transfer With owner approval, a tenant moves from one unit to another unit within the same property.

Utility Allowance HUD's or the Contract Administrator's estimate of the average monthly utility bills (except telephone) for an energy-conscious household. This estimate considers only utilities paid directly by the tenant. If all utilities are included in the rent, there is not a utility allowance. Utility allowances vary by unit type and are listed on the project's rent schedule or HAP contract.

Utility Allowance (PRAC) This is an amount equal to the estimate made or approved by HUD of the monthly costs of a reasonable consumption of utilities (except telephone) for the unit by an energy-conservative household of modest circumstances, consistent with the requirements of a safe, sanitary, and healthful living environment. A utility allowance is used in cases where the cost of utilities (except telephone) is the responsibility of the household and is not included in the tenant payment.

Utility Reimbursement The amount, if any, by which the utility allowance for a unit exceeds the total tenant payment for the family occupying the unit.

***VAWA** The Violence Against Women and Department of Justice Reauthorization Act of 2005 (Public Law 109-162, approved August 28, 2006) as this law amended the U.S Housing Act of 1937 (42 U.S.C. 1437c-1, 1437d, and 1437p).*

Very Low-Income Family A very low-income family is a family whose annual income does not exceed 50 percent of the area median income, as determined by HUD, with adjustments for smaller and larger families. *[24 CFR 5.603]*

Veteran The definition for veteran, as used by the Department of Veterans Affairs, is codified at 36 U.S.C. 101(2), may be used when determining a student's eligibility for Section 8 assistance. Since use of this definition is widespread in other federal programs affecting veterans, PHAs, Owners and Managers may find it useful to adopt this definition for purposes of administering the student eligibility restrictions.

Definition of veteran from 38 U.S.C. 101(2): The term veteran means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

Violent Criminal Activity 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]*

Waiting List A formal record of applicants for housing assistance and/or assisted housing units that identifies the applicant's name, date and time of application, selection preferences claimed, income category, and the need for an accessible unit. The waiting list may be kept in either a bound journal or a computer program. Whichever method is used to maintain the waiting list, the owner must establish a method of documenting the appropriate selection of applicant names from the list.

Welfare Assistance Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly by the Federal, State, or local government. *[24 CFR 5.603]*

Welfare Rent In those States in which the welfare grant is based on the actual amount a family pays for shelter and utilities, the welfare rent is the maximum amount permitted under welfare rule for rent and utilities.

[1] The term *handicapped* appears in a number of regulatory definitions that have not yet been updated to reflect current statutes. In this handbook, HUD replaced *handicapped* with the term *disabled*, *disability*, or *impairment* to reflect current statutes. The parenthetical reference to handicapped indicates that the term handicapped has been replaced with disabled, disability, or impairment in that definition.

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Affirmative Fair Housing Marketing (AFHM) Plan – Multifamily Housing

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity

OMB Approval No. 2529-0013
(exp. 8/31/2013)

1a. **Project Name & Address (including City, County, State & Zip Code)**

1b. Project Contract Number

1c. No. of Units

1d. **Census Tract**

1e. **Housing/Expanded Housing Marketing**

1f. **Managing Agent Name, Address (including City, State & Zip Code), Telephone Number & Email Address**

1g. **Applicant/Owner/Developer Name, Address (including City, State & Zip Code), Telephone Number & Email Address**

1h. **Entity Responsible for Marketing** (check all that apply)

☐ Owner ☐ Agent ☐ Other (specify)

Position, Name (if known), Address (including City, State & Zip Code), Telephone Number & Email Address

1i. **To whom should approval and other correspondence concerning this AFHM Plan be sent? Indicate Address (including City, State & Zip Code), Telephone Number & Email Address in addition to Name.**

2a. **Affirmative Fair Housing Marketing Plan**

Plan Type Please Select Plan Type Updated Plan / Date:

Reason(s) for current update:

2b. **HUD-Approved Occupancy of the Project** (check all that apply)

☐ Elderly ☐ Family ☐ Mixed (Elderly/Disabled) ☐ Disabled

2c. **Date of Initial Occupancy**

2d. **Advertising Start Date**

Advertising must begin *at least* 90 days prior to initial or renewed occupancy.

Date advertising began or will begin:

For existing projects, select below the reason advertising will be used:

To add to waiting list ☐ (which currently has ☐ individuals)

To reopen closed waiting list ☐ (which currently has ☐ individuals)

3a. **Demographics of Project and Marketing Area**
Complete and submit Worksheet 1.

3b. **Targeted Marketing Activity**

Based on your completed Worksheet 1, indicate which demographic group(s) in the housing market area is/are *least* likely to apply for the housing without special outreach efforts. (check all that apply)

☐ White ☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American

☐ Native Hawaiian or Other Pacific Islander ☐ Hispanic or Latino ☐ Persons with Disabilities

☐ Families with Children ☐ Other ethnic group, religion, etc. (specify)

4a. **Residency Preference**

Is the owner requesting a residency preference? If yes, complete questions 1 through 5. Please Select Yes or No
If no, proceed to Block 4b.

(1) Type Please Select Type

(2) Is the residency preference area:
The same as the AFHM Plan housing/expanded housing market area (as determined in Block 1e)? Please Select Yes or No

The same as the residency preference area of the local PHA in whose jurisdiction the project is located? Please Select Yes or No

(3) What is the geographic area for the residency preference?

(4) What is the reason for having a residency preference?

(5) How do you plan to periodically evaluate your residency preference to ensure that it is in accordance with the non-discrimination and equal opportunity requirements in 24 CFR 5.105(a)?

Complete and submit Worksheet 2 when requesting a residency preference (see also 24 CFR 5.655(c)(1) for residency preference requirements. The requirements in 24 CFR 5.655(c)(1) will be used by HUD as guidelines for evaluating residency preference requirements consistent with the applicable HUD program requirements. See also HUD Occupancy Handbook (4350.3) Chapter 4, Section 4.6 for additional guidance on preferences.

4b. **Proposed Marketing Activities: Community Contacts**
Complete and submit Worksheet 3 to describe your use of community contacts to market the project to those least likely to apply.

4c. Proposed Marketing Activities: Methods of Advertising
Complete and submit Worsheet 4 to describe your proposed methods of advertising that will be used to market to those least likely to apply. Attach samples of advertisements, radio and television scripts, Internet advertisements and websites, brochures, etc.

5a. **Fair Housing Poster**

The Fair Housing Poster must be prominently displayed in all offices in which sale or rental activity takes place (24 CFR 200.620(e)). Check below all locations where the AFHM Plan will be displayed. (Check all that apply)

☐ Rental Office ☐ Real Estate Office ☐ Model Unit ☐ Other (specify)

5b. **Affirmative Fair Housing Marketing Plan (AFHM Plan)**

The AFHM Plan must be available for public inspection at the sales or rental office (24 CFR 200.625). Check below all locations where the AFHM Plan will be made available. (Check all that apply)

☐ Rental Office ☐ Real Estate Office ☐ Model Unit ☐ Other (specify)

5c. **Project Site Sign**

All Project Site Signs should include the Equal Housing Opportunity logo, slogan, or statement (24 CFR 200.620(f)). Check below all locations where the Project Site Sign will be displayed. (Check all that apply)

☐ Rental Office ☐ Real Estate Office ☐ Model Unit ☐ Entrance to Project ☐ Other (specify)

The size of the Project Site Sign will be _____ x _____

The Equal Housing Opportunity logo or slogan or statement will be _____ x _____

6. **Evaluation of Marketing Activities**

Explain the evaluation process you will use to determine whether your marketing activities have been successful in attracting the group(s) least likely to apply, how often you will make this determination, and how you will make decisions about future marketing based on the evaluation process.

7a. **Marketing Staff**

What staff positions are/will be responsible for affirmative marketing?

7b. **Staff Training and Assessment: AFHM Plan**

(1) Has staff been trained on the AFHM Plan? Please Select Yes or No

(2) Is there ongoing training on the AFHM Plan and Fair Housing Act issues in general? Please Select Yes or No

(3) If yes, who provides it?

(4) Do you periodically assess staff skills, including their understanding of the AFHM Plan and their responsibilities to use it?

Please Select Yes or No

(5) If yes, how and how often?

7c. **Tenant Selection Training/Staff**

(1) Has staff been trained on tenant selection in accordance with the project's occupancy policy, including any residency preferences?

Please Select Yes or No

(2) What staff positions are/will be responsible for tenant selection?

7d. **Staff Instruction/Training:**

Describe AFHM/Fair Housing staff training, if any, provided/to be provided, to whom it was/will be provided, content of training, and dates of past and anticipated training. Include copies of any AFHM/Fair Housing staff training.

8. **Additional Considerations:** Is there anything else you would like to tell us about your AFHM Plan in order to ensure that your program is marketed to those least likely to apply for the units and/or to be housed in them? Please attach additional sheets, as needed.

9. **Review and Update**
By signing this form, the applicant/respondent agrees to review its AFHM Plan at least once every 5 years throughout the life of the mortgage and to update it as needed in order to ensure continued compliance with HUD's Affirmative Fair Housing Marketing Regulations (see 24 CFR Part 200, Subpart M). I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802).

Signature of person submitting this Plan Date of Submission (mm/dd/yyyy)

Name (type or print)

Title Name of Company

For HUD-Office of Housing Use Only
Reviewing Official:

Signature & Date (mm/dd/yyyy)

Name (type or print)

Title

For HUD-Office of Fair Housing and Equal Opportunity Use Only

Please Select Status

Signature & Date (mm/dd/yyyy)

Name (type or print)

Title

Public reporting burden for this collection of information is estimated to average six (6) hours per initial response, and four (4) hours for updated plans, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget (OMB) control number.

Purpose of Form: All applicants for participation in FHA subsidized and unsubsidized multifamily housing programs with five or more units (see 24 CFR 200.615) must complete this Affirmative Fair Housing Marketing Plan (AFHMP) Form as specified in 24 CFR 200.625, and in accordance with the requirements in (24 CFR 200.620). The purpose of the AFHMP is to help applicants in developing an AFHM program to achieve a condition in which individuals of similar income levels in the same housing market area have a like range of housing choices available to them regardless of their race, color, national origin, religion, sex, disability, or familial status. The AFHMP helps owners/agents (respondents) effectively market the availability of housing opportunities to individuals of both minority and non-minority groups that are least likely to apply for occupancy in the housing project (See AFHMP, Block 3b).

An AFHM program, as specified in this Plan, shall be in effect for each multifamily project throughout the life of the mortgage (24 CFR 200.620(a)). The AFHMP, once approved by HUD, must be available for public inspection at the sales or rental offices of the respondent (24 CFR 200.625) and may not be revised without HUD approval. This form contains no questions of a confidential nature.

Applicability: The form and worksheets must be completed and submitted by all FHA subsidized and unsubsidized multifamily housing projects.

INSTRUCTIONS

Send completed form and worksheets to: your local HUD Office. **Attention:** Director, Office of Housing.

Part 1- Applicant/Respondent and Project Identification.

Blocks 1a, 1b, 1c, 1g, 1h, and 1i are self-explanatory.

Block 1d Respondents may obtain the Census tract number from a local planning office, Community Development Block Grant Consolidated Plan, or another official source such as the U.S. Census Bureau (www.census.gov).

Block 1e A ***housing market area*** is the area from which a multifamily housing project owner/agent may reasonably expect to draw a substantial number of its tenants.

If a housing market area is not demographically diverse in terms of race, color, national origin, religion, sex, disability, or familial status, an ***expanded housing market area*** may be used. An expanded housing market area is a larger geographic area that may provide additional diversity. Respondents should indicate the housing or expanded housing market area in which the housing is/will be located, e.g., City of _____ for housing market area, or City of _____ and County of _____ for expanded housing market area.

Block 1f - The applicant should complete this Block only if a Managing Agent (the agent cannot be the applicant) is implementing the AFHMP.

Part 2-Type of AFHMP

Block 2a Respondents should indicate the status of the AFHMP, e.g., initial or updated, as well as the date of the AFHMP. Respondents should also provide the reason(s) for the current update, if applicable, whether the up-date is based on the five-year review or mid-term revisions due to changes in local demographics or other conditions.

Block 2b Respondents should identify all groups HUD has approved for occupancy in the subject project, in accordance with the contract, grant, etc.

Block 2c Respondents should specify the date the project was/will be first occupied.

Block 2d For new construction, substantial rehabilitation, or projects vacant for any other reason, advertising must begin at least 90 days prior to initial occupancy. In the case of existing projects, respondents should indicate whether the advertising will be used to add individuals to the project's waiting list or re-open a closed waiting list, and indicate how many people are on the waiting list when advertising begins.

Part 3-Demographics and Marketing Area.
Least likely to apply means that there is an identifiable presence of a specific demographic group in the housing market area, but members of that group are not likely to apply for the housing without targeted outreach, including marketing materials in other languages for limited English proficient individuals, and alternative formats for persons with disabilities. Reasons for not applying can include, but are not limited to, insufficient information about housing opportunities, language barriers, or transportation impediments.

Block 3a Using Worksheet 1, the respondent should indicate the demographic composition of the project, waiting list, census tract, and housing market area. The respondent compares the demographics of its existing project, waiting list (or any maintained list of interested housing applicants), with the demographics of the census tract and the larger housing market area to determine if there needs to be affirmative marketing to those least likely to apply. If the housing market area is not demographically diverse in terms of race, color, national origin, religion, sex, disability, or familial status, an expanded housing market area should be designated to enhance the diversity of individuals applying for housing opportunities. The applicable housing market area or expanded marketing area should be shown in Block 1e. Wherever possible, demographic statistics should be obtained from a local planning office, Community Development Block Grant Consolidated Plan, or another official source such as the U.S. Census Bureau (www.census.gov).

Compare groups within rows/across columns on Worksheet 1 to identify any under-represented group(s) relative to the surrounding housing market area, i.e., those group(s) least likely to apply for the housing without targeted outreach and marketing. If there is a particular group or subgroup with members of a protected class that has an identifiable presence in the housing market area, but is not included in Worksheet 1, please specify under Other.

Block 3b Using the information from the completed Worksheet 1, respondents should identify the demographic group(s) least likely to apply for the housing without special outreach efforts by checking all that apply.

Part 4 - Marketing Program and Residency Preference (if any).

Block 4a A residency preference is a preference for admission of persons who reside or work in a specified geographic area (see 24 CFR 5.655(c)(1)(ii)). Respondents should indicate whether a residency preference is being utilized, and if so, respondents should specify if it is new, revised, or continuing. If a respondent wishes to utilizea residency preference, it must state the preference area (and provide a map delineating the precise area) and state the reason for having such a preference. The respondent must ensure that the preference is in accordance with the non-discrimination and equal opportunity requirements in 24 CFR 5.105(a) (see 24 CFR 5.655(c)(1)).

Respondents should use Worksheet 2 to show how the percentage of the eligible population living or working in the residency preference area conforms to that of the occupancy of the project, waiting list, and housing market area. The latter percentages would be the same as those shown on completed Worksheet 1.

Block 4b Using Worksheet 3, respondents should describe their use of community contacts to market the project to those least likely to apply. This table should include the name of a contact person, his/her address, phone number, previous experience working with the target population(s), the approximate date contact was/will be initiated, and the specific role the community contact will play in implementing the AFHMP.

Block 4c Using Worksheet 4, respondents should describe their proposed method(s) of advertising to market to those least likely to apply. This table should identify each media option, percentage of the readers/listeners/users/ members/etc. who are members of the targeted population(s), language(s) into which the material(s) will be translated, alternative format(s) that will be used to reach persons with disabilities, and logo(s) that will appear on the various materials (as well as their size).

Part 5- Availability of the Fair Housing Poster, AFHMP, and Project Site Sign.

Block 5a - The Fair Housing Poster must be prominently displayed in all offices in which sale or rental activity takes place (24 CFR 200.620(e)). Respondents should indicate all locations where the Fair Housing Poster will be displayed.

Block 5b The AFHMP must be available for public inspection at the sales or rental office (24 CFR 200.625). Check all of the locations where the AFHM Plan will be displayed.

Block 5c The Project Site Sign should display the Equal Housing Opportunity logo or slogan or statement (24 CFR 200.620(f)). Respondents should indicate where the Project Site Sign will be displayed, as well as the size of the Sign and the size of the logo, slogan or statement.

Part 6 -Evaluation of Marketing Activities.

Respondents should explain the evaluation process to be used to determine if they have been successful in attracting those groups identified as least likely to apply. Respondents should also explain how they will make decisions about future marketing activities based on the evaluations.

Part 7-Marketing Staff and Training.

Block 7a - Respondents should identify staff positions that are/will be responsible for affirmative marketing.

Block 7b - Respondents should indicate whether staff has been trained on the use of the AFHMP and specify whether there is ongoing training on the AFHMP and Fair Housing Act issues in general. Show who provides the training. In addition, respondents should specify whether they periodically assess staff members' skills in relation to the AFHMP and staff responsibilities to use the Plan. They should state how often they assess employee skills and how they conduct the assessment.

Block 7c - Respondents should indicate whether staff has been trained on tenant selection in accordance with the project's occupancy policy, including residency preferences (if any). Respondents should also identify those staff positions that are/will be responsible for tenant selection.

Block 7d - Respondents should include copies of any written materials related to staff training, and identify the dates of past and anticipated training.

Part 8-Additional Considerations.

Respondents should describe their efforts not previously mentioned that were/are planned to attract those groups least likely to apply for the subject housing.

Part 9-Review and Update.

By signing, the respondent assumes responsibility for implementing the AFHMP, and for reviewing and updating the Plan at least once every 5 years, and more frequently if local conditions or project demographics significantly change. HUD may monitor the implementation of this AFHMP at any time, and may also request modification in its format and/or content, when deemed necessary. Respondents must notify their local HUD Office of Housing if they plan revisions to the AFHMP marketing strategy after HUD approval has occurred.

Notification of Intent to Begin Marketing for Initial Occupancy. No later than 90 days prior to the initiation of rental marketing activities, the respondent with an approved AFHMP must submit notification of intent to begin marketing. The notification is required by the AFHMP Compliance Regulations (24 CFR 108.15). The Notification is submitted to the Office of Housing in the HUD Office servicing the locality in which the proposed housing will be located. Upon receipt of the Notification of Intent to Begin Marketing from the applicant, the monitoring office will review any previously approved plan and may schedule a pre-occupancy conference. Such pre-occupancy will be held prior to initiation of sales/rental marketing activities. At this conference, the previously approved AFHM plan will be reviewed with the applicant to determine if the plan, and/or its proposed implementation, requires modification prior to initiation of marketing in order to achieve the objectives of the AFHM regulation and the plan.

OMB approval of the Affirmative Fair Housing Marketing Plan includes approval of this notification procedure as part of the AFHMP. The burden hours for such notification are included in the total designated for this AFHMP form.

Worksheet 1: Determining Demographic Groups Least Likely to Apply for Housing Opportunities
(See AFHM Plan, Block 3b)

In the respective columns below indicate the percentage of each demographic group for the project (if occupied), waiting list (for existing projects), census tract, housing market area, and expanded housing market area (if the latter is needed to create a more diverse housing market area in terms of race, color, national origin, religion, sex, disability, or familial status).

Wherever possible, statistics should be obtained from a local planning office, Community Development Block Grant Consolidated Plan, or another official source such as the U.S. Census Bureau (please see http://factfinder.census.gov. Under Decennial Census, click Get Data . Choose SF3, then detailed tables).

If there is a significant under-representation of any demographic group in the project and/or on its waiting list relative to the surrounding housing market area, then those groups(s) that are under-represented will be considered least likely to apply without targeted outreach and marketing, and will be so identified in Block 3b of the AFHM Plan. See Part 3 of the Form HUD-935.2A Instructions for further guidance. **Attach maps showing both the Housing Market Area and Expanded Housing Market Area.**

Demographic Characteristics	**Project %**	**Waiting List %**	**Census Tract %**	**Housing Market Area %**	**Expanded Housing Market Area% (if used)**
White					
American Indian or Alaskan Native					
Asian					
Black or African American					
Native Hawaiian or Other Pacific Islander					
Hispanic or Latino					
Persons with Disabilities					
Families with Children					
Other (specify)					

Worksheet 2: Establishing a Residency Preference Area (See AFHM Plan, Block 4a)

Complete this Worksheet if you wish to continue, revise, or add a residency preference, which is a preference for admission of persons who reside or work in a specified geographic area (see 24 CFR 5.655(c)(1)(ii)). If a residency preference is utilized, the preference must be in accordance with the non-discrimination and equal opportunity requirements contained in 24 CFR 5.105(a). This Worksheet will help show how the percentage of the population in the residency preference area conforms to that of the occupancy of the project, waiting list, census tract, and housing market area. **Attach a map specifying the area for which the residency preference is requested.**

Demographic Characteristics	**Project %** (as determined in Worksheet 1)	**Waiting List %** (as determined in Worksheet 1)	**Census Tract %** (as determined in Worksheet 1)	**Housing Market Area %** (as determined in Worksheet 1)	**Expanded Housing Market Area %** (if needed and as determined in Worksheet 1)	**Residency Preference Area %** (if applicable)
White						
American Indian or Alaskan Native						
Asian						
Black or African American						
Native Hawaiian or Other Pacific Islander						
Hispanic or Latino						
Persons with Disabilities						
Families with Children						
Other (specify)						

Worksheet 3: Proposed Marketing Activities Community Contacts (See AFHM Plan, Block 4b)

For each targeted marketing population designated as least likely to apply in Block 3b, identify at least one community contact organization you will use to facilitate outreach to the group. This could be a social service agency, religious body, advocacy group, community center, etc. State the names of contact persons, their addresses and phone numbers, their previous experience working with the target population, the approximate date contact was/will be initiated, and the specific role they will play in assisting with the affirmative fair housing marketing program. Attach additional pages, if necessary.

Targeted Population(s)	**Community Contact(s), including required information**

Worksheet 4: Proposed Marketing Activities Methods of Advertising (See AFHM Plan, Block 4c)

Complete the following table by identifying your targeted marketing population(s), as indicated in Block 3b, as well as the methods of advertising that will be used to market to that population. For each targeted population, state the means of advertising that you will use, as applicable to that group. In each block, in addition to specifying the media that will be used (e.g., name of newspaper, television station, website, location of bulletin board, etc.), state any language(s) in which the material will be provided, identify any alternative format(s) to be used (e.g., Braille, large print, etc.), and specify the logo(s) (as well as size) that will appear on the various materials. Attach additional pages, if necessary.

Targeted Population(s) **Methods of Advertising**	**Targeted Population:**	**Targeted Population:**	**Targeted Population:**
Newspaper(s)			
Radio Station(s)			
TV Station(s)			
Electronic Media			
Bulletin Boards			
Brochures, Notices, Flyers			
Other (specify)			

Appendix 2-A

**Reserved for Updated

Systematic Alien Verification for Entitlements (SAVE) Program Instructions Manual**

Appendix 2-B – Instructions and Mailing Addresses for DHS Form G 845S from the DHS Systematic Alien Verification for Entitlements (SAVE) Program Instructions Manual for the Department of Housing and Urban Development

CHAPTER 5: SECONDARY VERIFICATION PROCEDURES

This chapter of the SAVE Program Manual provides instructions for secondary verification, for both the Alien Status Verification Index (ASVI) and non-ASVI user. It gives guidelines for initiating secondary verification and understanding INS' response to the verification request.

Questions and comments regarding secondary verification should be directed to the INS SAVE Program at **1-888-464-4218.**

Background

The SAVE Program requires participating agencies and institutions to submit secondary verification requests to the INS under specified circumstances. The INS conducts thorough searches of applicable INS databases and paper files, as necessary, to respond to such secondary verification requests. A combination of both the primary and secondary components of the SAVE Program are used by a large number of SAVE users. However, status verification involving only the secondary process is available to benefit issuing agencies and institutions that have a very small number of non-citizen applicants for benefits.

The purpose of the secondary verification process is two-fold. First, it allows agencies to participate in the SAVE Program when access to the automated system would not be cost effective. Second, it provides a thorough search of all applicable INS automated databases and paper files when questions arise during the visual verification of documentation or the primary verification.

Initiating Secondary Verification

Benefit issuing agencies and institutions with access to ASVI will perform primary verification for most non-citizen applicants prior to initiating secondary verification procedures. However, certain circumstances require that the benefit provider forego the use of ASVI and perform secondary verification immediately. Refer to the "Immediate Secondary Verification" topic in Chapter 3 for circumstances that require immediate secondary verification. Additionally, secondary verification should occur after an automated ASVI check when:

- ASVI returns a response of "Institute Secondary Verification"
- A material discrepancy between an applicant's immigration documentation and the record contained in ASVI exists
- A non-citizen claims they obtained Lawful Permanent (or Conditional) Resident Status because they were a battered alien, a parent of a battered child(ren), or a victim of domestic violence. Refer to the Interim Guidance on Verification of Citizenship, Qualified Alien Status, and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 FR 61344 at Exhibit B to Attachment 5 (Nov. 17, 1997), for instructions on verifying non-citizens claiming status in this category.

- Sponsorship information from the non-citizen's Affidavit of Support (Form I-864) is required.

Obtaining Secondary Verification
To obtain secondary verification, the benefit provider will forward a completed Document Verification Request with fully readable photocopies of both sides of the non-citizen's immigration documentation to their local INS Office for review. The INS Offices are listed by state and county in Appendix D; their addresses are given in Appendix E.

Benefit issuing agencies and institutions mandated by the Immigration Reform and Control Act of 1986 (IRCA) to participate in the SAVE Program are required to use Form G-845S, Document Verification Request and all other participating benefit issuing agencies and institutions must use Form G-845, Document Verification Request. The Document Verification Request Supplement, Form G-845 Supplement, can be used in conjunction with both forms, but not separately to obtain additional immigration information required to make a determination for benefit eligibility as a result of the PRWORA, as amended. These forms are included in Appendix F and can be copied by benefit issuing agencies and institutions for use in instituting secondary verification.

A separate Document Verification Request should be completed for each applicant and should include copies of the documents for that person only. If a family unit has applied for a benefit, each member will require a separate Document Verification Request.

Attachments
A photocopy of all applicable printed pages of each piece of immigration documentation presented should be attached to the Document Verification Request. The INS requires that benefit issuing agencies and institutions copy all printed sides of each INS-issued card or form presented. When the non-citizen presents a foreign passport as documentation, INS only requires copies of those pages that identify the issuing country, holder, and immigration status while in the United States (i.e., Form I-94 INS stamp).

If the applicant presents expired immigration documents or is unable to present any immigration documentation evidencing his or her immigration status, the benefit issuing agency or institution should refer the applicant to the local INS office to obtain documentation of status. In unusual cases involving applicants who are hospitalized or medically disabled, or who can otherwise show good cause for their inability to present documentation, and for whom securing such documentation would constitute an undue hardship, if the applicant can provide other identifying documentation i.e., marriage records, court orders, etc., the benefit issuing agency or institution may file the Document Verification Request, and, if applicable, copies of any expired INS documents presented, with the local INS office to verify immigration status. As with any documentation of immigration status, the benefit issuing agency or institution should confirm that the status information received from INS pertains to the applicant whose identity has been verified.

Although an INS document is all the identification required to complete the secondary verification request, the attachments may include identification bearing a photograph of the applicant. If the non-citizen has presented another pertinent document, such as a marriage record or court order, it may be included as well. Refer to Appendix A for

examples of commonly presented INS documentation. Note that other INS forms can serve as valid identification documents.

The name and address of the benefit issuing agency or institution submitting the Document Verification Request should be typed or stamped in the block labeled "**From**." The INS office address the Document Verification Request is being sent to should be typed or stamped in the block labeled "**To**."

Completing the Document Verification Request
The Document Verification Requests (Form G-845S and Form G-845) (see Appendix F) should be completed as fully as possible by the submitting agency. It is essential that the form contain sufficient information to verify the immigration status of the non-citizen. The benefit issuing agency or institution completes Section A.

The following chart provides instructions for completing Section A of Form G-845S and Form G-845.

Field	Instructions
1.**Alien Registration Number or I-94 Number**	Enter the alien registration number as the letter A followed by a series of seven, eight, or nine digits. The admission number found on the Form I-94 consists of eleven digits and is found at the upper left–hand corner of the form. It may assist in the various searches made during secondary verification.
2. **Applicant's Name**	Enter last, first, and middle name of applicant. If documentation indicates more than one variation of the name, enter all versions. Appendix C provides information on Hispanic names.
3. **Nationality**	Enter the foreign nation or country to which the applicant owes allegiance. This is normally, but not always, the country of birth.
4. **Date of Birth**	Enter the birth date using the MM/DD/YYYY format. If the complete date of birth is not known, give available information.
5. **Social Security Number**	Enter the non-citizen's nine-digit Social Security number, if known. Copy the number directly from the non-citizen's Social Security card whenever possible.
6. **Verification Number**	Enter the verification number assigned when ASVI was queried, if applicable. If ASVI was not queried, enter "none."

Field	Instructions
7. **Photocopy of Document Attached and Other Information Attached**	Indicate that INS documentation is attached by checking the top box. Use the bottom box if other information has been included in support or in lieu of INS documents.
8. **Benefit/Your Case Number**	If completing the Form G-845S, mark the blocks showing the benefit program(s) for which the non-citizen has applied. If completing the Form G-845, enter the benefit program(s) for which the non-citizen has applied. This block may also be used to show the benefit issuing agency's or institution's case number.
9. **Name of Submitting Official**	The name of the submitting official from the benefit issuing agency or institution should be entered.
10. **Title of Submitting Official**	The title of the submitting official from the benefit issuing agency or institution should be entered.
11. **Date**	The date the Document Verification Request is being completed by the submitting official from the benefit issuing agency or institution should be entered.
12. **Telephone Number**	The telephone number that the Immigration Status Verifier can contact the submitting official from the benefit issuing agency or institution, if necessary, should be entered

The name and address of the benefit issuing agency or institution submitting the Document Verification Request should be typed or stamped in the box labeled "**From.**" The INS office address the Document Verification Request is being sent to should be typed or stamped and the box labeled "**To.**"

Completing the Document Verification Request Supplement

The Document Verification Request Supplement (G-845 Supplement) (See Appendix F) may only be used in conjunction with the Document Verification Request (Form G-845S or Form G-845), not separately. It should also be completed as fully as possible by the benefit issuing agency or institution. The following information should be provided on Form G-845 Supplement by the benefit issuing agency or institution

- Non-citizen applicant's last, first, and middle name;
- Social Security Number (if available);
- Alien Registration Number (A-Number) and/or I-94 Number;
- Typed or stamped name and address of submitting agency;
- Current date;
- Submitting agency's telephone number.

Refer to the "Completing the Document Verification Request" topic in this Section for more detailed instructions on providing this information.

The benefit issuing agency or institution should indicate what status information is required from INS by checking off the appropriate numbered block9s) in the "Complete

the following items:" section on the top portion of the Form G-845 Supplement. It is very important that the benefit issuing agency or institution complete this section, so that INS can provide all appropriate INS status information required to make a determination regarding the applicant's eligibility for benefits under Title IV of PRWORA, as amended. The following INS information can be obtained by submitting Form G-845 Supplement:

1. Immigration status;
2. Date alien entered the United States; Date status was granted;
3. Date status expires;
4. Citizen status;
5. Special benefit provisions for certain victims of abuse; and
6. Affidavit of Support.

Mailing Document Verification Requests

Photocopies of documentation should be stapled to the Document Verification Request with a single staple in the upper left-hand corner. The form and documents can be folded and placed in a window envelope, with the block labeled "To" showing in the address area. More than one G-845 can be mailed in a single envelope; however, INS discourages benefit issuing agencies and institutions from collecting forms over an extended period of time in order to mail them in bulk.

All benefit issuing agencies and institutions should mail Form G-845 to their local INS Office. The notation, "ATTN: Immigration Status Verifier," should be included on the envelope to ensure proper handling by the INS mailroom. Immigration Status Verifiers (ISVs) are located in INS Offices throughout the United States, Puerto Rico, Virgin Islands, and Guam. To determine the correct INS Office, review the list of states and counties in Appendix D; their mailing addresses are included in Appendix F.

Appendix F – Mailing Addresses

USCIS Office Addresses

Alaska, Anchorage (ANC)	620 East 10th Avenue Suite 102 Anchorage, AK 99501-3708 Attention: Immigration Status Verifier
Arizona, Phoenix (PHO)	400 N. 5th Street, 11th Floor Phoenix, AZ 85004 Attention: Immigration Status Verifier
California, Los Angeles (LOS)	300 N. Los Angeles Street, B120 Los Angeles, CA 90012 Attention: Immigration Status Verifier
California, San Diego (SND)	880 Front Street San Diego, CA 92101 Attention: Immigration Status Verifier
California, San Francisco (SFR)	Appraisers Building 630 Sansome Street Room 1245 San Francisco, CA 94111-2280 Attention: Immigration Status Verifier
Colorado, Denver (DEN)	4730 Paris Street Denver, CO 80239 Attention: Immigration Status Verifier

Connecticut, Hartford (HAR)	450 Main Street Ribicoff Federal Building, Room 444 Hartford, CT 06103-3060 Attention: Immigration Status Verifier
Florida, Miami (MIA)	7880 Biscayne Boulevard Miami, FL 33138 Attention: Immigration Status Verifier
Georgia, Atlanta (ATL)	77 Forsyth Street, SW Atlanta, GA 30303 Attention: Immigration Status Verifier
Guam, Agana (AGA)	Sirena Plaza Suite 100 108 Hernan Cortez Avenue Hagatna, GU 96910 Attention: Immigration Status Verifier
Hawaii, Honolulu, (HHW)	595 Ala Moana Boulevard Honolulu, HI 96813 Attention: Immigration Status Verifier
Illinois, Chicago (CHI)	10 W. Jackson Boulevard, Room 222 Chicago, IL 60604 Attention: Immigration Status Verifier
Louisiana, New Orleans (NOL) (See Tennessee, Memphis)	Postal Service Building Room T-8005 701 Loyola Avenue New Orleans, LA 70113
Maine, Portland (POM)	176 Gannett Drive South Portland, ME 04106 Attention: Immigration Status Verifier
Maryland, Baltimore (BAL)	Fallon Federal Building 31 Hopkins Plaza Baltimore, MD 21201 Attention: Immigration Status Verifier

Massachusetts, Boston (BOS)	JFK Federal Building Government Center Boston, MA 02203 Attention: Immigration Status Verifier
Michigan, Detroit (DET)	Federal Building 333 Mt. Elliott Street Detroit, MI 48207 Attention: Immigration Status Verifier
Minnesota, St. Paul (SPM)	2901 Metro Drive Suite 100 Bloomington, MN 55425 Attention: Immigration Status Verifier
Missouri, Kansas City (KAN)	9747 N. Conant Avenue Kansas City, MO 64153 Attention: Immigration Status Verifier
Missouri, St. Louis (STL)	Robert A. Young Federal Building 1222 Spruce Street Suite 1.100 St. Louis, MO 63103-2815 Attention: Immigration Status Verifier
Nebraska, Omaha (OMA)	1717 Avenue "H" Omaha, NE 68110 Attention: Immigration Status Verifier
Nevada, Las Vegas (LVG)	3373 Pepper Lane Las Vegas, NV 89120-2739 Attention: Immigration Status Verifier
Nevada, Reno (REN)	1351 Corporate Boulevard Reno, NV 89502 Attention: Immigration Status Verifier
New Jersey, Newark (NEW)	Federal Building 970 Broad Street Newark, NJ 07102 Attention: Immigration Status Verifier

New York, Albany (ALB)	1086 Troy-Schenectady Road Latham, NY 12110 Attention: Immigration Status Verifier
New York, Buffalo (BUF)	130 Delaware Avenue Buffalo, NY 14202 Attention: Immigration Status Verifier
New York, New York (NYC)	26 Federal Plaza 7th Floor, Room 130 New York, NY 10278 Attention: Immigration Status Verifier
North Carolina, Charlotte (CLT)	6130 Tyvola Centre Drive Charlotte, NC 28217 Attention: Immigration Status Verifier
Ohio, Cleveland (CLE)	1240 East 9th Street Room 1917 Cleveland, OH 44199 Attention: Immigration Status Verifier
Oregon, Portland (POO)	Federal Office Building 511 Northwest Broadway Portland, OR 97209 Attention: Immigration Status Verifier
Pennsylvania, Philadelphia (PHI)	1600 Callowhill Street Philadelphia, PA 19130 Attention: Immigration Status Verifier
Pennsylvania, Pittsburgh (PIT)	3000 Sidney Street Suite 200 Pittsburgh, PA 15222 Attention: Immigration Status Verifier
Puerto Rico, San Juan (SAJ)	PO Box 365068 San Juan, PR 00936 Attention: Immigration Status Verifier

Rhode Island, Providence (PRO)	200 Dyer Street Providence, RI 02903 Attention: Immigration Status Verifier
Tennessee, Memphis (MEM) (Temporary Status Verification Unit for New Orleans, LA)	842 Virginia Run Cove Memphis, TN 38122 Attention: Immigration Status Verifier
Texas, Dallas (DAL)	8101 North Stemmons Freeway Dallas, TX 75247 Attention: Immigration Status Verifier
Texas, El Paso (ELP)	1545 Hawkins Boulevard El Paso, TX 79925 Attention: Immigration Status Verifier
Texas, Harlingen (HLG)	1717 Zoy Street Harlingen, TX 78550 Attention: Immigration Status Verifier
Texas, Houston (HOU)	126 Northpoint Drive Houston, TX 77060 Attention: Immigration Status Verifier
Texas, San Antonio (SNA)	8940 Fourwinds Drive Suite 2020 San Antonio, TX 78239 Attention: Immigration Status Verifier
Vermont, St. Albans (STA)	64 Gricebrook Road St. Albans, VT 05478 Attention: Immigration Status Verifier
Virginia, Norfolk (NOR)	Norfolk Commerce Park 5280 Hennemam Drive Norfolk, VA 23513 Attention: Immigration Status Verifier

Virgin Islands, St. Thomas, Charlotte Amalie (CHA)	800 Nisky Center Suite 1A, First Floor South St. Thomas, VI 00802 Attention: Immigration Status Verifier
Washington, DC (WAS)	2675 Prosperity Avenue Fairfax, VA 22031-4906 Attention: Immigration Status Verifier
Washington, Seattle (SEA)	12500 Tukwila International Blvd. Seattle, WA 98168 Attention: Immigration Status Verifier

Appendix 3

Acceptable Forms of Verification

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	ACCEPTABLE SOURCES					Verification Tips
	Third Party[a]			*Provided by Applicant	Self-Declaration	
	Written [b and d]	*Provided by Applicant[e]	Oral[c]			
• Age. *(See Chapter 3, Paragraph 3-28.C)*	• None required.	• None required.	• None required.	• Birth Certificate • Baptismal Certificate • Military Discharge papers • Valid passport • Census document showing age • Naturalization certificate • Social Security Administration Benefits printout		

[a]**NOTE**: Requests for verification from *a third party source* must be accompanied by a Consent to Release form *HUD-9887-A*.
[b]**NOTE**: If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.
[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of the third party.
[d*]**NOTE:** For use of EIV Income Reports as third party verification of employment and income a current Consent for Release form HUD-9887 must be on file.*
[c*]**NOTE:** See examples and requirements found in Paragraph 5-13.B.1

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	ACCEPTABLE SOURCES					Verification Tips
	Third Party[a]			*Provided by Applicant	Self-Declaration	
	Written [b and d]	*Provided by Applicant[e]	Oral[c]			
• Alimony or child support. *(See Chapter 5, Paragraphs 5-6.F and 5-10.F)*	• Copy of separation or divorce agreement provided by ex-spouse or court indicating type of support, amount, and payment schedule. • Written statement provided by ex-spouse or income source indicating all of above. • If applicable, written statement from court/attorney that payments are not being received and anticipated date of resumption of payments.	• Recent original letters from the court.	• Telephone or in-person contact with ex-spouse or income source documented in file by the owner.	• Copy of most recent check, recording date, amount, and check number.	• Notarized statement or affidavit signed by applicant indicating amount received. • If applicable, notarized statement or affidavit from applicant indicating that payments are not being received and describing efforts to collect amounts due.	• Amounts awarded but not received can be excluded from annual income only when applicants have made reasonable efforts to collect amounts due, including filing with courts or agencies responsible for enforcing payments.

[a]**NOTE**: Requests for verification from *a third party source* must be accompanied by a Consent to Release form *HUD-9887-A*.
[b]**NOTE**: If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.
[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of the third party.
[d*]**NOTE:** For use of EIV Income Reports as third party verification of employment and income a current Consent for Release form HUD-9887 must be on file.*
[c*]**NOTE:** See examples and requirements found in Paragraph 5-13.B.1

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	ACCEPTABLE SOURCES					Verification Tips
	Third Party[a]			*Provided by Applicant	Self-Declaration	
	Written [b and d]	*Provided by Applicant[e]	Oral[c]			
• Assets disposed of for less than fair market value. *(See Chapter 5, Paragraph 5-7.G.8)*	• None required.	• None required.	• None required.	• None required.	• Certification signed by applicant *and/or tenant* that no *family* member has disposed of assets for less than fair market value during *the* preceding two years. • If applicable, certification signed by the owner of the asset disposed of that shows: - Type of assets disposed of; - Date disposed of; - Amount received; and - Market value of asset at the time of disposition.	• Only count assets disposed of within a two-year period prior to *certification or recertification.*

[a]**NOTE**: Requests for verification from *a third party source* must be accompanied by a Consent to Release form *HUD-9887-A*.
[b]**NOTE**: If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.
[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of the third party.
[d*]**NOTE:** For use of EIV Income Reports as third party verification of employment and income a current Consent for Release form HUD-9887 must be on file.*
[c*]**NOTE:** See examples and requirements found in Paragraph 5-13.B.1

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	ACCEPTABLE SOURCES					Verification Tips
	Third Party[a]			*Provided by Applicant	Self-Declaration	
	Written [b and d]	*Provided by Applicant[e]	Oral[c]			
• Auxiliary apparatus. *(See Chapter 5, Paragraph 5-10.C)*	• Written verification from source of costs and purpose of apparatus. • Written certification from doctor or rehabilitation agency that use of apparatus is necessary to employment of any family member. • In a case where the disabled person is employed, statement from employer that apparatus is necessary for employment.	• Copies of receipts.	• Telephone or in-person contact with these sources documented in file by the owner.	• Evidence of periodic payments for apparatus.	• Not appropriate.	• The owner must determine if the expense is to be considered a medical or disability assistance.

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[b]**NOTE**: If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.
[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of the third party.
[d*]**NOTE:** For use of EIV Income Reports as third party verification of employment and income a current Consent for Release form HUD-9887 must be on file.*
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Appendix 3: Acceptable Forms of Verification

Factor to be Verified	ACCEPTABLE SOURCES					Verification Tips
	Third Party[a]			*Provided by Applicant	Self-Declaration	
	Written [b and d]	*Provided by Applicant[e]	Oral[c]			
• Care attendant for disabled family members. *(Paragraph 5-10.C)*	• Written verification from attendant stating amount received, frequency of payments, hours of care. • Written certification from doctor or rehabilitation agency that care is necessary to employment of family member.	• Copies of receipts.	• Telephone or in-person contact with source documented in file by the owner.	• Cancelled checks indicating payment amount and frequency.	• Notarized statement or signed affidavit attesting to amounts paid.	• The owner must determine if this expense is to be considered a medical or disability assistance.

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[b]**NOTE**: If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.
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Appendix 3: Acceptable Forms of Verification

Factor to be Verified	ACCEPTABLE SOURCES					Verification Tips
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• Child care expenses (including verification that a family member who has been relieved of child care is working, attending school, or looking for employment). *(Paragraph 5-10.B)*	• Written verification from person who provides care indicating amount of payment, hours of care, names of children, frequency of payment, and whether or not care is necessary to employment or education. • Verification of employment as required under Employment Income. • Verification of student status (full or part-time) as required under Full-Time Student Status.	• Copies of receipts	• Telephone or in-person contact with these sources (child care provider, employer, school) documented in file by the owner.	• Cancelled checks indicating payments. • For school attendance, school records, such as paid fee statements that show that the time and duration of school attendance reasonably corresponds to the period of child care.	• For verification of looking for work, details of job search effort as required by owner's written policy.	• Allowance provided only for care of children 12 and younger. • When same care provider takes care of children and disabled person, the owner must prorate expenses accordingly. • Owners should keep in mind that costs may be higher in summer months and during holiday periods. • The owner must determine which family member has been enabled to work. • Care for employment and education must be prorated to compare to earnings. • Costs must be reasonable.

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Appendix 3: Acceptable Forms of Verification

Factor to be Verified	ACCEPTABLE SOURCES					Verification Tips
	Third Party[a]			*Provided by Applicant	Self-Declaration	
	Written [b and d]	*Provided by Applicant[e]	Oral[c]			
• Citizenship *(See Chapter 3, Paragraph 3-12)*					• Citizens must sign declaration certifying U.S. Citizenship.	• Owners may require applicants/residents to provide verification of citizenship.
• Current net family assets. *(See Chapter 5, Paragraph 5-7.C)*	• Verification forms, letters or documents received from financial institutions, stock brokers, real estate agents, employers indicating the current value of the assets and penalties or reasonable costs to be incurred in order to convert nonliquid assets into cash.	• Passbooks, checking, or savings account statements, certificates of deposit, property appraisals, stock or bond documents, or other financial statements completed by financial institution. • Copies of real estate tax statements, if tax authority uses approximate market value. • Copies of real estate closing documents that indicate distribution of sales proceeds and settlement costs.	• Telephone or in-person contact with appropriate source, documented in file by the owner.	• Quotes from attorneys, stockbrokers, bankers, and real estate agents that verify penalties and reasonable costs incurred to convert asset to cash.	• Notarized statement or signed affidavit stating cash value of assets or verifying cash held at applicant's home or in safe deposit box.	• Use current balance in savings accounts and average monthly balance in checking accounts for last 6 months. • Use cash value of all assets (the net amount the applicant would receive if the asset were converted to cash). • **NOTE:** This information can usually be obtained simultaneously when verifying income from assets and employment (e.g., value of pension).

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[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of the third party.
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Appendix 3: Acceptable Forms of Verification

Factor to be Verified	ACCEPTABLE SOURCES					Verification Tips
	Third Party[a]			*Provided by Applicant	Self-Declaration	
	Written [b and d]	*Provided by Applicant[e]	Oral[c]			
• Disability status. *(Paragraph 3-28.B)*	• Verification from *appropriate source of information* stating that individual qualifies under the definition of disability.	• Not appropriate.	• Telephone or in-person contact with medical professional verifying qualification under the federal disability definition and documentation in the file of the conversation.	• Not appropriate.	• Not appropriate.	• If a person receives Social Security Disability solely due to a drug or alcohol problem, the person is not considered disabled under housing law. A person that does not receive Social Security Disability may still qualify under the definition of a person with disabilities. • Owners must not seek to verify information about a person's specific disability other than obtaining a professional's opinion of qualification under the definition of a person with disabilities.

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[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of the third party.
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Appendix 3: Acceptable Forms of Verification

Factor to be Verified	ACCEPTABLE SOURCES					Verification Tips
	Third Party[a]			*Provided by Applicant	Self-Declaration	
	Written [b and d]	*Provided by Applicant[e]	Oral[c]			
• Dividend income and savings account interest income. *(See Chapter 5, Paragraph 5-7)*	• Verification form completed by bank.	• Copies of current statements, bank passbooks, certificates of deposit, if they show required information (i.e., current rate of interest). • Copies of Form 1099 from the financial institution, and verification of projected income for the next 12 months. • Broker's quarterly statements showing value of stocks/bonds and earnings credited to the applicant.	• Telephone or in-person contact with appropriate party, documented in file by the owner.		• Notarized statement or signed affidavit stating dividend income and savings account interest income.	• The owner must obtain enough information to accurately project income over next 12 months. • Verify interest rate as well as asset value.

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[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of the third party.
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Appendix 3: Acceptable Forms of Verification

Factor to be Verified	ACCEPTABLE SOURCES					Verification Tips
	Third Party[a]			*Provided by Applicant	Self-Declaration	
	Written [b and d]	*Provided by Applicant[e]	Oral[c]			
• Employment Income including tips, gratuities, overtime. *(See Chapter 5, Paragraph 5-5.A and C and Paragraph 5-6.)*	• *EIV Income Report (mandatory)* • Verification form completed by employer. See Paragraph 9-10 for situations when this method of verification must be used prior to verifying through an original or authentic document generated by a third-party source.	• W-2 Forms, if applicant has had same employer for at least two years and increases can be accurately projected. • Paycheck stubs or earning statements.	• Telephone or in-person contact with employer, specifying amount to be paid per pay period and length of pay period. Document in file by the owner.		• Notarized statements or affidavits signed by applicant that describe amount and source of income.	• *It is mandatory that the EIV Income Report be used as third-party verification of employment and income (24 CFR 5.233).* • Always verify: frequency of gross pay (i.e., hourly, biweekly, monthly, bimonthly); anticipated increases in pay and effective dates; overtime. • Require most recent *4-6* consecutive pay stubs; do not use check without stub. • For a fee, additional information can be obtained from The Work Number 800-996-7556; First American Registry 800-999-0350; and Verifax 800-969-5100. Fees are valid project expenses. Information does not replace third-party verification.

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[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of the third party.
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Appendix 3: Acceptable Forms of Verification

Factor to be Verified	ACCEPTABLE SOURCES					Verification Tips
	Third Party[a]			*Provided by Applicant	Self-Declaration	
	Written [b and d]	*Provided by Applicant[e]	Oral[c]			
• Family composition. *(See Chapter 3, Paragraph 3-27)*	• None required.	• None required.	• None required.	• Birth certificates • Divorce actions • Drivers' licenses • Employer records • Income tax returns • Marriage certificates • School records • Social Security Administration records • Social service agency records • Support payment records • Utility bills • Veterans Administration (VA) records		• An owner may seek verification only if the owner has clear written policy.

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	Third Party[a]			*Provided by Applicant	Self-Declaration	
	Written [b and d]	*Provided by Applicant[e]	Oral[c]			
• Family type. (Information verified only to determine eligibility for project, preferences, and allowances.) *(See Chapter 3, Paragraph 3-28)*	• Disability Status: statement from physician or other reliable source, if benefits documenting status are not received. See paragraph 3.25 B.1 for restrictions on this form of verification. • Displacement Status: Written statement or certificate of displacement by the appropriate governmental authority.		• Telephone or in-person contact with source documented in file by the owner.	• Elderly Status (when there is reasonable doubt that applicant is at least 62): birth certificate, baptismal certificate, social security records, driver's license, census record, official record of birth or other authoritative document or receipt of SSI old age benefits or SS benefits. • Disabled, blind: evidence of receipt of SSI or Disability benefits.	• Elderly Status: Applicant's signature on application is generally sufficient.	• *When* the applicant receives income or benefits for which elderly or disabled status is a requirement, such status must be verified. • Status of disabled family members must be verified for entitlement to $480 dependent deduction and disability assistance allowance. • Owner may not ask the nature/extent of disability.
• Full-time student status (of family member 18 or older, excluding head, spouse, or foster children). *(See Chapter 5, Paragraph 5-6.A.3)*	• Verification from the Admissions or Registrar's Office or dean, counselor, advisor, etc., or from VA Office.		• Telephone or in-person contact with these sources documented in file by the owner.	• School records, such as paid fee statements that show a sufficient number of credits to be considered a full-time student by the educational institution attended.	• Not appropriate.	

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	Third Party[a]			*Provided by Applicant	Self-Declaration	
	Written [b and d]	*Provided by Applicant[e]	Oral[c]			
• Immigration Status. *(See Chapter 3, Paragraph 3-12)*	• Verification of eligible immigration status must be received from DHS through the DHS SAVE system or through secondary verification using DHS Form G-845.		• None.	• Applicant/resident must provide appropriate immigration documents to initiate verification.	• Noncitizens must sign declaration certifying the following: Eligible immigration status; or Decision not to claim eligible status.	• Owners must require noncitizens requesting assistance to provide verification of eligible immigration status.
• *Immigration Status (SSN) Individuals who do not contend eligible immigration status under the Section 221(d)(3) BMIR, Section 202 PAC, Section 202 PRAC, Section 811 PRAC programs (See Chapter 3, Paragraph 3-9.A)*					• *Self-certification that they do not contend eligible immigration status.*	• *This verification is for exemption of the requirement to disclose and provide verification of a SSN when an individual does not contend eligible immigration status only for the programs listed in the Factor to be Verified column.*

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• Income maintenance payments, benefits, income other than wages (i.e., welfare, Social Security [SS], Supplemental Security Income [SSI], Disability Income, Pensions). *(See Chapter 5, Paragraph 5-6)*	• * EIV Income Report for Social Security benefits (mandatory) * • Award or benefit notification letters prepared and signed by authorizing agency.	• Current or recent check stubs with date, amount, and check number recorded by the owner. • Award *or benefit* letters or computer printout from court or public agency. • Most recent quarterly pension account statement.	• Telephone or in-person contact with income source, documented in file by the owner. • **NOTE:** For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.	• Copies of validated bank deposit slips or bank statements, with identification by bank.	• Notarized statement of income received other than wages.	• *It is mandatory that the EIV Income Report be used as third-party verification of the Social Security benefit income received (24 CFR 5.233).* • Checks or automatic bank deposit slips may not provide gross amounts of benefits if applicant has deductions made for Medicare Insurance. • Pay stubs for the most recent four to six weeks should be obtained. • Copying of U.S. Treasury checks is not permitted. • Award letters/printouts from court or public agency may be out of date; telephone verification of letter/printout is recommended.

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• Interest from sale of real property (e.g., contract for deed, installment sales contract, etc.) *(See chapter 5, Paragraph 5-7.G.7)*	• Verification form completed by an accountant, attorney, real estate broker, the buyer, or a financial institution which has copies of the amortization schedule from which interest income for the next 12 months can be obtained.	• Copy of the contract.	• Telephone or in-person contact with appropriate party, documented in file by the owner.	• Copy of the amortization schedule, with sufficient information for the owner to determine the amount of interest to be earned during the next 12 months. • **NOTE:** Copy of a check paid by the buyer to the applicant is not acceptable.	• Notarized statement of interest from sale of real property.	• Only the interest income is counted; the balance of the payment applied to the principal is merely a liquidation of the asset. • The owner must get enough information to compute the actual interest income for the next 12 months.

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	Written [b and d]	*Provided by Applicant[e]	Oral[c]			
• Medical expenses. *(See Chapter 5, Paragraph 5-10.D)*	• Verification by a doctor, hospital or clinic, dentist, pharmacist, etc., of estimated medical costs to be incurred or regular payments expected to be made on outstanding bills which are not covered by insurance.	• Copies of income tax forms (Schedule A, IRS Form 1040) that itemize medical expenses, when the expenses are not expected to change over the next 12 months. • Receipts, or pay stubs, which indicate health insurance premium costs, or payments to a resident attendant. • Receipts or ticket stubs that verify transportation expenses directly related to medical expenses.	• Telephone or in-person contact with these sources, documented in file by the owner.	• Copies of cancelled checks that verify payments on outstanding medical bills that will continue for all or part of the next 12 months. • Cancelled checks which indicate health insurance premium costs, or payments to a resident attendant.	• Notarized statement or signed affidavit of transportation expenses directly related to medical treatment, if there is no other source of verification.	• Medical expenses are not allowable as deduction unless applicant is an elderly or disabled family. Status must be verified.
• Need for an assistive animal. *(See Chapter 3, Paragraph 3-29)*	• Letter from *appropriate third party unless the need is readily apparent or already known*.					• If the owner's policy is to verify this need, owner must implement policy consistently.

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• Net Income for a business *(See Chapter 5, Paragraph 5-6.H).*	• Not applicable.	• Form 1040 with Schedule C, E, or F. • Financial Statement(s) of the business (audited or unaudited) including an accountant's calculation of straight-line depreciation expense if accelerated depreciation was used on the tax return or financial statement. • For rental property, copies of recent rent checks, lease and receipts for expenses, or IRS Schedule E.	• Not applicable.	• Any loan application listing income derived from business during the preceding 12 months.	• Notarized statement showing net income for a business.	
• Recurring contributions and gifts. *(See Chapter 5, Paragraph 5-6.G)*	• Notarized statement or affidavit signed by the person providing the assistance giving the purpose, dates, and value of gifts.	• Not applicable.	• Telephone or in-person contact with source documented in file by the owner.	• Not applicable.	• Notarized statement or affidavit signed by applicant stating purpose, dates, and value of gifts.	• Sporadic contributions and gifts are not counted as income.

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• Self-employment, tips, gratuities, etc. *(See Paragraph 5-5.C and Paragraph 5-6.H)*	• None available.	• Form 1040/1040A showing amount earned and employment period.	• None available.		• Notarized statement or affidavit signed by applicant showing amount earned and pay period.	

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	Third Party[a]			*Provided by Applicant	Self-Declaration	
	Written [b and d]	*Provided by Applicant[e]	Oral[c]			
• Social security number. *(See Chapter 3, Paragraph 3-31)*	• None required.		• None Required	• Original Social Security card • *Original document issued by a federal or state government agency which contains the name, SSN, and other identifying information of the individual* • Driver's license with SSN • Identification card issued by a medical insurance provider, or by an employer or trade union. • Earnings statements on payroll stubs • Bank statement • Form 1099 • Benefit award letter • Retirement benefit letter • Life insurance policy • Court records	• N/A	• Individuals who have applied for legalization under the Immigration Reform and Control Act of 1986 will be able to disclose their social security numbers but unable to supply cards for documentation. Social security numbers are assigned to these persons when they apply for amnesty. The cards go to DHS until the persons are granted temporary lawful resident status. Until that time, their acceptable documentation is a letter from the DHS indicating that social security numbers have been assigned.

[a]**NOTE**: Requests for verification from *a third party source* must be accompanied by a Consent to Release form *HUD-9887-A*.
[b]**NOTE**: If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.
[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of the third party.
[d*]**NOTE:** For use of EIV Income Reports as third party verification of employment and income a current Consent for Release form HUD-9887 must be on file.*
[c*]**NOTE:** See examples and requirements found in Paragraph 5-13.B.1

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	ACCEPTABLE SOURCES					Verification Tips
	Third Party[a]			*Provided by Applicant	Self-Declaration	
	Written [b and d]	*Provided by Applicant[e]	Oral[c]			
• *Student Status (Section 8 only) (See Chapter 3, Paragraphs 3-13.A and 3-33.A)*	• *Enrolled full-time and/or part-time at an institution of higher education • Verification of independence from parents • Financial assistance received*				• *Signed declaration and certification of income from parents • Certification of income provided by parent or from persons not living in the unit with the student*	• *May also need to verify age; dependent children; marital status; tuition; veteran status and /or disability status.*
• *Student status (Section 221(d)(3) BMIR, Section 202 PAC, Section 202 PRAC and Section 811 PRAC) See Chapter 3, Paragraph 3-13.B and 3-33.B)*	• *Enrolled full-time and/or part-time at an institution of higher education • Verification of independence from parents • Financial assistance received*				• *Certification of income provided by parent or from persons not living in the unit with the student*	
• Unborn children.	• None required.		• None required.	• None required.	• Applicant/tenant self-certifies to pregnancy.	• Owner may not verify further than self-certification.

[a]**NOTE**: Requests for verification from *a third party source* must be accompanied by a Consent to Release form *HUD-9887-A*.
[b]**NOTE**: If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.
[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of the third party.
[d*]**NOTE:** For use of EIV Income Reports as third party verification of employment and income a current Consent for Release form HUD-9887 must be on file.*
[c*]**NOTE:** See examples and requirements found in Paragraph 5-13.B.1

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	ACCEPTABLE SOURCES					Verification Tips
	Third Party[a]			*Provided by Applicant	Self-Declaration	
	Written [b and d]	*Provided by Applicant[e]	Oral[c]			
• Unemployment compensation. *(See Chapter 5, Paragraphs 5-5.A, 5-6.J and Q)*	• *EIV Income Report (mandatory) * • Verification form completed by source.	• Copies of checks or records from agency provided by applicant stating payment amounts and dates. • Benefit notification letter signed by authorizing agency.	• Telephone or in-person contact with agency documented in a file by an owner.		• Notarized statement of unemployment compensation received.	• *It is mandatory that the EIV Income Report be used as third-party verification of employment and income (24 CFR 5.233).* • Frequency of payments and expected length of benefit term must be verified. • Income not expected to last full 12 months must be calculated based on 12 months and interim recertification completed when benefits stop.

[a]**NOTE**: Requests for verification from *a third party source* must be accompanied by a Consent to Release form *HUD-9887-A*.
[b]**NOTE**: If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.
[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of the third party.
[d*]**NOTE:** For use of EIV Income Reports as third party verification of employment and income a current Consent for Release form HUD-9887 must be on file.*
[c*]**NOTE:** See examples and requirements found in Paragraph 5-13.B.1

Appendix 3: Acceptable Forms of Verification

Factor to be Verified	ACCEPTABLE SOURCES					Verification Tips
	Third Party[a]			*Provided by Applicant	Self-Declaration	
	Written [b and d]	*Provided by Applicant[e]	Oral[c]			
• Welfare payments (as-paid states only). *(See Chapter 5, Paragraph 5-6.K)*	• Verification form completed by welfare department indicating maximum amount family may receive. • Maximum shelter schedule by household size with ratable reduction schedule.		• Telephone or in-person contact with income source, documented in file by the owner.	• Maximum shelter allowance schedule with ratable reduction schedule provided by applicant.	• Notarized statement of welfare payments received.	• Actual welfare benefit amount not sufficient as proof of income in as-paid states or localities since income is defined as maximum shelter amount.
• Zero Income. *(See Chapter 9, Paragraph 9-11.D)*	• Not applicable.	• Not applicable.	• Not applicable.	• Not applicable.	• Applicant/Tenant self-certifies to zero income.	• Owners may require applicant/tenant to sign verification release of information forms for state, local, and federal benefits programs, as well as the HUD 9887 and HUD 9887-A. • Owners may require the tenant to reverify zero income status at least every 90 days.

[a]**NOTE**: Requests for verification from *a third party source* must be accompanied by a Consent to Release form *HUD-9887-A*.
[b]**NOTE**: If the original document is witnessed but is a document that should not be copied, the owner should record the type of document, any control or serial numbers, and the issuer. The owner should also initial and date this notation in the file.
[c]**NOTE**: For all oral verification, file documentation must include facts, time and date of contact, and name and title of the third party.
[d*]**NOTE:** For use of EIV Income Reports as third party verification of employment and income a current Consent for Release form HUD-9887 must be on file.*
[c*]**NOTE:** See examples and requirements found in Paragraph 5-13.B.1

MODEL LEASE FOR SUBSIDIZED PROGRAMS

1. Parties and Dwelling Unit: The parties to this Agreement are (A)_____ _____, referred to as the Landlord, and (B)_____, referred to as the Tenant. The Landlord leases to the Tenant(S) unit number (C)_____, located at (D)_____ in the project known as (E)_____.

2. Length of Time (Term): The initial term of this Agreement shall begin on (F)_____ and end on (G)_____. After the initial term ends, the Agreement will continue for successive terms of one (H)_____ each unless automatically terminated as permitted by paragraph 23 of this Agreement.

3. Rent: The Tenant agrees to pay $(I)_____ for the partial month ending on (J)_____. After that, Tenant agrees to pay a rent of $(K)_____ per month. This amount is due on the (L)_____ day of the month at (M)_____. The Tenant understands that this monthly rent is less than the market (unsubsidized) rent due on this unit. This lower rent is available either because the mortgage on this project is subsidized by the Department of Housing and Urban Development (HUD) and/or because HUD makes monthly payments to the Landlord on behalf of the Tenant. The amount, if any, that HUD makes available monthly on behalf of the Tenant is called the tenant assistance payment and is shown on the "Assistance Payment" line of the Owner’s Certification of Compliance with HUD’s Tenant Eligibility and Rent Procedures form which is Attachment No. 1 to this Agreement.

4. Changes in the Tenant's Share of the Rent: The Tenant agrees that the amount of rent the Tenant pays and/or the amount of assistance that HUD pays on behalf of the Tenant may be changed during the term of this Agreement if:

   a. HUD or the Contract Administrator (such as a Public Housing Agency) determines, in accordance with HUD procedures, that an increase in rents is needed;

   b. HUD or the Contract Administrator changes any allowance for utilities or services considered in computing the Tenant's share of the rent;

   c. the income, the number of persons in the Tenant's household or other factors considered in calculating the Tenant's rent change and HUD procedures provide that the Tenant's rent or assistance payment be adjusted to reflect the change;

d. changes in the Tenant's rent or assistance payment are required by HUD's recertification or subsidy termination procedures

e. HUD's procedures for computing the Tenant's assistance payment or rent change; or

f. the Tenant fails to provide information on his/her income, family composition or other factors as required by the Landlord.

The Landlord agrees to implement changes in the Tenant's rent or tenant assistance payment only in accordance with the time frames and administrative procedures set forth in HUD's handbooks, instructions and regulations related to administration of multifamily subsidy programs. The Landlord agrees to give the Tenant at least 30 days advance written notice of any increase in the Tenant's rent except as noted in paragraphs 11, 15 or 17. The Notice will state the new amount the Tenant is required to pay, the date the new amount is effective, and the reasons for the change in rent. The Notice will also advise the Tenant that he/she may meet with the Landlord to discuss the rent change.

5. Charges for Late Payments and Returned Checks: If the Tenant does not pay the full amount of the rent shown in paragraph 3 by the end of the 5th day of the month, the Landlord may Collect a fee of $5 on the 6th day of the month. Thereafter, the Landlord may collect $1 for each additional day the rent remains unpaid during the month it is due.
The Landlord may not terminate this Agreement for failure to pay late charges, but may terminate this Agreement for non-payment of rent, as explained in paragraph 23. The Landlord may collect a fee of $(N)_____ on the second or any additional time a check is not honored for payment (bounces). The charges discussed in this paragraph are in addition to the regular monthly rent payable by the Tenant.

6. Condition of Dwelling Unit By signing this Agreement, the Tenant acknowledges that the unit is safe, clean and in good condition. The Tenant agrees that all Appliances and equipment in the unit are in good working order, except as described on the Unit Inspection Report which is Attachment No. 2 to this Agreement. The Tenant also agrees that the Landlord has made no promises to decorate, alter, repair or improve the unit, except as listed on the Unit Inspection Report.

7. Charges for Utilities and Services: The following charts describe how the cost of utilities and services related to occupancy of the unit will be paid. The Tenant agrees

that these charts accurately describe the utilities and services paid by the Landlord and those paid by the Tenant.

a. The Tenant must pay for the utilities in column (1). Payments should be made directly to the appropriate utility company. The items in column (2) are included in the Tenant's rent.

(1) Put "x" by any Utility Tenant pays directly	Type of Utility	(2) Put "x" by any Utility Included in Tenant Rent
(0)_____	Heat	(0)_____
_____	Lights, Electric	_____
_____	Cooking	_____
_____	Water	_____
	Other (Specify.	
_____	_____	_____
_____	_____	_____

b. The Tenant agrees to pay the Landlord the amount shown in column (3) on the date the rent is due. The Landlord certifies that HUD had authorized him/her to collect the type of charges shown in column (3) and that the amounts shown in column (3) do not exceed the amounts authorized by HUD.

	(3) Show $ Amount Tenant Pays to Landlord in Addition to Rent
Parking	(0) $_____
Other (Specify.)	
_____	$_____
_____	$_____

8. Security Deposits: The Tenant has deposited $(P)_____ with the Landlord. The Landlord will hold this security deposit for the period the Tenant occupies the unit. After the Tenant has moved from the unit, the Landlord will determine whether the Tenant is eligible for a refund of any or all of the security deposit. The amount of the refund will be determined in accordance with the following conditions and procedures.

a. The Tenant will be eligible for a refund of the security Deposit only if the Tenant provided the Landlord with the 30-day written notice of intent to move required by paragraph 23, unless the Tenant was unable to give the notice for reasons beyond his/her control.

b. After the Tenant has moved from the unit, the Landlord will inspect the unit and complete another Unit Inspection Report. The Landlord will permit the Tenant to participate in the inspection, if the Tenant so requests.

b. The Landlord will refund to the Tenant the amount of the security deposit plus interest computed at (Q)_____%, beginning (R)_____ ,less any amount needed to pay the cost of:

(1) unpaid rent;

(2) damages that are not due to normal wear and tear and are not listed on the Unit Inspection Report;

(3) charges for late payment of rent and returned checks, as described in paragraph 5; and

(4) charges for unreturned keys, as described in paragraph 9.

d. The Landlord agrees to refund the amount computed in paragraph 8c within (S)_____ days after the Tenant has permanently moved out of the unit, returned possession of the unit to the Landlord, and given his/her new address to the Landlord. The Landlord will also give the Tenant a written list of charges that were subtracted from the deposit. If the Tenant disagrees with the Landlord concerning the amounts deducted and asks to meet with the Landlord, the Landlord agrees to meet with the Tenant and informally discuss the disputed charges.

e. If the unit is rented by more than one person, the Tenants agree that they will work out the details of dividing any refund among themselves. The Landlord may pay the refund to any Tenant identified in Paragraph 1 of this Agreement.

f. The Tenant understands that the Landlord will not count the Security Deposit towards the last month's rent or towards repair charges owed by the Tenant in accordance with paragraph 11.

9. Keys and Locks: The Tenant agrees not to install additional or different locks or gates on any doors or windows of the unit without the written permission of the Landlord. If the Landlord approves the Tenant's request to install such locks, the Tenant agrees to provide the Landlord with a key for each lock. When this Agreement ends, the Tenant agrees to return all keys to the dwelling unit to the Landlord. The Landlord may charge the Tenant $(T)_____ for each key not returned.

Maintenance:

a. The Landlord agrees to:

(1) regularly clean all common areas of the project;

(2) maintain the common areas and facilities in a safe condition;

(3) arrange for collection and removal of trash and garbage;

(4) maintain all equipment and appliances in safe and working order;

(5) make necessary repairs with reasonable promptness;

(6) maintain exterior lighting in good working order:

(7) provide extermination services, as necessary; and

(8) maintain grounds and shrubs.

b. The Tenant agrees to:

(1) keep the unit clean;

(2) use all appliances, fixtures and equipment in a safe manner and only for the purposes for which they are intended;

(3) not litter the grounds or common areas of the project;

(4) not destroy, deface, damage or remove any part of the unit, common areas, or project grounds;

(5) give the Landlord prompt notice of any defects in the plumbing, fixtures, appliances, heating and cooling equipment or any other part of the unit or related facilities; and

(6) remove garbage and other waste from the unit in a clean and safe manner.

11. Damages: Whenever damage is caused by carelessness, misuse, or neglect on the part of the Tenant, his/her family or visitors, the Tenant agrees to pay:

a. the cost of all repairs and do so within 30 days after receipt of the Landlord's demand for the repair charges; and

b. rent for the period the unit is damaged whether or not the unit is habitable. The Tenant understands that HUD will not make assistance payments for any period in which the unit is not habitable. For any such period, the Tenant agrees to pay the HUD-approved market rent rather than the Tenant rent

shown in paragraph 3 of this agreement.

12. Restrictions on Alterations: No alteration, addition, or improvements shall be made in or to the premises without the prior consent of the Landlord in writing. The Landlord agrees to provide reasonable accommodation to an otherwise eligible tenant's disability, including making changes to rules, policies, or procedures, and making and paying for structural alterations to a unit or common areas. The Landlord is not required to provide accommodations that constitute a fundamental alteration to the Landlord's program or which would pose a substantial financial and administrative hardship. See the regulations at 24 CFR Part 8. In addition, if a requested structural modification does pose a substantial financial and administrative hardship, the Landlord must then allow the tenant to make and pay for the modification in accordance with the Fair Housing Act.

13. General Restrictions: The Tenant must live in the unit and the unit must be the Tenant's only place of residence. The Tenant shall use the premises only as a private dwelling for himself/herself and the individuals listed on the Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures, Attachment 1. The Tenant agrees to permit other individuals to reside in the unit only after obtaining the prior written approval of the Landlord. The Tenant agrees not to:

a. sublet or assign the unit, or any part of the unit;

b. use the unit for unlawful purposes;

c. engage in or permit unlawful activities in the unit, in the common areas or on the project grounds;

d. have pets or animals of any kind in the unit without the prior written permission of the Landlord, but the landlord will allow the tenant to keep an animal needed as a reasonable accommodation to the tenant's disability, and will allow animals to accompany visitors with disabilities who need such animals as an accommodation to their disabilities; or

e. make or permit noises or acts that will disturb the rights or comfort of neighbors. The Tenant agrees to keep the volume of any radio, phonograph, television or musical instrument at a level which will not disturb the neighbors.

14. Rules: The Tenant agrees to obey the House Rules which are

Attachment No. 3 to this Agreement. The tenant agrees to obey additional rules established after the effective date of this Agreement if:

a. the rules are reasonably related to the safety, care and cleanliness of the building and the safety, comfort and convenience of the Tenants; and

b. the Tenant receives written notice of the proposed rule at least 30 days before the rule is enforced.

15. Regularly Scheduled Recertifications: Every year around the(u) _____ day of(v) _____, the Landlord will request the Tenant to report the income and composition of the Tenant's household and to supply any other information required by HUD for the purposes of determining the Tenant's rent and assistance payment, if any. The Tenant agrees to provide accurate statements of this information and to do so by the date specified in the Landlord's request. The landlord will verify the information supplied by the Tenant and use the verified information to recompute the amount of the Tenant's rent and assistance payment, if any.

a. If the Tenant does not submit the required recertification information by the date specified in the Landlord's request, the Landlord may impose the following penalties. The Landlord may implement these penalties only in accordance with the administrative procedures and time frames specified in HUD's regulations, handbooks and instructions related to the administration of multifamily subsidy programs.

(1) Require the Tenant to pay the higher, HUD-approved market rent for the unit.

(2) Implement any increase in rent resulting from the recertification processing without providing the 30-day notice otherwise required by paragraph 4 of this Agreement.

b. The Tenant may request to meet with the Landlord to discuss any change in rent or assistance payment resulting from the recertification processing. If the Tenant requests such a meeting, the Landlord agrees to meet with the Tenant and discuss how the Tenant's rent and assistance payment, if any, were computed.

16. Reporting Changes Between Regularly Scheduled Recertifications:

a. If any of the following changes occur, the Tenant agrees to advise the Landlord immediately.

(1) Any household member moves out of the unit.

(2) An adult member of the household who was reported as unemployed on the most recent certification or recertification obtains employment.

(3) The household's income cumulatively increases by $200 or more a month.

b. The Tenant may report any decrease in income or any change in other factors considered in calculating the Tenant's rent. Unless the Landlord has confirmation that the decrease in income or change in other factors will last less than one month, the Landlord will verify the information and make the appropriate rent reduction. However, if the Tenant's income will be partially or fully restored within two months, the Landlord may delay the certification process until the new income is known, but the rent reduction will be retroactive and the Landlord may not evict the Tenant for nonpayment of rent due during the period of the reported decrease and the completion of the certification process. The Tenant has thirty days after receiving written notice of any rent due for the above described time period to pay or the Landlord can evict for nonpayment of rent. (Revised 3/22/89)

c. If the Tenant does not advise the Landlord of these interim changes, the Landlord may increase the Tenant's rent to the HUD-approved market rent. The Landlord may do so only in accordance with the time frames and administrative procedures set forth in HUD's regulations, handbooks and instructions on the administration of multifamily subsidy programs.

d. The Tenant may request to meet with the Landlord to discuss how any change in income or other factors affected his/her rent or assistance payment, if any. If the Tenant requests such a meeting, the Landlord agrees to meet with the Tenant and explain how the Tenant's rent or assistance payment, if any, was computed.

17. Removal of Subsidy:

a. The Tenant understands that assistance made available on his/her behalf may be terminated if events in either items 1 or 2 below occur. Termination of assistance means that the Landlord may make the assistance available to another Tenant and the Tenant's rent will be recomputed. In addition, if the Tenant's assistance is terminated because of criterion (1) below, the Tenant will be required to pay the HUD-approved market rent for the unit.

(1) The Tenant does not provide the Landlord with the information or reports required by paragraph 15 or 16 within 10 calendar days

after receipt of the Landlord's notice of intent to terminate the Tenant's assistance payment.

(2) The amount the Tenant would be required to pay towards rent and utilities under HUD rules and regulations equals the Family Gross Rent shown on Attachment 1.

b. The Landlord agrees to give the Tenant written notice of the proposed termination. The notice will advise the Tenant that, during the ten calendar days following the date of the notice, he/she may request to meet with the Landlord to discuss the proposed termination of assistance. If the Tenant requests a discussion of the proposed termination, the Landlord agrees to meet with the Tenant.

c. Termination of assistance shall not affect the Tenant's other rights under this Agreement, including the right to occupy the unit. Assistance may subsequently be reinstated if the Tenant submits the income or other data required by HUD procedures, the Landlord determines the Tenant is eligible for assistance, and assistance is available.

18. Tenant Obligation To Repay: If the tenant submits false information on any application, certification or request for interim adjustment or does not report interim changes in family income or other factors as required by paragraph 16 of this Agreement, and as a result, is charged a rent less than the amount required by HUD's rent formulas, the Tenant agrees to reimburse the Landlord for the difference between the rent he/she should have paid and the rent he/she was charged. The Tenant is not required to reimburse the Landlord for undercharges caused solely by the Landlord's failure to follow HUD's procedures for computing rent or assistance payments.

19. Size of Dwelling The Tenant understands that HUD requires the Landlord to assign units in accordance with the Landlord’s written occupancy standards. These standards include consideration of unit size, relationship of family members, age and sex of family members and family preference. If the Tenant is or becomes eligible for a different size unit, and the required size unit becomes available, the Tenant agrees to:

a. move within 30 days after the Landlord notifies him/her that unit of the required size is available within the project; or

b. remain in the same unit and pay the HUD-approved market rent.

20. Access by Landlord:

a. The Landlord agrees to enter the unit only during reasonable hours, to provide reasonable advance notice of his/her intent to enter the unit, and to enter the unit only after receiving the Tenant's consent to do so, except when urgency situations make such notices impossible or except under paragraph (c) below.

b. The Tenant consents in advance to the following entries into the unit:

(i) The tenant agrees to permit the Landlord, his/her agents or other persons, when authorized by the Landlord, to enter the unit for the purpose of making reasonable repairs and periodic inspections.

(ii) After the Tenant has given a notice of intent to move, the Tenant agrees to permit the Landlord to show the unit to prospective tenants during reasonable hours.

c. If the Tenant moves before this Agreement ends, the Landlord may enter the unit to decorate, remodel, alter or otherwise prepare the unit for re-occupancy.

21. Discrimination Prohibited: The Landlord agrees not to discriminate based upon race, color, religion, creed, National origin, sex, age, familial status, and disability.

22. Change in Rental Agreement: The Landlord may, with the prior approval of HUD, change the terms and conditions of this Agreement. Any changes will become effective only at the end of the initial term or a successive term. The Landlord must notify the Tenant of any change and must offer the Tenant a new Agreement or an amendment to the existing Agreement. TheTenant must receive the notice at least 60 days before the proposed effective date of the change. The Tenant may accept the changed terms and conditions by signing the new Agreement or the amendment to the existing Agreement and returning it to the Landlord. The Tenant may reject the changed terms and conditions by giving the Landlord written notice that he/she intends to terminate the tenancy. The Tenant must give such notice at least 30 days before the proposed change will go into effect. If the

Tenant does not accept the amended agreement, the Landlord may require the Tenant to move from the project, as provided in paragraph 23.

23. Termination of Tenancy:

a. To terminate this Agreement, the Tenant must give the Landlord 30-days written notice before moving from the unit.

b. Any termination of this Agreement by the Landlord must be carried out in accordance with HUD regulations, State and local law, and the terms of this Agreement.

c. The Landlord may terminate this Agreement for the following reasons:

1. the Tenant's material noncompliance with the terms of this Agreement;

2. the Tenant's material failure to carry out obligations under any State Landlord and Tenant Act;

3. drug related criminal activity engaged in on or near the premises, by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control;

4. determination made by the Landlord that a household member is illegally using a drug;

5. determination made by the Landlord that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents;

6. criminal activity by a tenant, any member of the tenant's household, a guest or another person under the tenant's control:

(a) that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises); or

(b) that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises;

7. if the tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that in the case of the State of New Jersey, is a high misdemeanor;

8. if the tenant is violating a condition of probation or parole under Federal or State law;

9. determination made by the Landlord that a household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents;

10. if the Landlord determines that the tenant, any member of the tenant's household, a guest or another person under the tenant's control has engaged in the criminal activity, regardless of whether the tenant, any member of the tenant's household, a guest or another person under the tenant's control has been arrested or convicted for such activity.

d. The Landlord may terminate this Agreement for other good cause, which includes, but is not limited to, the tenant's refusal to accept change to this agreement. Terminations for "other good cause" may only be effective as of the end of any initial or successive term.

The term material noncompliance with the lease includes: (1) one or more substantial violations of the lease; (2) repeated minor violations of the lease that (a) disrupt the livability of the project; (b) adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment to the leased premises and related project facilities, (c) interfere with the management of the project, or (d) have an adverse financial effect on the project (3) failure of the tenant to timely supply all required information on the income and composition, or eligibility factors, of the tenant household (including, but not limited to, failure to meet the disclosure and verification requirements for Social Security Numbers, or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies), and (4) Non-payment of rent or any other financial obligation due under the lease beyond any grace period permitted under State law. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law constitutes a minor violation.

d. If the Landlord proposes to terminate this Agreement, the Landlord agrees to give the Tenant written notice and the grounds for the proposed termination. If the Landlord is terminating this agreement for "other good cause," the termination notice must be mailed to the Tenant and hand-

delivered to the dwelling unit in the manner required by HUD at least 30 days before the date the Tenant will be required to move from the unit and in accordance with State law requirements. Notices of proposed termination for other reasons must be given in accordance with any time frames set forth in State and local law. Any HUD-required notice period may run concurrently with any notice period required by State or local law. All termination notices must:

- specify the date this Agreement will be terminated;
- state the grounds for termination with enough detail for the Tenant to prepare a defense;
- advise the Tenant that he/she has 10 days within which to discuss the proposed termination of tenancy with the Landlord. The 10-day period will begin on the earlier of the date the notice was hand-delivered to the unit or the day after the date the notice is mailed. If the Tenant requests the meeting, the Landlord agrees to discuss the proposed termination with the Tenant; and
- advise the Tenant of his/her right to defend the action in court.

f. If an eviction is initiated, the Landlord agrees to rely only upon those grounds cited in the termination notice required by paragraph e.

24. Hazards: The Tenant shall not undertake, or permit his/her family or guests to undertake, any hazardous acts or do anything that will increase the project's insurance premiums. Such action constitutes a material non-compliance. If the unit is damaged by fire, wind, or rain to the extent that the unit cannot be lived in and the damage is not caused or made worse by the Tenant, the Tenant will be responsible for rent only up to the date of the destruction. Additional rent will not accrue until the unit has been repaired to a livable condition.

25. Penalties for Submitting False Information: Knowingly giving the Landlord false information regarding income or other factors considered in determining Tenant's eligibility and rent is a material noncompliance with the lease subject to termination of tenancy. In addition, the Tenant could become subject to penalties available under Federal law. Those penalties include fines up to $10,000 and imprisonment for up to five years.

26. Contents of this Agreement: This Agreement and its Attachments make up the entire agreement between the

Landlord and the Tenant regarding the unit. If any Court declares a particular provision of this Agreement to be invalid or illegal, all other terms of this Agreement will remain in effect and both the Landlord and the Tenant will continue to be bound by them.

27. Attachments to the Agreement: The Tenant certifies that he/she has received a copy of this Agreement and the

following Attachments to this Agreement and understands that these Attachments are part of this Agreement.

a. Attachment No. 1 – Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures, form HUD-50059

b. Attachment No. 2 - Unit Inspection Report.
c. Attachment No. 3 - House Rules (if any).

28. Tenants' rights to organize: Landlord agrees to allow tenant and tenant organizers to conduct on the property the activities related to the establishment or operation of a tenant organization set out in accordance with HUD requirements.

29. Tenant Income Verification: The Tenant must promptly provide the Landlord with any letter or other notice by HUD to a member of the family that provides information concerning the amount or verification of family income in accordance with HUD requirements.

30. The lease agreement will terminate automatically, if the Section 8 Housing Assistance contract terminates for any reason.

31. Signatures:

TENANT
BY:

1.(W) _____ _____/____/____
Date Signed

2. _____ ____/____/____
Date Signed

3. _____ ____/____/____
Date Signed

LANDLORD
BY:

1.(W) _____ ____/____/____
Date Signed

Public reporting burden – HUD is not requesting approval of any burden hours for the model leases since use of leases are a standard business practice in the housing rental industry. This information is required to obtain benefits. The request and required supporting documentation are sent to HUD or the Contract Administrator (CA) for approval. The lease is a contract between the owner of the project and the tenant(s) that explains the terms for residing in the unit. Leases are a standard business practice in the housing rental industry. Owners are required to use the HUD model lease which includes terms normally covered by leases used in the housing rental industry plus terms required by HUD for the program under which the project was built and/or the program providing rental assistance to the tenants.

This information is authorized by 24 CFR 5.360, 236.750, 880.606, 883.701, 884.215, 886.127, 891.425, 891.625 and 891.765 cover lease requirements and provisions. This information is considered non-sensitive and does not require any special protection.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

_____
Project Name

_____
HUD Project Number

Model Lease For Use Under:

(1) The Section 202 Program of Housing for the Elderly or Handicapped in conjunction with the Section 8 Housing Assistance Payments Program; and (2) the Section 202 Program for Nonelderly Handicapped Families and Individuals in conjunction with Section 162 assistance and Project Assistance Contracts.

This agreement made and entered into this **(A)**_____ day of _____, 20____, between **(B)**_____, as LANDLORD, and

(C)_____, as TENANT.

WITNESSETH

WHEREAS, the LANDLORD is the Mortgagor under a Mortgage covering the project in which the hereinafter described unit is situated, which secures a loan made by the Secretary of Housing and Urban Development (HUD)(hereinafter "Secretary") pursuant to Section 202 of the Housing Act of 1959, as amended, and

WHEREAS, the LANDLORD has entered into a Housing Assistance Payments (HAP) Contract with the Secretary, or the LANDLORD has entered into a Project Assistance Contract (PAC) with the Secretary, (STRIKE INAPPLICABLE CONTRACT), and

WHEREAS, pursuant to a Regulatory Agreement entered into between the LANDLORD and the Secretary, the LANDLORD has agreed to limit occupancy of the project to elderly or handicapped families and individuals as defined in Section 202 of the Housing Act of 1959, as amended, and applicable HUD regulations under criteria for eligibility of TENANTS for admission to Section 8 assisted units and conditions of continued occupancy in accordance with the terms and provisions of the HAP Contract, or applicable HUD regulations under criteria for eligibility of TENANTS for admission to Section 162 assisted units and conditions of continued occupancy in accordance with the terms and provisions of the PAC, (STRIKE INAPPLICABLE REGULATIONS); and

WHEREAS, the LANDLORD has determined that the TENANT is eligible to pay less than the contract rent for the described unit,

NOW THEREFORE,

1. The LANDLORD leases to the TENANT, and the TENANT leases from the

LANDLORD dwelling unit in the project known as

(D)_____

for a term of one year commencing on the _____ day of **(E)**_____, 20__,

and ending on the _____ day of **(F)**_____, 20__.

2. The total rent (Contract Rent) shall be $**(G)**____ per month.

3. The total rent specified in Paragraph 2, above, shall include the following utilities:

(H)_____ __ _____ _____

_____ _____

(If the total rent includes all utilities, enter "ALL"; where TENANTS pay some or all utilities, enter the following additional paragraph as 3a.)

The total rent stipulated herein does not include the cost of the following utility service(s), for which the Utility Allowance is $**(I)**_____:

(J)_____ __ _____ _____

_____ _____

Charges for such service(s) is/are to be paid directly by the TENANT to the utility company/companies providing such service(s). If the Utility Allowance exceeds the required TENANT's share of the total housing expense per HUD-approved schedule and criteria, the LANDLORD shall pay the TENANT the amount of such excess on behalf of the Government upon receipt of funds
from HUD for that purpose. (Note: Utility Allowance is not applicable to non-Section 8 tenants.)

4. Where meal service is a condition of occupancy, the charge for such meals shall be $(**K**)_____ per month, and a mandatory meals agreement will be made a part of this lease.

5. Of the total rent, $**(L)**_____ shall be payable by or at the direction of HUD as housing assistance payments, or project assistance payments (STRIKE INAPPLICABLE PAYMENTS) on behalf of the TENANT, and $**(M)**____ shall be payable by the TENANT. These amounts shall be subject to change by reason of changes in HUD requirements, changes in the TENANT's family income, family composition, or extent of exceptional medical or other unusual expenses in accordance with HUD-established schedules and criteria; or by reason of adjustment by HUD of any applicable Utility Allowance. Any such change shall be effective as of the date stated in a Notice to the TENANT. (Note: This paragraph is not applicable to non-Section 8 tenants.)

6. The TENANT's share of the rent shall be due and payable on or before the first day of each month at **(N)**_____ to the LANDLORD, or to such other person or persons or at such places as the LANDLORD may from time to time designate in writing.

7. A security deposit equal to one month's total tenant payment or $50, whichever is greater, shall be required at the time of execution of this Agreement. Accordingly, TENANT hereby makes a deposit of $(**O**)_____ against any damage except reasonable wear done to the premises by the TENANT, his/her family, guests, or agents; and agrees to pay when billed the full amount of any such damage in order that the deposit will remain intact. Upon termination of this Lease, the deposit is to be refunded to the TENANT or to be applied to any such damage or any rent delinquency. The LANDLORD shall comply with all State and local laws regarding interest payments on security deposits.

8. The LANDLORD shall not discriminate against the TENANT in the provision of services or in any other manner on the grounds of race, color, creed, religion, sex, familial status, national origin, or disability.

9. Unless terminated or modified as provided herein, this Agreement shall be automatically renewed for successive terms of one month each at the aforesaid rental, subject to adjustment as herein provided.

(a) The TENANT may terminate this Agreement at the end of the initial term or any successive term by giving 30 days written notice in advance to the LANDLORD. Whenever the LANDLORD has been in material noncompliance with this Agreement, the TENANT may in accordance with State law terminate this Agreement by so advising the LANDLORD in writing.

(b) The LANDLORD's right to terminate this Agreement is governed by the regulation at 24 CFR Part 247. The HUD Regulation provides that the LANDLORD may terminate this Agreement only under the following circumstances:

(1) The LANDLORD may terminate, effective at the end of the initial term or any successive term, by giving the TENANT notification in the manner prescribed in paragraph (g) below that the term of this Agreement is not renewed and this Agreement is accordingly terminated. This termination must be based upon either material noncompliance with this Agreement, material failure to carry out obligations under any State landlord or tenant act, or other good cause. When the termination of the tenancy is based on other good cause, the termination notice shall so state, at the end of a term and in accordance with the termination provisions of this Agreement, but in no case earlier than 30 days after receipt by the TENANT of the notice. Where the termination notice is based on material noncompliance with this Agreement or material failure to carry out obligations under a State landlord and tenant act, the time of service shall be in accordance with the previous sentence or State law, whichever
is later.

(2) Notwithstanding subparagraph (1), whenever the TENANT has been in material noncompliance with this Agreement, the LANDLORD may, in accordance with State law and the HUD Regulation, terminate this Agreement by notifying the TENANT in the manner prescribed in paragraph (g) below.

(c) If the TENANT does not vacate the premises on the effective date of the termination of this Agreement, the LANDLORD may pursue all judicial remedies under State or local law for the eviction of the TENANT, and in accordance with the requirements in the HUD Regulation.

(d) The term "material noncompliance with this Agreement" shall, in the case of the TENANT, include (1) one or more substantial violations of this Agreement, (2) repeated minor violations of this Agreement which disrupt the livability of the project, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities, interfere with the management of the project or have an adverse financial effect on the project, or (3) failure of the TENANT to timely supply all required information on the income and composition, or eligibility factors of the TENANT household (including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR Part 5, or knowingly providing incomplete or inaccurate information). Nonpayment of rent or any other financial obligation due under this Agreement (including any portion thereof) beyond any grace period permitted under State law shall constitute a substantial violation. The payment of rent or any other financial obligation due under this Agreement after the due date but within any
grace period permitted under State law shall constitute a minor violation.

(e) The conduct of the TENANT cannot be deemed other good cause unless the LANDLORD has given the TENANT prior notice that said conduct shall henceforth constitute a basis for termination of this Agreement. Said notice shall be served on the TENANT in the manner prescribed in paragraph (g) below.

(f) The LANDLORD's determination to terminate this Agreement shall be in writing and shall (1) state that the Agreement is terminated on a date speciified therein, (2) state the reasons for the LANDLORD's action with enough specificity so as to enable the TENANT to prepare a defense, (3) advise the TENANT that if he or she remains in the leased unit on the date specified for termination, the LANDLORD may seek to enforce the termination only by bringing a judicial action at which time the TENANT may present a defense, and (4) be served on the TENANT in the manner prescribed by paragraph (g) below.

(g) The LANDLORD's termination notice shall be accomplished by (1) sending a letter by first class mail, properly stamped and addressed, to the TENANT at his/her address at the project, with a proper return address, and (2) serving a copy of said notice on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door. Service shall not be deemed effective until both notices provided for herein have been accomplished. The date on which the notice shall be deemed to be received by the TENANT shall be the date on which the first class letter provided for in clause (1) herein is mailed, or the date on which the notice provided for in clause (2) is properly given, whichever is later.

(h) The LANDLORD may, with the prior approval of HUD, modify the terms and conditions of the Agreement, effective at the end of the initial term or a successive term, by serving an appropriate notice on the TENANT, together with the tender of a revised Agreement or an addendum revising the existing Agreement. Any increase in rent shall in all cases be governed by 24 CFR Part 245 and other applicable HUD regulations. This notice and tender shall be served on the TENANT in the manner prescribed in paragraph (g) and must be received by the TENANT (as defined in paragraph (g)) at least 30 days prior to the last date on which the TENANT has the right to terminate the tenancy without being bound by the codified terms and conditions. The TENANT may accept it by executing the tendered revised Agreement or addendum, or may reject it by giving the LANDLORD written notice at least 30 days prior to its effective date that he/she intends to terminate the tenancy. The TENANT's termination notice shall be accomplished by sending a letter by first class mail, properly stamped and addressed to the LANDLORD at his/her address.

(i) The Landlord may terminate this Agreement for the following reasons:

1. drug related criminal activity engaged in on or near the premises, by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant’s control;

2. determination made by the Landlord that a household member is illegally using a drug;

3. determination made by the Landlord that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents;

4. criminal activity by a tenant, any member of the tenant’s household, a guest or another person under the tenant’s control:

(a) that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises); or

(b) that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises;

5. if the tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that in the case of the State of New Jersey, is a high misdemeanor; or

6. if the tenant is violating a condition of probation or parole under Federal or State law;

7. determination made by the Landlord that a household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents;

8. if the Landlord determines that the tenant, any member of the tenant's household, a guest or another person under the tenant's control has engaged in criminal activity, regardless of whether the tenant, any member of the tenant's household, a guest or another person under the tenant's control has been arrested or convicted for such activity.

10. TENANT agrees that the family income, family composition and other eligibility requirements shall be deemed substantial and material obligations of his/her tenancy with respect to the amount of rental he/she will be obligated to pay and his/her right of occupancy, and that a recertification of income shall be made to the LANDLORD annually from the date of this lease in accordance with HUD regulations and requirements. (Note: This paragraph is not applicable to non-Section 8 tenants.)

11. TENANT agrees that the TENANT's share of the monthly rental payment is subject to adjustment by the LANDLORD to reflect income changes which are disclosed on any of TENANT's recertification of income, and TENANT agrees to be bound by such adjustment. LANDLORD agrees to give 30 days written notice of any such adjustment to the TENANT, by an addendum to be made a part of this lease, stating the amount of the adjusted monthly rental which the TENANT will be required to pay. (Note: This paragraph is not applicable to non-Section 8 tenants.)

12. LANDLORD and TENANT agree that if, upon recertification, TENANT'S income is found to be sufficient to pay the Contract Rent plus any Utility Allowance, the TENANT shall then be required to bear the cost of all such housing expense, but he/she will no longer be required to make income certifications under this lease.

13. The TENANT shall not assign this lease, sublet the premises, give accommodation to any roomers or lodgers, or permit the use of the premises for any purpose other than as a private dwelling solely for the TENANT and his/her family. The TENANT agrees to reside in this unit and agrees that this unit shall be the TENANT's and his/her family's only place of residence.

14. TENANT agrees to pay to the LANDLORD any rental which should have been paid but for (a) TENANT's misrepresentation in his/her initial income certification or recertification, or in any other information furnished to the LANDLORD or (b) TENANT's failure to supply income recertification when required or to supply information requested by the LANDLORD.

15. TENANT for himself/herself and his/her heirs, executors and administrators agrees as follows:

(a) To pay the rent herein stated promptly when due, without any deductions whatsoever, and without any obligation on the part of the LANDLORD to make any demand for the same;

(b) To keep the premises in a clean and sanitary condition, and to comply with all obligations imposed upon TENANTS under applicable provisions of building and housing codes materially affecting health and safety with respect to said premises and appurtenances, and to save the

LANDLORD harmless from all fines, penalties and costs for violations or noncompliance by TENANT with any of said laws, requirements or regulations, and from all liability arising out of any such violations or noncompliance.

(c) Not to use premises for any purpose deemed hazardous by insurance companies carrying insurance thereon;

(d) That if any damage to the property shall be caused by his/her acts or neglect, the TENANT shall forthwith repair such damage at his/her own expense, and should the TENANT fail or refuse to make such repairs within a reasonable time after the occurrence of such damage, the LANDLORD may, at his/her option, make such repairs and charge the cost thereof to the TENANT, and the TENANT shall thereupon reimburse the LANDLORD for the total cost of the damages so caused;

(e) To permit the LANDLORD, or his/her agents, or any representative of any holder of a mortgage on the property, or when authorized by the LANDLORD, the employees of any contractor, utility company, municipal agency or others, to enter the premises for the purpose of making reasonable inspections and repairs and replacements;

(f) Not to install a washing machine, clothes dryer, or air conditioning unit in the apartment without the prior approval of the LANDLORD; and

(g) To permit the LANDLORD or his/her agents to bring appropriate legal action in the event of a breach or threatened breach by the TENANT of any of the covenants or provisions of this lease.

16. The TENANT is permitted to keep common household pets in his/her dwelling unit (subject to the provisions in 24 CFR Part **5** and the pet rules promulgated under 24 CFR Part 5). Any pet rules promulgated by the LANDLORD are attached hereto and incorporated hereby. The TENANT agrees to comply with these rules. A violation of these rules may be grounds for removal of the pet or termination of the TENANT's (pet owner's) tenancy (or both), in accordance with the provisions of 24 CFR Part 5 and applicable regulations and State or local law. These regulations include 24 CFR Part 5 (Evictions From Certain Subsidized and HUD-Owned Projects) and provisions governing the termination of tenancy under the Section 8 housing assistance payments and project assistance payments programs.

Note: The Part 5 Pet Rules do not apply to an animal used by a Tenant or visitor that is needed as a reasonable accommodation for the Tenant or visitor's disability. Optional: The LANDLORD may after reasonable notice to the TENANT and during reasonable hours, enter and inspect the premises. Entry and inspection is permitted only if the LANDLORD has received a signed, written complaint alleging (or the LANDLORD has reasonable grounds to believe) that the conduct or condition of a pet in the dwelling unit constitutes, under applicable State or local law, a nuisance or a threat to the health or safety of the occupants of the project or other persons in the community where the project is located.

If there is no State or local authority (or designated agent of such an authority) authorized under applicable State or local law to remove a pet that becomes vicious, displays symptoms of severe illness, or demonstrates other behavior that constitutes an immediate threat to the health or safety of the tenancy as a whole, the LANDLORD may enter the premises (if necessary), remove the pet, and take such action with respect to the pet as may be permissible under State and local law, which may include placing it in a facility that will provide care and shelter for a period not to exceed 30 days. The LANDLORD shall enter the premises and remove the pet or take such other permissible action only if the LANDLORD requests the TENANT (pet owner) to remove the pet from the project immediately, and the TENANT (pet owner) refuses to do so, or if the LANDLORD is unable to contact the TENANT (pet owner) to

make a removal request. The cost of the animal care facility shall be paid as provided in 24 CFR Part 5.

17. The LANDLORD agrees to comply with the requirement of all applicable Federal, State, and local laws, including health, housing and building codes and to deliver and maintain the premises in safe, sanitary and decent condition.

18. The TENANT, by the execution of this Agreement, agrees that the dwelling unit described herein has been inspected by him/her and meets with his/her approval. The TENANT acknowledges hereby that said premises have been satisfactorily completed and that the LANDLORD will not be required to repaint, replaster, or otherwise perform any other work, labor, or service which it has already performed for the TENANT. The TENANT admits that he/she has inspected the unit and found it to be in good and tenantable condition, and agrees that at the end of the occupancy hereunder to deliver up and surrender said premises to the LANDLORD in as good condition as when received, reasonable wear and tear excepted.

19. No alteration, addition, or improvements shall be made in or to the premises without the prior consent of the LANDLORD in writing. The LANDORD agrees to provide reasonable accommodation to an otherwise eligible tenant's disability, including making changes to rules, policies, or procedures, and making and paying for structural alterations to a unit or common areas. The Landlord is not required to provide accommodations that constitute a fundamental alteration to the Landlord's program or which would pose a substantial financial and administrative hardship. See the regulations at 24 CFR Part 8. In addition, if a requested structural modification does pose a substantial financial and administrative hardship, the Landlord must then allow the tenant to make and pay for the modification in accordance with the Fair Housing Act.

20. TENANT agrees not to waste utilities furnished by the LANDLORD; not to use utilities or equipment for any improper or unauthorized purpose; and not to place fixtures, signs, or fences in or about the premises without the prior permission of the LANDLORD in writing. If such permission is obtained, TENANT agrees, upon termination of the lease**,** to remove any fixtures, signs or fences, at the option of the LANDLORD, without damage to the premises.

21. This Agreement shall be subordinate in respect to any mortgages that are now on or that hereafter may be placed against said premises, and the recording of such mortgage or mortgages shall have preference and precedence and be superior and prior in lien to this Agreement, and the TENANT agrees to execute any such instrument without cost, which may be deemed necessary or desirable to further effect the subordination of this Agreement to any such mortgage or mortgages and a refusal to execute such instruments shall entitle the LANDLORD, or the LANDLORD's assigns and legal representatives to the option of cancelling this Agreement without incurring any expense or damage, and the term hereby granted is expressly limited accordingly.

22. Tenant Income Verification: The Tenant must promptly provide the Landlord with any letter or other notice by HUD to a member of the family that provides information concerning the amount or verification of family income. in accordance with HUD requirements.

23. Tenants' rights to organize: Landlord agrees to allow tenant and tenant organizers to conduct on the property the activities related to the establishment or operation of a tenant organization set out in accordance with HUD requirements.

24. Interim recertifications.

(a) The TENANT agrees to advise the Landlord immediately if any of the following changes occur

1. Any household member moves out of the unit.

2. Any adult member of the household who was reported as unemployed on the most recent certification or recertification obtains employment.

3. The household's income cumulatively increases by $200 or more a month.

(b) The Tenant may report any decrease in income or any change in other factors considered in calculating the Tenant's rent. Unless the Landlord has confirmation that the decrease in income or change in other factors will last less than one month, the Landlord will verify the information and make the appropriate rent reduction. However, if the Tenant's income will be partially or fully restored within two months, the Landlord may delay the certification process until the new income is known, but the rent reduction will be retroactive and Landlord may not evict the Tenant for nonpayment of rent due during the period of the reported decrease and the completion of the certification process. The Tenant has thirty days after receiving written notice of any rent due for the above described time period to pay or the Landlord can evict for nonpayment of rent.

(c) If the Tenant does not advise the Landlord of the interim changes concerning household members or increase in income, the Landlord may increase the Tenant's rent to the HUD-approved market rent. The Landlord may do so only in accordance with the time frames and administrative procedures set forth in HUD's regulations, handbooks and instructions on the administration of multifamily subsidy programs.

(d) The Tenant may request to meet with the Landlord to discuss how any change in income or other factors affected his/her rent or assistance payment, if any. If the Tenant requests such a meeting, the Landlord agrees to meet with the Tenant and explain how the Tenant's rent or assistance payment, if any, was computed.

25. Removal of Subsidy:

(a) The Tenant understands that assistance made available on his/her behalf may be terminated if events in either item 1 or 2 below occur. Termination of assistance means that the Landlord may make the assistance available to another Tenant and the Tenant's rent will be recomputed. In addition, if the Tenant's assistance is terminated because of criterion (1) below, the Tenant will be required to pay the HUD-approved market rent for the unit.

(1) The Tenant does not provide the Landlord with the information or reports required by paragraph 10 or 24 within 10 calendar days after receipt of the Landlord's notice of intent to terminate the Tenant's assistance payment.

(2) The amount the Tenant would be required to pay towards rent and utilities under HUD rules and regulations equals the Family Gross Rent shown on Attachment 1.

(b) The Landlord agrees to give the Tenant written notice of the proposed termination. The notice will advise the Tenant that, during the ten calendar days following the date of the notice, he/she may request to meet with the Landlord to discuss the proposed termination of assistance.

If the Tenant requests a discussion of the proposed termination, the Landlord agrees to meet with the Tenant.

(c) Termination of assistance shall not affect the Tenant's other rights under this Agreementincluding the right to occupy the unit. Assistance may subsequently be reinstated if the Tenant submits the income or other data required by HUD procedures, the Landlord determines the Tenant is eligible for assistance, and assistance is available.

26. Failure of the LANDLORD to insist upon the strict performance of the terms, covenants, agreements and conditions herein contained, or any of them, shall not constitute or be construed as a waiver or relinquishment of the LANDLORD's right thereafter to enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.

27. In return for the TENANT's continued fulfillment of the terms and conditions of this Agreement, the LANDLORD covenants that the TENANT may at all times, while this Agreement remains in effect, have and enjoy for his/her sole use and benefit the above described property.

28. The lease agreement will terminate automatically, if the Section 8 Housing Assistance contract terminates for any reason.

29. Attachments to the Agreement: The Tenant certifies that he/she has received a copy of the Agreement and the following attachments to the Agreement and understands that these attachments are part of the Agreement.

a. Attachment No. 1 –Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures, form HUD-50059

b. Attachment No. 2 – Unit Inspection Report.

c. Attachment No. 3 – House Rules (if any).

d. Attachment No. 4 – Pet Rules.

WITNESS:

(**P**)_____LANDLORD

_____ By:_____
Date

_____ **(Q)**_____TENANT
Date

_____ _____
Date

Public reporting burden – HUD is not requesting approval of any burden hours for the model leases since use of leases are a standard business practice in the housing rental industry. This information is required to obtain benefits. The request and required supporting documentation are sent to HUD or the Contract Administrator (CA) for approval. The lease is a contract between the owner of the project and the tenant(s) that explains the terms for residing in the unit. Leases are a standard business practice in the housing rental industry. Owners are required to use the HUD model lease which includes terms normally covered by leases used in the housing rental industry plus terms required by HUD for the program under which the project was built and/or the program providing rental assistance to the tenants.

This information is authorized by 24 CFR 5.360, 236.750, 880.606, 883.701, 884.215, 886.127, 891.425, 891.625 and 891.765 cover lease requirements and provisions. This information is considered non-sensitive and does not require any special protection.

202 PRAC LEASE

Supportive Housing for the Elderly

This agreement made and entered into this _____**(A)**_____ day of _____, 20___, between _____**(B)**_____, as LANDLORD, and _____**(C)**_____, as TENANT.

WITNESSETH:

WHEREAS, the LANDLORD is the Mortgagor under a Mortgage covering the project in which the hereinafter described unit is situated, which secures a capital advance made by the Secretary of Housing and Urban Development (HUD) (hereinafter "Secretary") pursuant to Section 202 of the Housing Act of 1959, as amended, and

WHEREAS, the LANDLORD has entered into a Project Rental Assistance Contract (PRAC) with the Secretary.

WHEREAS, pursuant to a Regulatory Agreement entered into between the LANDLORD and the Secretary, the LANDLORD has agreed to limit occupancy of the project to elderly families and individuals as defined in Section 202 of the Housing Act of 1959, as amended, and applicable HUD regulations under criteria for eligibility of TENANTS for admission to assisted units and conditions of continued occupancy in accordance with the terms and provisions of the PRAC Contract, and

NOW THEREFORE,

1. The LANDLORD leases to the TENANT, and the TENANT leases from the LANDLORD dwelling unit in the project known as _____**(D)**_____ for a term of one year, commencing on the _____ day of ___**(E)**_____, 20__, and ending on the _____ day of _____**(F)**_____, 20__.

2. The total rent (Contract Rent) shall be $_____**(G)**_____ per month.

3. The total rent specified in Paragraph 2, above, shall include the following utilities:

_____**(H)**_____ _____

_____ _____

(If the total rent includes all utilities, enter "ALL"; where TENANTS pay some or all utilities, enter the following additional paragraph as 3a.)

The total rent stipulated herein does not include the cost of the following utility service(s), for which the Utility allowance is $__**(I)**_____.

_____**(J)**_____ _____

_____ _____

Charges for such service(s) is/are to be paid directly by the TENANT to the utility company/companies providing such service(s). If the Utility Allowance exceeds the required TENANT's share of the total housing expense per HUD-approved schedule and criteria, the LANDLORD shall pay the TENANT the amount of such excess on behalf of the Government upon receipt of funds from HUD for that purpose.

4. Of the total rent, $____**(K)**_____ shall be payable by or at the direction of HUD as project rental assistance payments on behalf of the TENANT, and $_____**(L)**_____ shall be payable by the TENANT. These amounts shall be subject to change by reason of changes in HUD's requirements, changes in the TENANT's family income, family composition, or extent of exceptional medical or other unusual expenses in accordance with HUD-established schedules and criteria; or by reason of adjustment by HUD of any applicable Utility Allowance. Any such change shall be effective as of the date stated in a Notice to the TENANT.

5. The TENANT"S share of the rent shall be due and payable on or before the first day of each month at _____**(M)**_____ to the LANDLORD, or to such other person or persons or at such places as the LANDLORD may from time to time designate in writing.

6. A security deposit in an amount equal to one month's total tenant payment or $50, whichever is greater, shall be required at the time of execution of this Agreement. Accordingly, TENANT hereby makes a deposit of $_____**(N)**_____ against any damage except reasonable wear done to the premises by the TENANT, his/her family, guests, or agents, and agrees to pay when billed the full amount of any such damage in order that the deposit will remain intact. Upon termination of this Lease, the deposit is to be refunded to the TENANT or to be applied to any such damage or any rent delinquency. The LANDLORD shall comply with all State and local laws regarding interest payments on security deposits.

7. The LANDLORD shall not discriminate against the TENANT in the provision of services or in any other manner on the grounds of race, color, creed, religion, sex, familial status, national origin, or disability.

8. Unless terminated or modified as provided herein, this Agreement shall be automatically renewed for successive terms of one month each at the aforesaid rental, subject to adjustment as herein provided.

(a) The TENANT may terminate this Agreement at the end of the initial term or any successive term by giving 30 days written notice in advance to the LANDLORD. Whenever the LANDLORD has been in material

noncompliance with this Agreement, the TENANT may in accordance with State law terminate this Agreement by so advising the LANDLORD in writing.

(b) The LANDLORD's right to terminate this Agreement is governed by the regulation of the Secretary at 24 CFR 891.430 and 24 CFR Part 247 (herein referred to as the HUD Regulation). The HUD Regulation provides that the LANDLORD may terminate this Agreement only under the following circumstances:

(1) The LANDLORD may terminate, effective at the end of the initial term or any successive term, by giving the TENANT notification in the manner prescribed in paragraph (a) below that the term of this Agreement is not renewed and this Agreement is accordingly terminated. This termination must be based upon either material noncompliance with this Agreement, material failure to carry out obligations under any State landlord or tenant act, or criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises-, any criminal activity that threatens the health or safety of any on-site property management staff responsible for managing the premises; or any drug-related criminal activity on or near such premises, engaged in by a resident, any member of the resident's household or other person under the resident's control; or other good cause. When the termination of the tenancy is based on other good cause, the termination notice shall so state, and the tenancy shall terminate at the end of a term and in accordance with the termination provisions of this Agreement, but in no case earlier than 30 days after receipt by the TENANT of the notice. Where the termination notice is based on material noncompliance with this Agreement or material failure to carry out obligations under a State landlord and tenant act, the time of service shall be in accordance with the previous sentence or State law, whichever is later.

(2) Notwithstanding subparagraph (1), whenever the TENANT has been in material noncompliance with this Agreement, the LANDLORD may, in accordance with State law and the HUD Regulation, terminate this Agreement by notifying the TENANT in the manner prescribed in paragraph (g) below.

(c) If the TENANT does not vacate the premises on the effective date of the termination of this Agreement, the LANDLORD may pursue all judicial remedies under State or local law for the eviction of the TENANT, and in accordance with the requirements in the HUD Regulation.

(d) The term "material noncompliance with this Agreement" shall, in the case of the TENANT, include (1) one or more substantial violations of this Agreement, (2) repeated minor violations of this Agreement which disrupt the livability of the project, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities, interfere with the management of the project or have an adverse financial effect on the project, (3) failure of the TENANT to timely supply all required information on the income and composition, or eligibility factors of the TENANT household (including failure to meet the disclosure and verification requirements for Social Security

Numbers, as provided by 24 CFR Part 5, or knowingly providing incomplete or inaccurate information). Nonpayment of rent or any other financial obligation due under this Agreement (including any portion thereof) beyond any grace period permitted under State law shall constitute a substantial violation. The payment of rent or any other financial obligation due under this Agreement after the due date but within any grace period permitted under State law shall constitute a minor violation.

(e) The conduct of the TENANT cannot be deemed other good cause unless the LANDLORD has given the TENANT prior notice that said conduct shall henceforth constitute a basis for termination of this Agreement. Said notice shall be served on the TENANT in the manner prescribed in paragraph (g) below.

(f) The LANDLORD's determination to terminate this Agreement shall be in writing and shall (1) state that the Agreement is terminated on a date specified therein, (2) state the reasons for the LANDLORD's action with enough specificity so as to enable the TENANT to prepare a defense, (3) advise the TENANT that if he or she remains in the leased unit on the date specified for termination, the LANDLORD may seek to enforce the termination only by bringing a judicial action at which time the TENANT may present a defense, and (4) be served on the TENANT in the manner prescribed by paragraph (g) below.

(g) The LANDLORD's termination notice shall be accomplished by (1) sending a letter by first class mail, properly stamped and addressed, to the TENANT at his/her address at the project, with a proper return address, and (2) serving a copy of said notice on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door. Service shall not be deemed effective until both notices provided for herein have been accomplished. The date on which the notice shall be deemed to be received by the TENANT shall be the date on which the first class letter provided for in clause (1)herein is mailed, or the date on which the notice provided for in clause (2) is properly given, whichever is later.

(h) The LANDLORD may, with the prior approval of HUD, modify the terms and conditions of the Agreement, effective at the end of the initial term or a successive term, by serving an appropriate notice on the TENANT, together with the tender of a revised Agreement or an addendum revising the existing Agreement. Any increase in rent shall in all cases be governed by **24 CFR Part 245,** and other applicable HUD regulations. This notice and tender shall be served on the TENANT (as defined in paragraph (g)) at least 30 days prior to the last date on which the TENANT has the right to terminate the tenancy without being bound by the codified terms and conditions. The TENANT may accept it by executing the tendered revised Agreement or addendum, or may reject it by giving the LANDLORD written notice at least 30 days prior to its effective date that he/she intends to terminate the tenancy. The TENANT's termination notice shall be accomplished by sending a letter by first class mail, properly stamped and addressed to the LANDLORD at his/her address.

(i) The LANDLORD may terminate this Agreement for the following reasons:

1. drug related criminal activity engaged in on or near the premises, by any TENANT, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control;

2. determination made by the LANDLORD that a household member is illegally using a drug;

3. determination made by the LANDLORD that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents;

4. criminal activity by a tenant, any member of the TENANT'S household, a guest or another person under the TENANT'S control:

(a) that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises); or

(b) that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises;

5. if the TENANT is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that in the case of the State of New Jersey, is a high misdemeanor; or

6. if the TENANT is violating a condition of probation or parole under Federal or State law;

7. determination made by the LANDLORD that a household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents;

8. if the LANDLORD determines that the tenant, any member of the TENANT'S household, a guest or another person under the TENANT'S control has engaged in criminal activity, regardless of whether the tenant, any member of the tenant's household, a guest or another person under the tenant's control has been arrested or convicted for such activity.

9. TENANT agrees that the family income, family composition and other eligibility requirements shall be deemed substantial and material obligations of his/her tenancy with respect to the amount of rental he/she will be obligated to pay and his/her right of occupancy, and that

a recertification of income shall be made to the LANDLORD annually from the date of this lease in accordance with HUD regulations and requirements.

10. TENANT agrees that the TENANT's share of the monthly rental payment is subject to adjustment by the LANDLORD to reflect income changes which are disclosed on any of TENANT's recertification of income, and TENANT agrees to be bound by such adjustment. LANDLORD agrees to give 30 days written notice of any such adjustment to the TENANT, by an addendum to be made a part of this lease, stating the amount of the adjusted monthly rental which the TENANT will be required to pay.

11. The TENANT shall not assign this lease, sublet the premises, give accommodation to any roomers or lodgers, or permit the use of the premises for any purpose other than as a private dwelling solely for the TENANT and his/her family. The TENANT agrees to reside in this unit and agrees that this unit shall be the TENANT's and his/her family's only place of residence.

12. TENANT agrees to pay the LANDLORD any rental which should have been paid but for (a) TENANT's misrepresentation in his/her initial income certification or recertification, or in any other information furnished to the LANDLORD or (b) TENANT's failure to supply income recertification when required or to supply information requested by the LANDLORD.

13. TENANT for himself/herself and his/her heirs, executors and administrators agrees as follows:

(a) To pay the rent herein stated promptly when due, without any deductions whatsoever, and without any obligation on the part of the LANDLORD to make any demand for the same;

(b) To keep the premises in a clean and sanitary condition, and to comply with all obligations imposed upon TENANT under applicable provisions of building and housing codes materially affecting health and safety with respect to said premises and appurtenances, and to save the LANDLORD harmless from all fines, penalties and costs for violations or noncompliance by TENANT with any of said laws, requirements or regulations, and from all liability arising out of any such violations or noncompliance.

(c) Not to use premises for any purpose deemed hazardous by insurance companies carrying insurance thereon;

(d) That if any damage to the property shall be caused by his/her acts or neglect, the TENANT shall forthwith repair such damage at his/her own expense, and should the TENANT fall or refuse to make such repairs within a reasonable time after the occurrence of such damage, the LANDLORD may, at his/her option, make such repairs and charge the cost thereof to the TENANT, and the TENANT shall thereupon reimburse the LANDLORD for the total cost of the damages so caused;

(e) To permit the LANDLORD, or his/her agents, or any representative of any holder of a mortgage on the property, or when authorized by the LANDLORD, the employees of any contractor, utility company, municipal agency or others, to enter the premises for the purpose of making reasonable inspections and repairs and replacements"

(f) Not to install a washing machine, clothes dryer, or air conditioning unit in the apartment without the prior approval of the LANDLORD, and

(g) To permit the LANDLORD or his/her agents to bring appropriate legal action in the event of a breach or threatened breach by the TENANT of any of the covenants or provisions of this lease.

14. The TENANT is permitted to keep common household pets in his/her dwelling unit(subject to the provisions in 24 CFR Part 5 Subpart C) and the pet rules promulgated under 24 CFR 5.315). Any pet rules promulgated by the LANDLORD are attached hereto and incorporated hereby. The TENANT agrees to comply with these rules. A violation of these rules may be grounds for removal of the pet or termination of the TENANT's (pet owner's) tenancy (or both), in accordance with the provisions of 24 CFR Part 5, Subpart C and applicable regulations and State or local law. These regulations include 24 CFR Part 247 (Evictions From Certain Subsidized and HUD-Owned Projects) and provisions governing the termination of tenancy under the Project Rental Assistance Contract.

Note: The Part 5 Pet Rules do not apply to an animal used by a Tenant or visitor that is needed as a reasonable accommodation for the Tenant’s or visitor’s disability.

[Optional] The LANDLORD may after reasonable notice to the TENANT and during reasonable hours, enter and inspect the premises. Entry and inspection is permitted only if the LANDLORD has received a signed, written complaint alleging (or the LANDLORD has reasonable grounds to believe) that the conduct or condition of a pet in the dwelling unit constitutes, under applicable State or local law, a nuisance or a threat to the health or safety of the occupants of the project or other persons in the community where the project is located.

If there is not State or local authority (or designated agent of such an authority) authorized under applicable State or local law to remove a pet that becomes vicious, displays symptoms of severe illness, or demonstrates other behavior that constitutes an immediate threat to the health or safety of the tenancy as a whole, the LANDLORD may enter the premises (if necessary), remove the pet, and take such action with respect to the pet as may be permissible under State and local law, which may include placing it in a facility that will provide care and shelter for a period not to exceed 30 days. The LANDLORD shall enter the premises and remove the pet or take such other permissible action only if the LANDLORD requests the TENANT (pet owner) to remove the pet from the project immediately, and the TENANT (pet owner) refuses to do so, or if the LANDLORD is unable to contact the TENANT (pet owner) to make a removal request. The cost of the animal care facility shall be paid as provided in 24 CFR 5.363.

15. The LANDLORD agrees to comply with the requirement of all applicable Federal, State, and local laws, including health, housing and building codes and to deliver and maintain the premises in safe, sanitary decent condition.

16. The TENANT, by the execution of this Agreement, admits that the dwelling unit described herein has been inspected by him/her and

meets with his/her approval. The TENANT acknowledges hereby that said premises have been satisfactorily completed and that the LANDLORD will not be required to repaint, replaster, or otherwise perform any other work, labor, or service which it has already performed for the TENANT. The TENANT admits that he/she has inspected the unit and found it to be in good and tenantable condition, and agrees that at the end of the occupancy hereunder to deliver up and surrender said premises to the LANDLORD in as good condition as when received, reasonable wear and tear excepted.

17. No alteration, addition, or improvements shall be made in or to the premises without the prior consent of the LANDLORD in writing. The LANDORD agrees to provide reasonable accommodation to an otherwise eligible tenant’s disability, including making changes to rules, policies, or procedures, and making and paying for structural alterations to a unit or common areas. The Landlord is not required to provide accommodations that constitute a fundamental alteration to the Landlord’s program or which would pose a substantial financial and administrative hardship. See the regulations at 24 CFR Part 8. In addition, if a requested structural modification does pose a substantial financial and administrative hardship, the Landlord must then allow the tenant to make and pay for the modification in accordance with the Fair Housing Act.

18. TENANT agrees not to waste utilities furnished by the LANDLORD; not to use utilities or equipment for any improper or unauthorized purpose; and not to place fixtures, signs, or fences in or about the premises without the prior permission of the LANDLORD in writing. If such permission is obtained, TENANT agrees, upon termination of the lease, to remove any fixtures, signs of fences, at the option of the LANDLORD, without damage to the premises.

19. This Agreement shall be subordinate in respect to any mortgages that are now on or that hereafter may be placed against said premises, and the recording of such mortgage or mortgages shall have preference and precedence and be superior and prior in lien to this Agreement, and the TENANT agrees to execute any such instrument without cost, which may be deemed necessary or desirable to further effect the subordination of this Agreement to any such mortgage or mortgages and a refusal to execute such instruments shall entitle the LANDLORD, or the LANDLORD's assigns and legal representatives to the option of canceling this Agreement without incurring any expense or damage, and the term hereby granted is expressly limited accordingly.

20. Failure of the LANDLORD to insist upon the strict performance of the terms, covenants, agreements and conditions herein contained, or any of them, shall not constitute or be construed as a waiver or relinquishment of the LANDLORD's right thereafter to enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.

21. In return for the TENANT's continued fulfillment of the terms and conditions of this Agreement, the LANDLORD covenants that the TENANT may at all times, while this Agreement remains in effect, have and enjoy for his/her sole use and benefit the above described property.

22. Tenant Income Verification: The TENANT must promptly provide the LANDLORD with any letter or other notice by HUD to a member of the family that provides information concerning the amount or verification of family income in accordance with HUD requirements.

23. Tenants' rights to organize: LANDLORD agrees to allow TENANT organizers to conduct on the property the activities related to the establishment or operation of a TENANT organization set out in accordance with HUD requirements.

24. Interim recertifications:

a. The TENANT agrees to advise the LANDLORD immediately if any of the following changes occur:

1. Any household member moves out of the unit.

2. Any adult member of the household who was reported as unemployed on the most recent certification or recertification obtains employment.

3. The household's income cumulatively increases by $200 or more a month.

b. The TENANT may report any decrease in income or any change in other factors considered in calculating the Tenant's rent. Unless the LANDLORD has confirmation that the decrease in income or change in other factors will last less than one month, the LANDLORD will verify the information and make the appropriate rent reduction. However, if the TENANT'S income will be partially or fully restored within two months, the LANDLORD may delay the certification process until the new income is known, but the rent reduction will be retroactive and LANDLORD may not evict the TENANT for nonpayment of rent due during the period of the reported decrease and the completion of the certification process. The TENANT has thirty days after receiving written notice of any rent due for the above described time period to pay or the LANDLORD can evict for nonpayment of rent.

c. If the TENANT does not advise the LANDLORD of the interim changes concerning household members or increase in income, the TENANT may be subject to eviction. The LANDLORD may evict TENANT only in accordance with the time frames and administrative procedures set forth in HUD's regulations, handbooks and instructions on the administration of multifamily subsidy programs.

d. The TENANT may request to meet with the LANDLORD to discuss how any change in income or other factors affected his/her rent or assistance payment, if any. If the TENANT requests such a meeting, the LANDLORD agrees to meet with the TENANT and explain how the TENTANT'S rent or assistance payment, if any, was computed.

25. Attachments to the Agreement: The Tenant certifies that he/she has received a copy of the Agreement and the following attachments to the Agreement and understands that these attachments are part of the Agreement.

a. Attachment No. 1 - Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures, form HUD-50059

b. Attachment No. 2 - Unit Inspection Report.

c. Attachment No. 3 - House Rules (if any).

d. Attachment No. 4 – Pet Rules

WITNESS:

_____ _____**(O)**_____LANDLORD

_____
Date By: _____

_____ _____**(O)**_____TENANT
Date

_____ _____

_____ _____

Public reporting burden – HUD is not requesting approval of any burden hours for the model leases since use of leases are a standard business practice in the housing rental industry. This information is required to obtain benefits. The request and required supporting documentation are sent to HUD or the Contract Administrator (CA) for approval. The lease is a contract between the owner of the project and the tenant(s) that explains the terms for residing in the unit. Leases are a standard business practice in the housing rental industry. Owners are required to use the HUD model lease which includes terms normally covered by leases used in the housing rental industry plus terms required by HUD for the program under which the project was built and/or the program providing rental assistance to the tenants.

This information is authorized by 24 CFR 5.360, 236.750, 880.606, 883.701, 884.215, 886.127, 891.425, 891.625 and 891.765 cover lease requirements and provisions. This information is considered non-sensitive and does not require any special protection.

811 PRAC LEASE

SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES

This agreement made and entered into this _____**(A)**_____ day of _____, 20___, between _____**(B)**_____ as LANDLORD, and _____**(C)**_____as Tenant.

WITNESSETH:

WHEREAS, the LANDLORD is the Mortgagor under a Mortgage covering the project in which the hereinafter described unit is situated, which secures a capital advance made by the Secretary of Housing and Urban Development (HUD) (hereinafter "Secretary") pursuant to Section 811 of the National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992 and

WHEREAS, the LANDLORD has entered into a Project Rental Assistance Contract (PRAC) with the Secretary.

WHEREAS, pursuant to a Regulatory Agreement entered into between the LANDLORD and the Secretary, the LANDLORD has agreed to limit occupancy of the project to persons with disabilities as defined in Section 811 of the National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992 and applicable HUD regulations under criteria for eligibility of TENANTS for admission to assisted units and conditions of continued occupancy in accordance with the terms and provisions of the PRAC Contract, and

NOW THEREFORE,

1. The LANDLORD leases to the TENANT, and the TENANT leases from the LANDLORD dwelling unit in the project known as _____**(D)**_____ for a term of one year commencing on the _____ day of _____**(E)**_____, 20__, and ending on the _____ day of _____**(F)**_____, 20__.

2. The total rent (Contract Rent) shall be $___**(G)**_____ per month.

3. The total rent specified in Paragraph 2, above, shall include the following utilities:

_____**(H)**_____ _____

(If the total rent includes all utilities, enter "ALL"; where TENANTS pay some or all utilities, enter the following additional paragraph as 3a.)

The total rent stipulated herein does not include the cost of the following utility service(s), for which the Utility Allowance is $_**(I)**___.
_____**(J)**_____ _____

_____ _____

charges for such service(s) are to be paid directly by the TENANT to the utility company/companies providing such service(s). If the Utility Allowance exceeds the required TENANT's share of the total housing expense per HUD-approved schedule and criteria, the LANDLORD shall pay the TENANT the amount of such excess on behalf of the Government upon receipt of funds from HUD for that purpose.

4. Of the total rent, $___**(K)**_____ shall be payable by or at the direction of HUD as project rental assistance payments on behalf of the TENANT, and $_____**(L)**_____ shall be payable by the TENANT. These amounts shall be subject to change by reason of changes in requirements, changes in the TENANT's family income, family composition or extent of exceptional medical or other unusual expenses in accordance with HUD-established schedules and criteria; or by reason of adjustment by HUD of any applicable Utility Allowance. Any such change shall be effective as of the date stated in a Notice to the TENANT.

5. The TENANT's share of the rent shall be due and payable on or before the first day of each month at _____**(M)**_____ to the LANDLORD, or to such other person or persons or at such places as the LANDLORD may from time to time designate in writing.

6. A security deposit in an amount equal to one month's total TENANT payment or $50, whichever is greater, shall be required at the time of execution of this Agreement, Accordingly, TENANT hereby makes a deposit of $____**(N)**_____ against any damage except reasonable wear done to the premises by the TENANT, his/her family, guests, or agents; and agrees to pay when billed the full amount of any such damage in order that the deposit will remain intact. Upon termination of this Lease, the deposit is to be refunded to the TENANT or to be applied to any such damage or any rent delinquency. The LANDLORD shall comply with all State and local laws regarding interest payments on security deposits.

7. The LANDLORD shall not discriminate against the TENANT in the provision of services or in any other manner on the grounds of race, color, creed, religion, sex, familial status, national origin, or disability.

8. Unless terminated or modified as provided herein, this Agreement shall be automatically renewed for successive terms of One month each at the aforesaid rental, subject to adjustment as herein provided.

(a) The TENANT may terminate this Agreement at the end of the initial term or any successive term by giving 30 days written notice in advance to the LANDLORD. Whenever the LANDLORD has been in material noncompliance with this Agreement, the TENANT may in accordance with State law terminate this Agreement by so advising the LANDLORD in writing.

(b) The LANDLORD's right to terminate this Agreement is governed by the regulation of the Secretary at 24 CFR 891.430 and Part 247 (herein referred to as the HUD Regulation). The HUD Regulation provides that the LANDLORD may terminate this Agreement only under the following circumstances:

(1) The LANDLORD may terminate, effective at the end of the initial term or any successive term, by giving the TENANT notification in the manner prescribed in paragraph (g)below that the term of this Agreement is not renewed and this Agreement is accordingly terminated. This termination must be based upon either material noncompliance with this Agreement, material failure to carry out obligations under any State landlord or tenant act, or criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; any criminal activity that threatens the health or safety of any on-site project management staff responsible for managing the premises, or any drug-related criminal activity on or near such premises, engaged in by a resident, any member of the resident's household or other person under the resident's control; or other good cause. When the termination of the tenancy is based on other good cause, the termination notice shall so state, at the end of a term and in accordance with the termination provisions of this Agreement, but in no case earlier than 30 days after receipt by the TENANT of the notice. Where the termination notice is based on material noncompliance with this Agreement or material failure to carry out obligations under a State landlord and tenant act, the time of service shall be in accordance with the previous sentence or State law, whichever is later.

(2) Notwithstanding subparagraph (1), whenever the TENANT has been in material noncompliance with this Agreement, the LANDLORD may, in accordance with State law and the HUD Regulation, terminate this Agreement by notifying the TENANT in the manner prescribed in paragraph (g) below.

(c) If the TENANT does not vacate the premises on the effective date of the termination of this Agreement, the LANDLORD may pursue all judicial remedies under State or local law for the eviction of the TENANT, and in accordance with the requirements in the HUD Regulation.

(d) The term "material noncompliance with this Agreement" shall, in the case of the TENANT, include (1) one or more substantial violations of this Agreement, (2) repeated minor violations of this Agreement which disrupt the livability of the project, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities, interfere with the management of the project or have an adverse financial effect on the project, (3) failure of the TENANT to timely supply all required information on the income and composition, or eligibility factors of the TENANT household (including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR Part 5, Subpart B or knowingly providing incomplete or inaccurate information). Nonpayment of rent or any other financial obligation due under this Agreement (including any portion thereof) beyond any grace period permitted under State law shall constitute a substantial violation. The payment of rent or any other financial obligation due under this Agreement after the due date but within any grace period permitted under State law shall constitute a minor violation.

(e) The conduct of the TENANT cannot be deemed other good cause unless the LANDLORD has given the TENANT prior notice that said conduct shall henceforth constitute a basis for termination of this Agreement. Said notice shall be served on the TENANT in the manner prescribed in paragraph (g) below.

(f) The LANDLORD's determination to terminate this Agreement shall be in writing and shall (1) state that the Agreement is terminated on a date specified therein, (2) state the reasons for the LANDLORD's action with enough specificity so as to enable the TENANT to prepare a defense, (3) advise the TENANT that is he or she remains in the leased unit on the date specified for termination, the LANDLORD may seek to enforce the termination only by bringing a judicial action at which time the TENANT may present a defense, and (4) be served on the TENANT in the manner prescribed by paragraph (g) below.

(g) The LANDLORD's termination notice shall be accomplished by (1) sending a letter by first class mail, properly stamped and addressed, to the TENANT at his/her address at the project, with a proper return address, and (2) serving a copy of said notice on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door. Service shall not be deemed effective until both notices provided for herein have been accomplished. The date on which the notice shall be deemed to be received by the TENANT shall be the date on which the first class letter provided for in clause (1) herein is mailed, or the date on which the notice provided for in clause (2) is properly given, whichever is later.

(h) The LANDLORD may, with the prior approval of HUD, modify the terms and conditions of the Agreement, effective at the end of the initial term or a successive term, by serving an appropriate notice on the TENANT, together with the tender of a revised Agreement or an addendum revising the existing Agreement. Any increase in rent shall, in all cases, be governed by **24 CFR Part 245, and other applicable HUD regulations**. This notice and tender shall be served on the TENANT (as defined in paragraph (g)) at least 30 days prior to the last date on which the TENANT has the right to terminate the tenancy without being bound by the codified terms and conditions. The TENANT may accept it by executing the tendered revised agreement or addendum, or may reject it by giving the LANDLORD written notice at least 30 days prior to its effective date that he/she intends to terminate the tenancy. The TENANT's termination notice shall be accomplished by sending a letter by first class mail, properly stamped and addressed to the LANDLORD at his/her address.

(i) The LANDLORD may terminate this Agreement for the following reasons:

1. drug related criminal activity engaged in on or near the premises, by any TENANT, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant’s control;

2. determination made by the LANDLORD that a household member is illegally using a drug;

3. determination made by the LANDLORD that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents;

4. criminal activity by a tenant, any member of the TENANT’S household, a guest or another person under the TENANT’S control:

(a) that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises); or

(b) that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises;

5. if the TENANT is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that in the case of the State of New Jersey, is a high misdemeanor; or

6. if the TENANT is violating a condition of probation or parole under Federal or State law;

7. determination made by the LANDLORD that a household member’s abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents;

8. if the LANDLORD determines that the tenant, any member of the TENANT’S household, a guest or another person under the TENANT’S control has engaged in criminal activity, regardless of whether the tenant, any member of the tenant’s household, a guest or another person under the tenant’s control has been arrested or convicted for such activity.

9. TENANT agrees that the family income, family composition and other eligibility requirements shall be deemed substantial and material obligations of his/her tenancy with respect to the amount of rental he/she will be obligated to pay and his/her right of occupancy, and that a recertification of income shall be made to the LANDLORD annually from the date of this lease in accordance with HUD regulations and requirements.

10. TENANT agrees that the TENANT's share of the monthly rental payment is subject to adjustment by the LANDLORD to reflect income changes which are disclosed on any of TENANT's recertification of income, and TENANT agrees to be bound by such adjustment. LANDLORD agrees to give 30 days written notice of any such adjustment to the TENANT, by an addendum to be made a part of this lease, stating the amount of the adjusted monthly rental which the TENANT will be required to pay.

11. The TENANT shall not assign this lease, sublet the premises, give accommodation to any roomers or-lodgers, or permit the use of the premises for any purpose other than as a private dwelling solely for the TENANT and his/her family. The TENANT agrees to reside in this unit and agrees that this unit shall be the TENANT's and his/her family's only place of residence.

12. TENANT agrees to pay the LANDLORD any rental which should have been paid but for (a) TENANT's misrepresentation in his/her initial income certification or recertification, or in any other information furnished to the LANDLORD or (b) TENANT's failure to supply income recertification when required or to supply information requested by the LANDLORD.

13. TENANT for himself/herself and his/her heirs, executors and administrators agrees as follows:

(a) To pay the rent herein stated promptly when due, without any deductions whatsoever, and without any obligation on the part of the LANDLORD to make any demand for the same;

(b) To keep the premises in a clean and sanitary condition, and to comply with all obligations imposed upon TENANTS under applicable provisions of building and housing codes materially affecting health and safety with respect to said premises and appurtenances, and to save the LANDLORD harmless from all fines, penalties and costs for violations or noncompliance by TENANT with any of said laws, requirements or regulations, and from all liability arising out of any such violations or noncompliance.

(c) Not to use premises for any purpose deemed hazardous by insurance companies carrying insurance thereon;

(d) That if any damage to the property shall be caused by his/her acts or neglect, the TENANT shall forthwith repair such damage at his/her own expense, and should the TENANT fall or refuse to make such repairs within a reasonable time after the occurrence of such damage, the LANDLORD may, at his/her option, make such repairs and charge the cost thereof to the TENANT, and the TENANT shall thereupon reimburse the LANDLORD for the total cost of the damages so caused,

(e) To permit the LANDLORD, or his/her agents, or any representative of any holder of a mortgage on the property, or when authorized by the LANDLORD, the employees of any contractor, utility company, municipal agency or others, to enter the premises for the purpose of making reasonable inspections and repairs and replacements,

(f) Not to install a washing machine, clothes dryer, or air conditioning unit in the apartment without the prior approval of the LANDLORD; and

(g) To permit the LANDLORD or his/her agents to bring appropriate legal action in the event of a breach or threatened breach by the TENANT of any of the covenants or provisions of this lease.

14. The TENANT is permitted to keep common household pets in his/her dwelling unit or in an independent living facility (subject to the provisions in 24 CFR Part 5, Subpart C) and the pet rules promulgated under 24 CFR 5.315). Project owners may limit the number of common household pets to one pet in each group home. (24 CFR 5.318(b)(ii)). Any pet rules promulgated by the LANDLORD are attached hereto and incorporated hereby. The TENANT agrees to comply with these rules. A violation of these rules may be grounds for removal of the pet or termination of the TENANT's (pet owner's) tenancy (or both), in accordance with the provisions of 24 CFR Part 5, Subpart C, and applicable regulations and State or local law. These regulations include 24 CFR Part 247 (Evictions From Certain Subsidized and HUD-Owned Projects) and provisions governing the termination of tenancy under the Project Rental Assistance Contract.

Note: The Part 5 Pet Rules do not apply to an animal used by a Tenant or visitor that is needed as a reasonable accommodation for the Tenant’s or visitor’s disability.

[Optional] The LANDLORD may after reasonable notice to the TENANT and during reasonable hours, enter and inspect the premises. Entry and inspection is permitted only if the LANDLORD has received a signed, written complaint alleging (or the LANDLORD has reasonable grounds to believe) that the conduct or condition of a pet in the dwelling unit constitutes, under applicable State or local law, a nuisance or a threat to the health or safety of the occupants of the project or other persons in the community where the project is located.

If there is not State or local authority (or designated agent of such an authority) authorized under applicable State or local law to remove a pet that becomes vicious, displays symptoms of severe illness, or demonstrates other behavior that constitutes an immediate threat to the health or safety of the tenancy as a whole, the LANDLORD may enter the premises (if necessary), remove the pet, and take such action with respect to the pet as may be permissible under State and local law, which may include placing it in a facility that will provide care and shelter for a period not to exceed 30 days. The LANDLORD shall enter the premises and remove the pet or take such other permissible action only if the LANDLORD requests the TENANT (pet owner) to remove the pet from the project immediately, and the TENANT (pet owner) refuses to do so, or if the LANDLORD is unable to contact the TENANT (pet owner) to make a removal request. The cost of the animal care facility shall be paid as provided in 24 CFR 5.363. (NOTE: Paragraph 14 does not apply to individual residents of 811 Group Homes.

15. The LANDLORD agrees to comply with the requirement of all applicable Federal, State, and local laws, including health, housing and building codes and to deliver and maintain the premises in safe, sanitary decent condition.

16. The TENANT, by the execution of this Agreement, admits that the dwelling unit described herein has been inspected by him/her and meets with his/her approval. The TENANT acknowledges hereby that said premises have been satisfactorily completed and that the LANDLORD will not be required to repaint, replaster, or otherwise perform any other work, labor, or service which it has already performed for the TENANT. The TENANT admits that he/she has inspected the unit and found it to be

in good and tenantable condition, and agrees that at the end of the occupancy hereunder to deliver up and surrender said premises to the LANDLORD in as good condition as when received, reasonable wear and tear excepted.

17. No alteration, addition, or improvements shall be made in or to the premises without the prior consent of the LANDLORD in writing. The LANDORD agrees to provide reasonable accommodation to an otherwise eligible tenant’s disability, including making changes to rules, policies, or procedures, and making and paying for structural alterations to a unit or common areas. The Landlord is not required to provide accommodations that constitute a fundamental alteration to the Landlord’s program or which would pose a substantial financial and administrative hardship. See the regulations at 24 CFR Part 8. In addition, if a requested structural modification does pose a substantial financial and administrative hardship, the Landlord must then allow the tenant to make and pay for the modification in accordance with the Fair Housing Act.

18. TENANT agrees not to waste utilities furnished by the LANDLORD; not to use utilities or equipment for any improper or unauthorized purpose, and not to place fixtures, signs, or fences in or about the premises without the prior permission of the LANDLORD in writing. If such permission is obtained, TENANT agrees, upon termination of the lease, to remove any fixtures, signs of fences, at the option of the LANDLORD, without damage to the premises.

19. This Agreement shall be subordinate in respect to any mortgages that are now on or that hereafter may be placed against said premises, and the recording of such mortgage or mortgages shall have preference and precedence and be superior and prior in lien to this Agreement, and the TENANT agrees to execute any such instrument without cost, which may be deemed necessary or desirable to further effect the subordination of this Agreement to any such mortgage or mortgages and a refusal to execute such instruments shall entitle the LANDLORD, or the LANDLORD's assigns and legal representatives to the option of canceling this Agreement without incurring any expense or damage, and the term hereby granted is expressly limited accordingly.

20. Failure of the LANDLORD to insist upon the strict performance of the terms, covenants, agreements and conditions herein contained, or any of them, shall not constitute or be construed as a waiver or relinquishment of the LANDLORD's right thereafter to enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.

21. In return for the TENANT's continued fulfillment of the terms and conditions of this Agreement, the LANDLORD covenants that the TENANT may at all times, while this Agreement remains in effect, have and enjoy for his/her sole use and benefit the above described property.

22. Tenant Income Verification: The TENANT must promptly provide the LANDLORD with any letter or other notice by HUD to a member of the family that provides information concerning the amount or verification of family income in accordance with HUD requirements.

23. Tenants' rights to organize: LANDLORD agrees to allow TENANT organizers to conduct on the property the activities related to the establishment or operation of a TENANT organization set out in accordance with HUD requirements.

24. Interim recertifications:

a. The TENANT agrees to advise the LANDLORD immediately if any of the following changes occur.

1. Any household member moves out of the unit.

2. Any adult member of the household who was reported as unemployed on the most recent certification or recertification obtains employment.

3. The household's income cumulatively increases by $200 or more a month.

b. The TENANT may report any decrease in income or any change in other factors considered in calculating the Tenant's rent. Unless the LANDLORD has confirmation that the decrease in income or change in other factors will last less than one month, the LANDLORD will verify the information and make the appropriate rent reduction. However, if the TENANT'S income will be partially or fully restored within two months, the LANDLORD may delay the certification process until the new income is known, but the rent reduction will be retroactive and LANDLORD may not evict the TENANT for nonpayment of rent due during the period of the reported decrease and the completion of the certification process. The TENANT has thirty days after receiving written notice of any rent due for the above described time period to pay or the LANDLORD can evict for nonpayment of rent.

c. If the TENANT does not advise the LANDLORD of the interim changes concerning household members or increase in income, the TENANT may be subject to eviction. The LANDLORD may evict TENANT only in accordance with the time frames and administrative procedures set forth in HUD's regulations, handbooks and instructions on the administration of multifamily subsidy programs.

d. The TENANT may request to meet with the LANDLORD to discuss how any change in income or other factors affected his/her rent or assistance payment, if any. If the TENANT requests such a meeting, the LANDLORD agrees to meet with the TENANT and explain how the TENTANT'S rent or assistance payment, if any, was computed.

25. Attachments to the Agreement: The Tenant certifies that he/she has received a copy of the Agreement and the following attachments to the Agreement and understands that these attachments are part of the Agreement.

a. Attachment No. 1 - Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures, form HUD-50059

b. Attachment No. 2 - Unit Inspection Report.

c. Attachment No. 3 - House Rules (if any).

d. Attachment No. 4 – Pet Rules

WITNESS:

_____**(O)**_____LANDLORD

_____
Date By: _____

_____ _____**(O)**_____TENANT
Date

_____ _____

_____ _____

Public reporting burden – HUD is not requesting approval of any burden hours for the model leases since use of leases are a standard business practice in the housing rental industry. This information is required to obtain benefits. The request and required supporting documentation are sent to HUD or the Contract Administrator (CA) for approval. The lease is a contract between the owner of the project and the tenant(s) that explains the terms for residing in the unit. Leases are a standard business practice in the housing rental industry. Owners are required to use the HUD model lease which includes terms normally covered by leases used in the housing rental industry plus terms required by HUD for the program under which the project was built and/or the program providing rental assistance to the tenants.

This information is authorized by 24 CFR 5.360, 236.750, 880.606, 883.701, 884.215, 886.127, 891.425, 891.625 and 891.765 cover lease requirements and provisions. This information is considered non-sensitive and does not require any special protection.

Appendix 4-E

Applying the Model Lease for Subsidized Programs to Individual Tenants

APPLYING THE MODEL LEASE FOR SUBSIDIZED PROGRAMS TO INDIVIDUAL TENANTS

Chapter 6, Section 1 of this handbook offers general guidance on how and when the model lease for subsidized programs is to be used and highlights key provisions. Provided below are detailed instructions on: (1) how to complete the blank spaces in the model lease for subsidized programs; and, (2) how to edit the lease to comply with differences in the various types of multifamily programs. The following information is designed to help front-line staff apply the model lease to an individual tenant. Note that capital letters entered on the model lease correspond to the blanks for which completion instructions are provided below.

Paragraph 1: **Parties and Dwelling Unit.**

A and B- Enter name of the Landlord and the name of the head of household, spouse, co-head (if applicable) and all adult members of the family.

C, D and E - Enter the dwelling Unit Number, address and name of the project.

***Paragraph 2:** **Length of Time (Term).** Refer to Chapter 6, Figure 6-3 for the initial and renewal lease terms by program type.

F and G – fill in the beginning and ending dates of the lease.

The definition of the initial term of the lease is for twelve calendar months beginning January 1 and ending December 31; or 12 calendar months beginning at any point, e.g., beginning May 15, 2008 and ending May 14, 2009. For localities where the practice is to end the date at the end of the month the initial lease term would be beginning May 15, 2008 and ending May 31, 2009.*

H - Fill in the blank for successive terms of the lease. Use either one “month” or one “year”.

Paragraph 3:. **Rent.** The blanks in this paragraph apply only to the tenant’s share of the rent, the amount shown as the “Tenant Rent” on the HUD-50059. The first sentence applies only when the tenant occupies the unit on other than the first of the rental period. The last sentence may be deleted for BMIR and Section 236 tenants who are not receiving RAP, Rent Supplement or Section 8 assistance.

I and J- If the tenant will move in on the first day of the monthly rent period, strike the first sentence and the words “after that” in the second sentence. Otherwise, enter the prorated amount of the tenant’s monthly rent. To obtain this amount, divide the “Tenant Rent” from the HUD-50059 by the actual number of days in the month and multiply by the number of days the tenant will occupy the unit during the first rental period. If the Tenant Rent is zero, enter $0. Also enter the month for which partial rent is paid.

K - Enter the “Tenant Rent” from the HUD-50059 prepared for this tenant. If this entry is zero, enter $0.

L - Enter the date the rent is due. Due date is determined by the project owner or management agent.

M - Specify where the rent is to be delivered.

Paragraph 5:

N - Charges for Late Payment and Returned Checks. HUD's limitations on the amount the landlord may collect for these charges are discussed in Chapter 6, Section 3 of this handbook. The dates included in the model lease assume that rent is due on the first of the month. If rent is due on another date, adjust the dates in this paragraph.

Paragraph 7:

O - Charges for Utilities and Services. The split between utilities paid directly by the tenant (Column 1) and utilities included in the tenant's rent (Column 2) must agree with the HUD-approved rental schedule for the project. HUD must approve any charges imposed upon the tenant in addition to rent (Column 3) before being included in the lease. See Chapter 6, Section 3 of this handbook for a discussion on approvable charges. Strike paragraph (b) if the tenant will not be paying any special charges.

Paragraph 8: Security Deposits:

P - Amount must be within HUD limitations specified in Chapter 6, Section 1 of this handbook. If the security deposit will be collected in installments, edit first sentence to specify amount and due dates of installments.

Q and R – If the tenant will receive interest, enter interest rate the tenant will receive and date interest will begin to accrue. If the tenant will not receive interest on his/her security deposit (i.e., deposits will not be invested or interest will be deposited in the project's operating account), strike portion in brackets. HUD requirements regarding the amount and investment of security deposits as well as the disposition of any interest earned on invested deposits are explained in Chapter 6, Section 2 of this handbook.

S - Enter 30 days or any smaller number required by State law.

Paragraph 9: Keys and Locks.

T - See Chapter 6, Section 3 of this handbook for HUD's limitations on key charges.

Paragraph 15: Regularly Scheduled Recertifications. See Chapter 7 of this handbook for an in-depth discussion of recertification requirements.

U and V – Enter the day and month the tenant will be notified of the need to recertify. This date should be at least 120 days before the scheduled effective dates discussed in Chapter 7, Section 1 of this handbook.

Paragraph 17: **Removal of Subsidy.** This paragraph only applies to tenants receiving Rent Supplement, Section 8 or RAP payments. If the tenant is not receiving one of these tenant-subsidies, strike all of paragraph 17.

Paragraph 23: **Termination of Tenancy.** Management may edit paragraph 23a to specify when the 30-day notice period begins, i.e., at the beginning or in the middle of a monthly rental period.

Paragraph 25: **Attachments.** Attach: 1) the HUD-50059 certification; 2) the Unit Inspection Report; and, 3) any house rules. Attachments 1and 2 must be signed and dated by both the Landlord and tenant.

Paragraph 29:

W - Signatures. The lease must be signed and dated by the head-of-household, spouse, co-head (if applicable) and any adult family members and the Landlord.

Appendix 4-F

Applying the Model Leases for Section 202/8 or Section 202 Pac Programs to Individual Tenants

APPLYING THE MODEL LEASES FOR SECTION 202/8 OR SECTION 202 PAC PROGRAMS TO INDIVIDUAL TENANTS

Chapter 6, Section 1 of this handbook offers general guidance on how and when the model lease Is to be used and highlights key provisions. Provided below are detailed instructions on: (1) how to complete the blank spaces in the model lease; and, (2) how to edit the lease to comply with slightly differences in the multifamily programs. The following paragraphs are designed to help front-line staff apply a lease to an individual tenant. Note that capital letters entered on the model lease correspond to the blanks for which completion instructions are provided below.

Paragraph (1):

A - Enter the date lease agreement is entered into.

B and C – Enter the name of the Landlord and the head of household, spouse, co-head (if applicable) and all adult members of the family.

Paragraph 1: For Section 202/8, and Section 202 PAC, HUD requires initial terms of at least one year and automatically renews for successive one-month terms. Chapter 6, Section 1 of this handbook provides information on lease terms.

D – Enter the dwelling unit number and the name of the project.

E and F – Fill in the beginning and ending dates of the lease.

The definition of the initial term of the lease is for twelve calendar months beginning January 1 and ending December 31; or 12 calendar months beginning at any point, e.g., beginning May 15, 2008 and ending May 14, 2009. For localities where the practice is to end the date at the end of the month the initial lease term would be beginning May 15, 2008 and ending May 31, 2009.

Paragraph 2:.

G – Enter the Contract Rent from the Contract Rent field on the HUD-50059.

Paragraph 3:

H - Enter the utilities that are included in the tenant's rent from the approved Rental Schedule, form HUD-92458.

I – Enter the approved Utility Allowance as shown on the HUD-50059 and the Rental Schedule, form HUD-92458.

J – Enter the utilities covered by the Utility Allowance.

Paragraph 4:

K - Complete this paragraph only for Section 202/8 projects for which HUD has approved a mandatory meal program. If HUD has not approved a mandatory

meal program enter N/A (non applicable). See Chapter 6, Section 3 of this handbook for information pertaining to Meal Programs.

Paragraph 5 -

L – Enter the amount of assistance HUD is going to pay on behalf of the tenant as shown in the Assistance Payment field on the HUD-50059.

M – Enter the tenant's share of the rent as shown in the Tenant Rent field on the HUD-50059. If this entry is zero, enter $0.

Paragraph 6:

N – Enter the place where the rent is to be delivered.

Paragraph 7:

O - Amount of security deposit must be within HUD limitations specified in Chapter 6, Section 1 of this handbook.

Paragraph 29: Attachments. Attach: 1) the HUD-50059 certification; 2) the Unit Inspection Report; 3) any house rules, and 4) pet rules. Attachments 1 and 2 must be signed and dated by both the Landlord and tenant.

Paragraph 29: Signatures.

P - The lease must be signed and dated by the head-of-household, spouse, co-head (if applicable) and any adult family members**, as listed in C of the lease.**

Appendix 4-G

Applying the Model Leases for Section 202 PRAC and Section 811 PRAC Programs to Individual Tenants

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APPLYING THE MODEL LEASES FOR SECTION 202 PRAC AND SECTION 811 PRAC PROGRAMS TO INDIVIDUAL TENANTS

Chapter 6, Section 1 of this handbook offers general guidance on how and when the model leases are to be used and highlights key provisions. Provided below are detailed instructions on: (1) how to complete the blank spaces in the model leases. The following paragraphs are designed to help front-line staff apply a lease to an individual tenant. Note that capital letters entered on the model leases correspond to the blanks for which completion instructions are provided below.

Paragraph (1):

A - Enter the date lease agreement is entered into.

B and C – Enter the name of the Landlord and the head of household, spouse, co-head (if applicable) and all adult members of the family.

Paragraph 1: For Section 202 PRAC and Section 811 PRAC, HUD requires initial terms of at least one year and automatically renews for successive one-month terms. Chapter 6, Section 1 of this handbook provides information on lease terms.

D – Enter the dwelling unit number and the name of the project.

E and F – Fill in the beginning and ending dates of the lease.

The definition of the initial term of the lease is for twelve calendar months beginning January 1 and ending December 31; or 12 calendar months beginning at any point, e.g., beginning May 15, 2008 and ending May 14, 2009. For localities where the practice is to end the date at the end of the month the initial lease term would be beginning May 15, 2008 and ending May 31, 2009.

Paragraph 2:.

G – Enter the Contract Rent from the Contract Rent field on the HUD-50059.

Paragraph 3:

H - Enter the utilities that are included in the tenant's rent from the approved Rental Schedule, form HUD-92458.

I – Enter the approved Utility Allowance as shown on the HUD-50059 and the Rental Schedule, form HUD-92458.

J – Enter the utilities covered by the Utility Allowance.

Paragraph 4 -

K – Enter the amount of assistance HUD is going to pay on behalf of the tenant as shown in the Assistance Payment field on the HUD-50059.

L – Enter the tenant's share of the rent as shown in the Tenant Rent field on the HUD-50059. If this entry is zero, enter $0.

Paragraph 5:

M – Enter the place where the rent is to be delivered.

Paragraph 6:

N - Amount of security deposit must be within HUD limitations specified in Chapter 6, Section 1 of this handbook.

Paragraph 25:

Attachments. 1) the HUD-50059 certification; 2) the Unit Inspection Report; 3) any house rules, and 4) pet rules. Attachments 1 and 2 must be signed and dated by both the Landlord and tenant.

Signatures.

O - The lease must be signed and dated by the head-of-household, spouse, co-head (if applicable) and any adult family members, **as listed in C of the lease**.

Appendix 5

Sample Move-In/Move-Out Inspection Form

Appendix 5: Sample Move-In/Move-Out Inspection Form

[Company name]
[Company address]

Property		Resident	
Apartment No.	Unit Size	Move-In Inspection Date	Move-Out Inspection Date

Item	Condition		Cost to Correct
	Move-In	Move-Out	
ENTRANCE/HALLS			
Steps and landings			
Handrails			
Doors			
Hardware/Locks			
Floors/Coverings			
Walls/Coverings			
Ceilings			
Windows/Coverings			
Lighting[1]			
Electrical Outlets			
Closets[2]			
Fire alarms/equipment			
LIVING ROOM			
Floor/Coverings			
Walls/Coverings			
Ceiling			
Windows/Covering			
Lighting[1]			
Electrical outlets			

Item	Condition		Cost to Correct
	Move-In	Move-Out	
DINING ROOM			
Floor/Coverings			
Walls/Coverings			
Ceiling			
Windows/Coverings			
Lighting[1]			
Electrical outlets			
KITCHEN			
Range			
Refrigerator			
Sink/Faucets[3]			
Floor/Coverings			
Walls/Coverings			
Ceiling			
Windows/Coverings			
Lighting[1]			
Electrical outlets			
Cabinets			
Closets/Pantry[2]			
Exhaust fan			
Fire alarms/equipment			
BEDROOM(S)			
Doors and locks			
Floor/Coverings			
Walls/Coverings			
Ceiling			
Windows/Covering			
Closets[2]			
Lighting[1]			
Electrical outlets			

Item	Condition		Cost to Correct
	Move-In	Move-Out	
BATHROOM(S)			
Sink/Faucets[3]			
Shower/Tub[3]			
Curtain rack/Door			
Towel rack			
Toilet			
Doors/Locks			
Floor/Coverings			
Walls/Coverings			
Ceiling			
Windows/Coverings			
Closets[2]			
Cabinets			
Exhaust fan			
Lighting[1]			
Electrical outlets			
OTHER EQUIPMENT			
Heating Equipment			
Air-conditioning unit(s)			
Hot-water heater			
Smoke/Fire alarms			
Thermostat			
Door bell			
TOTAL			

1. Fixtures, Bulbs, Switches, and Timers
2. Floor/Walls/Ceiling, Shelves/Rods, Lighting
3. Water pressure and Hot water

Move-In

This unit **is in decent, safe and sanitary condition. ** Any deficiencies identified in this report will be remedied within 30 days of the date the tenant moves into the unit.

_____
Manager's Signature

I have inspected the apartment and found **this unit to be in decent, safe and sanitary condition. Any deficiencies are noted above.** I recognize that I am responsible for keeping the apartment in good condition, with the exception of normal wear. In the event of damage, I agree to pay the cost to restore the apartment to its original condition.

_____
Resident's Signature

_____
Resident's Signature

	By	Date
Prepared	_____	_____
Reviewed	_____	_____
Prepared	_____	_____
Reviewed	_____	_____

Move-Out

_____
Manager's Signature

___Agree with move-out inspection

___Disagree with move-out inspection

If disagree, list specific items of disagreement.

_____

_____

_____

_____
Resident's Signature

_____
Resident's Signature

	By	Date
Prepared	_____	_____
Reviewed	_____	_____
Prepared	_____	_____
Reviewed	_____	_____

APPENDIX 6: VERIFICATION AND CONSENT – GUIDANCE AND SAMPLE FORMATS

This appendix contains three components.

Appendix 6-A: Guidance for Development of Individual Consent Forms describes the required language that must be used when obtaining an applicant/tenant's consent to seek third-party verification of eligibility and income information, as well as a sample format.

Appendix 6-B: Verification of Disability – Instructions to Owners and Sample Formats provides additional instructions and sample formats for verifying an applicant/tenant's disability status for eligibility, or for receiving allowable income deductions based on disability.

Appendix 6-C: Guidance About Types of Information to Request When Verifying Eligibility and Income presents guidance about the types of information that are appropriate when an owner is seeking to verify an applicant/tenant's eligibility or income information.

Appendix 6-A: Guidance for Development of Individual Consent Forms

1. REQUIREMENTS FOR INDIVIDUAL CONSENT. See sample consent below. Individual verification consent forms must contain the following consumer protections:

   a. State in bold (or other emphasis) in a prominent place that the applicant/tenant does not have to sign the consent if it is not clear who will provide the information or who will receive the information.

      NOTE: This can be re-worded to suit the owner's individual style. This customer protection assures individuals that their consents will be used by authorized individuals only.

      "NOTE: This information may have to be conveyed in languages other than English for LEP persons in accordance with HUD guidance."

   b. Include the following statement on the penalties for misusing the consent:

      "Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government. HUD and any owner (or any employee of HUD or the owner) may be subject to penalties for unauthorized disclosures or improper uses of information collected based on the consent form. Use of the information collected based on this verification form is restricted to the purposes cited above. Any person who knowingly or willingly requests, obtains or discloses any information under false pretenses concerning an applicant or participant may be subject to a misdemeanor and fined not more than $5,000. Any applicant or participant affected by negligent disclosure of information may bring civil action for damages and seek other relief, as may be appropriate, against the officer or employee of HUD or the owner responsible for the unauthorized disclosure or improper use. Penalty provisions for misusing the social security number are contained in the Social Security Act at **208 (a) (6), (7) and (8).** Violation of these provisions are cited as violations of 42 U.S.C. Section **408 (a) (6), (7) and (8).**

   c. Request only that information necessary to determine the person's eligibility or level of assistance.

EXAMPLE – Information That Is Not Necessary to Determine Eligibility or Level of Assistance

In a verification for termination of employment, it would not be appropriate to ask “would you rehire this person?” But, it would be appropriate to ask “do you anticipate rehiring this person and, if yes, when?”

In a medical verification, it would not be appropriate to ask the purpose of an office visit or to ask for a diagnosis.

NOTE: Concerning verifications of disability (handicap), **Appendix 6-B** provides a specific explanation to the applicant/tenant on the limitations on any verification of disability (handicap).

d. Include the following certification statement to be signed by the applicant/tenant:

"I hereby authorize the release of the requested information. Information obtained under this consent is limited to information that is no older than 12 months. There are circumstances that would require the owner to verify information that is up to 5 years old, which would be authorized by me on a separate consent attached to a copy of this consent."

e. Provide a space for the title, agency/organization, and signature of the third party who is supplying the information. This information will be provided by the third party. For example:

_____	_____
NAME AND TITLE OF PERSON SUPPLYING THE INFORMATION (PRINT)	AGENCY/ORGANIZATION
_____	_____
SIGNATURE	DATE

2. <u>SAMPLE VERIFICATION CONSENT FORMAT</u>

The format on the next page shows a sample of how consent for verification may be requested.

SAMPLE VERIFICATION CONSENT

DATE:

TO: (Name and address of third party who is being requested to verify this information)

FROM: (Name of individual requesting the information, title, name of housing project, address)

RETURN THIS VERIFICATION TO THE PERSON LISTED ABOVE (or other instruction to the third party to ensure that the verification is returned to the right person. This is important because owners have a responsibility to treat this information confidentially.)

SUBJECT: Verification of Information Supplied by an Applicant for Housing Assistance

NAME _____

ADDRESS _____

This person has applied for housing assistance under a program of the U.S. Department of Housing and Urban Development (HUD). HUD requires the housing owner to verify all information that is used in determining this person's eligibility or level of benefits.

We ask your cooperation in providing the following information and returning it to the person listed at the top of the page. Your prompt return of this information will help to ensure timely processing of the application for assistance. Enclosed is a self-addressed, stamped envelope for this purpose. The applicant/tenant has consented to this release of information as shown below.

==========

INFORMATION BEING REQUESTED

(Owners: Fill in here the information requested. Consult **Appendix 6-C** of this handbook for examples of relevant information that owners may request from third parties in verifying several types of income and information and household characteristics. This list of information is not meant to be all-inclusive. Owners may add other information as long as any additional information is relevant to determining the individual's eligibility for assistance or level of benefits. This instruction does not have to appear on an individual consent.)

_____ _____

Name and Title of Person Supplying the Information | Firm/Organization

_____ _____

Signature | Date

==========

==========

RELEASE: I hereby authorize the release of the requested information. Information obtained under this consent is limited to information that is no older than 12 months. There are circumstances that would require the owner to verify information that is up to 5 years old, which would be authorized by me on a separate consent attached to a copy of this consent.

_____ _____

Signature Date

Note to Applicant/Tenant: You do not have to sign this form if either the requesting organization or the organization supplying the information is left blank.

==========

PENALTIES FOR MISUSING THIS CONSENT:

Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government. HUD and any owner (or any employee of HUD or the owner) may be subject to penalties for unauthorized disclosures or improper uses of information collected based on the consent form. Use of the information collected based on this verification form is restricted to the purposes cited above. Any person who knowingly or willingly requests, obtains, or discloses any information under false pretenses concerning an applicant or participant may be subject to a misdemeanor and fined not more than $5,000. Any applicant or participant affected by negligent disclosure of information may bring civil action for damages and seek other relief, as may be appropriate, against the officer or employee of HUD or the owner responsible for the unauthorized disclosure or improper use. Penalty provisions for misusing the social security number are contained in the Social Security Act at **208 (a) (6), (7) and (8).** Violations of these provisions are cited as violations of 42 USC **408 (a) (6), (7) and (8).**

EQUAL HOUSING OPPORTUNITY

We Do Business in Accordance With the Federal Fair Housing Law

(The Fair Housing Amendments Act of 1988)

Appendix 6-B: Verification of Disability – Instructions to Owners and Sample Formats

NOTE: These verification instructions and sample formats are not to be used when assigning accessible units.

1. EXPLANATION TO THE APPLICANT

(**Instruction to Owners:** This explanation is required. It may be in the form of a cover letter or may appear directly on the verification consent. Owners may edit the following explanation as long as the same message is conveyed. This instruction does not have to appear on the verification consent.)

HUD permits owners to verify that you have a disability only if:

1) Your eligibility for admission is dependent on your being a person with a disability; or

2) You claim eligibility for deductions that are given to a person with a disability.

The definitions of disability vary depending on the project you are applying for or living in. The owner determines the definition(s) to use by consulting with HUD Handbook 4350.3 REV-1. The third party from whom this verification is being requested has knowledge of whether your disability meets the applicable definition(s) of disability (or person with a disability). An owner may request from a third party only the minimum information necessary to determine whether you meet the applicable definition of disability (or person with a disability). Any other request for information about you is not relevant and may not be asked (e.g., diagnosis, treatment plan).

"NOTE: This information may have to be conveyed in languages other than English for LEP persons in accordance with HUD guidance."

2. SAMPLE FORMATS

The two sample formats on the next page can be used to verify an applicant/tenant's disability status for purposes of eligibility for occupancy in properties/units where occupancy is restricted to disabled families or persons with disabilities, or for income deductions based on disability when determining an applicant/tenant's adjusted income.

Please note that if Item 4, on either sample format, is checked "YES", the applicant/tenant does not meet HUD's definition of disability.

HUD- 90102 - SAMPLE VERIFICATION OF DISABILITY WHEN ELIGIBILITY FOR ADMISSION OR QUALIFICATION FOR CERTAIN INCOME DEDUCTIONS IS BASED ON DISABILITY

FOR USE WITH **SECTION 202/8**, **SECTION 202 PAC**, **Section 202 PRAC,** AND **SECTION 811 PRAC**

http://www.hud.gov/offices/adm/hudclips/forms/files/90102.pdf

HUD -90103 - SAMPLE VERIFICATION OF DISABILITY WHEN ELIGIBILITY FOR ADMISSION OR QUALIFICATION FOR CERTAIN INCOME DEDUCTIONS IS BASED ON DISABILITY

FOR USE WITH ALL PROGRAMS **EXCEPT** SECTION 202/8, SECTION 202 PAC, SECTION 202 PRAC, AND SECTION 811 PRAC

http://www.hud.gov/offices/adm/hudclips/forms/files/90103.pdf

Appendix 6-C: Guidance About Types of Information to Request When Verifying Eligibility and Income

Paragraph 1.c of **Appendix 6-A** states that owners may request only that information necessary to determine the person's eligibility or level of assistance. The first paragraph under most of the types of income listed below provides information that would meet this requirement. For some types of income listed below, appropriate requests for information are combined with the types of verification that are permitted. In deciding whether to add information to a particular verification request that is not listed below, the owner must ask: Is this information necessary to determine the individual's eligibility for assistance or level of assistance? If the answer is "yes", then the owner may verify that information. If the answer is "no", then the owner may not verify that information

"NOTE: This information may have to be conveyed in languages other than English for LEP persons in accordance with HUD guidance."

A. Employment Income

1. Relevant information to verify with third party:

   a. Nonmilitary employment

      (1) Date first employed,

      (2) Base pay rate (Gross) (check one)

      Per hour $_____ or per week $_____

      OR per month $_____

      Date present rate became effective _____

      Expected average hours to be worked during next 12 calendar months at base pay rate _____

      Per week _____ or per month_____,

      (3) Overtime pay rate

      Per hour $_____

      Expected average number of hours to be worked per week during next 12 calendar months _____,

      (4) Other compensation not included above (specify for commissions, bonuses, tips, etc.)

      For _____ $_____ per _____,

(5) Total anticipated base pay earnings for the next 12 calendar months $_____,

Total anticipated overtime earnings for the next 12 calendar months $_____,

(6) Medical insurance premium deducted (if any). (This would be relevant only for families eligible for the medical deduction.),

_____

(7) Has employment been terminated? _____

If yes, is individual eligible for unemployment benefits?

_____

b. Military employment

(1) Years ____ and months _____ of services for pay purposes.

Number of dependents claimed_____,

(2) Monthly income from the following sources:

Base pay and longevity pay	$_____
Proficiency pay	$_____
Sea and foreign duty pay	$_____
Hazardous duty pay	$_____
Imminent danger pay	$_____
Subsistence allowance	$_____
Quarters allowance (Include only amount contributed by government)	$_____
Other (explain)	$_____

TOTAL AMOUNT RECEIVED MONTHLY $_____.

2. Acceptable forms of verification:

a. Employment verification form completed by the employer verifying frequency of pay, effective date of the last pay increase, and probability and effective date of any increase during the next 12 months;

b. Check stubs or earning statements showing employee's gross pay per pay period and frequency of pay;

c. W-2 forms if applicant has had the same job for at least two years and pay increases can be accurately projected; and

d. Notarized statements, affidavits or income tax returns signed by the applicant describing self-employment and amount of income or income from tips and other gratuities.

B. **Date Employment Terminated**

1) Relevant information to verify with third party:

a. Date of hire;

b. Date of termination;

c. Last day actually worked;

d. Do you anticipate rehiring this employee? If yes, when?

e. Will the employee receive additional paychecks for worker's compensation?

If yes, provide the name and address of the company through which this can be verified.

f. Is employee eligible for unemployment benefits?

g. Total severance pay anticipated for the next 12 months.

2. Acceptable forms of verification:

a. Termination of employment verification;

b. Letter from employer stating date of termination; and

c. Letter from an agency providing unemployment compensation stating that the individual's employment terminated and that unemployment benefits will begin.

C. **Social Security and Supplementary Security Income (SSI)**

1. Relevant information to verify *Social Security and SSI income.* The following information is generally available from *EIV or the* award or benefit letter *or the Proof of Income Letter*.

a. Name of original annuitant;

b. Pension claim number or social security number of person receiving the pension claim;

c. Current monthly gross amount of pension or annuity;

d. Deductions from gross amount for medical insurance premiums;

e. Date benefits began;

f. Effective date of current amount;

g. For social security, ask: Has the monthly payment been reduced for overpayment of previous benefits? If so, by how much?

2) Acceptable forms of verification:

a. Initial occupancy. At initial occupancy, acceptable forms of verification are:

- Benefit verification form completed by agency providing the benefits;
- Award or benefit notification letters prepared and signed by the authorizing agency. (Since checks or bank deposit slips show only net amounts remaining after deducting supplemental security income or Medicare, they may be used only when award letters can't be obtained.) If the applicant does not have his or her award letter, the applicant may obtain it by calling 800-772-1213.

b. Annual recertification. At annual recertification, the owner *must* verify benefit information by obtaining a Benefit History Report from *EIV*. If the owner cannot obtain this report from *EIV*, the owner uses the verification methods for initial occupancy.

NOTE: Failure to obtain a Benefit History Report from *EIV* is not an indication that the tenant does not receive benefits. Due to data sharing limitations between existing data systems, it is possible for a tenant to receive benefits on which the owner cannot obtain a Benefit History Report.

D. Pensions and Disability Income Other Than from the Social Security Administration

This paragraph is not suggesting that owners group verifications of these different sources of income into one verification. Owners may have to adapt the questions, depending on the source of income being verified. This paragraph provides suggestions on the types of questions that are appropriate to ask a third party.

1. Relevant information to verify with third party:

a. Name of original annuitant;

b. Pension claim number or social security number of person receiving the pension claim;

c. Current monthly gross amount of pension or annuity;

d. Deductions from gross amount for medical insurance premiums;

e. Date benefits began;

f. Effective date of current amount;

g. For annuities, ask: Did the individual invest in an annuity? If yes, what is the amount invested? What is the amount received to date from the annuity? Does the individual receive regular payments? When are they received (monthly, annually)?

h. For pensions and annuities, ask: Is the individual reimbursed for medical costs?

2) Acceptable forms of verification:

a. Benefit verification form completed by the company/agency providing the benefits;

b. Award or benefit notification letters prepared and signed by the authorizing company/agency. (Checks or bank deposit slips show only net amounts remaining after deductions.)

E. **Unemployment Compensation**

1. Relevant information to verify with third party:

a. Gross weekly payment;

b. Date of initial payment;

c. Duration of benefits: _____ weeks;

d. Is the claimant eligible for further benefits?

e. If yes, how many weeks?

f. If no, what is the date the benefits are terminated?

2. Acceptable forms of verification:

a. Verification form completed by the unemployment compensation agency; and

b. Records from unemployment office stating payment dates and amounts.

F. **Public Benefits**

1. Relevant information to verify with third party:

a. Number of members in the family;

b. Names of the children for whom benefits are received and their social security numbers;

c. Date of initial assistance;

d. Is recipient covered by Medicaid? If yes, what is the Medicare spend down amount?

e. Does the recipient meet his/her spend down amount each period?

f. What is the rate per month under the following grant:

(1) Temporary Assistance to Needy Families (TANF),

(2) Supplemental Social Security,

(3) Other assistance: Type _____, and

g. The following question applies only to "as-paid" States only: Amount specifically designated for shelter and utilities (This is the maximum allowance for rent and utilities);

h. The grant is increased by the following amounts (Specify purpose):

(1) Employment income $ _____

(2) Child care allowance $ _____

(3) Transportation $ _____

(4) Other _____ $ _____;

i. The grant is reduced by the following amounts:

(1) Alimony $_____

(2) Child support $_____

(3) Other (specify) $_____;

j. Is there anything else that will influence the amount of the grant? If yes, specify purpose and amount. $_____

k. Has the monthly payment been reduced for overpayment of previous benefits? If so, by how much? $_____

l. TOTAL MONTHLY GRANT $ _____.

2. Acceptable forms of verification:

a. All welfare programs. Welfare agency's written statements as to type and amount of assistance family is now receiving and any changes in assistance expected during the next 12 months;

b. Additional information for "as-paid" programs. Welfare agency's written schedule or statement that describes how the "as-paid" system works, the maximum amount a family may receive for shelter and utilities and, if applicable, any factors used to ratably reduce the client's grant.

G. **Alimony or Child Support Payments**

1. Relevant information to verify with third party:

a. Amount of alimony or child support being provided to the family;

b. Will such amounts be terminated within the next 12 months. If so, when?

2. Acceptable forms of verification:

a. Copy of a separation or settlement agreement or divorce decree stating amount and type of support and payment schedules;

b. A letter from the person paying the support;

c. Copy of latest check. Owner must record the date, amount, and number of check; and

d. Applicant's notarized statement or affidavit of amount received or that support payments are not being received and the likelihood of support payments being received in the future.

H. **Net Income from a Business**

The following documents show income for the prior years. Owners must consult with tenants and use this data to estimate income for the next 12 months.

1. IRS Tax Return, Form 1040, including any:

a. Schedule C (Small Business);

b. Schedule E (Rental Property Income); and

c. Schedule F (Farm Income).

2. An accountant's calculation of depreciation expense, computed using straight-line depreciation rules. (Required when accelerated depreciation was used on the tax return or financial statement.)

3. Audited or unaudited financial statement(s) of the business.

4. Loan Application listing income derived from the business during the previous 12 months.

5. Applicant's notarized statement or affidavit as to net income realized from the business during the previous years.

I. **Recurring Gifts**

Acceptable forms of verification:

1. Notarized statement or affidavit signed by the person providing the assistance. It must give the purpose, dates and value of gifts.

2. Applicant's notarized statement or affidavit that provides the purpose, dates and value of gifts.

J. **Family Assets Now Held**

1) Relevant information to verify with third party:

For non-liquid assets, collect enough information to determine the current cash value—the net amount the family would receive if the asset were converted to cash. (See paragraph 5.7.)

a. Type of account;

b. Current balance or, for checking accounts, the average balance for the last six months;

c. Date account opened;

d. Date account closed;

e. Is this an interest bearing account? If so, what is the interest rate?

f. For trusts:

(1) What is the value of the trust fund?

(2) What is the anticipated amount of income to be earned by the trust over the next 12 months?

(3) What is the amount anticipated to be distributed over the next 12 months?

g, For property, what is the equity value?

2) Acceptable forms of verification:

a. Verification forms, letters, or documents from a financial institution, broker, etc.;

NOTE: When financial institutions charge a fee to the applicant or tenant for providing verifications, the forms of verification in paragraph b) below would be the preferred method.

b. Account statements, passbooks, broker's quarterly statements showing value of stocks or bonds, etc., and the earnings credited to the applicant's account statements, or financial statements completed by a financial institution or broker;

NOTE: The owner must adjust the information provided by the financial institution to project earnings expected for the next 12 months.

c. Quotes from a stockbroker or realty agent as to net amount family would receive if they liquidated securities or real estate;

d. Copy of IRS Form 1099 prepared by the financial institution showing the amount of income provided by the asset;

e. Real estate tax statements if tax authority uses approximately market value;

f. Copies of closing documents showing the selling price, the distribution of the sales proceeds and the net amount to the individual;

g. Appraisals of personal property held as an investment; and

h. Applicant's notarized statements or signed affidavits describing assets or verifying cash held at the applicant's home or in safe deposit boxes.

K. **Assets Disposed of for Less than Fair Market Value During Two Years Preceding Effective Date of Certification or Recertification**

(See paragraph 5.7 G.6.) Suggested information to obtain and acceptable forms of verification are included below.

1. For all certifications and recertifications except those prepared for BMIR tenants, certification as to whether any member *of the family* has disposed of assets for less than fair market value during the two years preceding effective date of the certification or recertification.

2. If the family certifies that they did dispose of assets for less than fair market value a certification that shows:

   a. All assets disposed of for less than fair market value;

   b. The date they disposed of the assets;

c. The amount the family received; and

d. The market value *of the asset(s)* at the time of disposition.

L. **Income from Sale of Real Property Pursuant to a Purchase Money Mortgage, Installment Sales Contract, or Similar Arrangement**

The following provide suggested information to verify with a third party and acceptable forms of verification:

1. A letter from an accountant, attorney, real estate broker, the buyer, or a financial institution stating interest due for next 12 months. (A copy of the check paid by the buyer to the applicant is not sufficient since appropriate breakdowns of interest and principal are not included.)

2. Amortization schedule showing interest for the 12 months following the effective date of the certification or recertification.

M. **Rental Income from Property Owned by Applicant/Tenant**

The following provide suggested information to verify with a third party and acceptable forms of verification:

1. IRS Form 1040 with Schedule E (Rental Income).

2. Copies of latest rent checks, leases, or utility bills.

3. Documentation of applicant's/tenant's income and expenses in renting the property (tax statements, insurance premiums, receipts for reasonable maintenance and utilities, bank statements or amortization schedules showing monthly interest expense).

4. Lessee's written statement identifying monthly payments due the applicant and applicant's affidavit as to net income realized.

N. **Full-Time Student Status**

The following provide suggested information to verify with a third party and acceptable forms of verification:

1. Written verification from the registrar's office or appropriate school official.

2. School records indicating enrollment for sufficient number of credits to be considered a full-time student by the school.

O. **Child Care Expenses**

The following provide suggested information to verify with a third party and acceptable forms of verification:

1. Written verification from the person who receives the payments.

2. Verifications must specify the hours and days during which the care is provided, the names and ages of the children cared for, and the frequency and amount of compensation received. (Owners should recognize that child care costs may be higher during summer and holiday recesses.)

   NOTE: Owners may want to ask the verifying party to indicate children age 12 or younger.

3. Applicant's certification as to whether any of those payments have been or will be reimbursed by outside sources.

   NOTE: Owners may wish to use separate verification consents for child care and disability (handicap) care.

P. **Medical Expenses**

The following provide suggested information to verify with a third party and acceptable forms of verification:

1. Written verification by a doctor, hospital or clinic personnel, dentist, pharmacist, etc., of:

   a. The estimated medical costs to be incurred by the applicant and of regular payments due on medical bills;

   b. The extent to which those expenses will be reimbursed by insurance or a government agency; and

   c. Whether the provider accepts Medicare assignment.

2. The insurance company's or employer's written confirmation of health insurance premiums to be paid by the applicant.

3. Social Security Administration's written confirmation of Medicare premiums to be paid by the applicant over the next 12 months.

4. For attendant care:

   a. Doctor's certification that the assistance of an attendant is medically necessary;

   b. Attendant's written confirmation of hours of care provided and amount and frequency of payments received from the family (or copies of cancelled checks the family used to make those payments); and

   c. Applicant's certification as to whether any of those payments have been or will be reimbursed by outside sources.

5. Receipts, cancelled checks, or pay stubs that indicate health insurance premium costs, etc., that verify medical and insurance expenses likely to be incurred in the next 12 months.

6. Copies of payment agreements with medical facilities or cancelled checks that verify payments made on outstanding medical bills that will continue over all or part of the next 12 months.

7. Receipts or other record of medical expenses incurred during the past 12 months that can be used to anticipate future medical expenses. Owners may use this approach for "general medical expenses" such as non-prescription drugs and regular visits to doctors or dentists, but not for one-time, nonrecurring expenses from the previous year.

Q. **Need for Larger Unit Because of Physical or Mental Disability (Handicap)**

The owner may request additional information to verify the request for a larger unit as a reasonable accommodation. The owner may request reliable disability-related information to verify that the requestor meets the definition of disability, that the accommodation is needed, and that the need is related to the disability. Such information may be, but need not be, provided by a health care professional. It could be provided by a non-medical service coordinator or service provider, a peer support group, or other reliable third party who is in the position to know about the requestor's disability.

R. **Disabled (Handicap) Assistance Expense**

1. Attendant care:

   a. Attendant's written certification as to amount received from the applicant/tenant, frequency of receipt, hours of care provided, and/or copies of cancelled checks applicant/tenant used to make those payments; and

   b. Family's written certification as to whether they receive reimbursement for any of the attendant care expenses and the amount of any reimbursement received.

2) Auxiliary apparatus: Receipts for purchases of, or evidence of monthly payments for auxiliary apparatus.

3) In all cases:

   a. As routine practice, owners should accept the individual's written statement that an auxiliary apparatus or attendant care is necessary for employment. If the owner determines that verification is necessary in a particular case, the owner should obtain written certification from a *reliable source* that the family member who is a person with a disability (handicap) requires the services of an attendant or the use of auxiliary apparatus to permit this family member to be employed or to enable

another family member to be employed. *See* Chapter 2 regarding individuals' requests for reasonable accommodations.

b. Family's written certification as to whether they receive reimbursement for any of the auxiliary apparatus expenses and the amount of any reimbursement received.

S. **Family Type and Membership in Family**

1. For elderly household where the head, co-head, or spouse is 62 years of age or older verification of age may be provided by:

   a. Copy of a birth certificate, baptismal certificate, census record, official record of birth or other authoritative document; or

   b. Receipt of supplemental security income old age benefits or social security retirement benefits.

2. For disability (because the individual's eligibility for admission is dependent on his/her being a person with a disability [handicap] or because the individual claims eligibility for income deductions that are given to persons with disabilities [handicaps]) verification of disability (handicap) may be provided by:

   a. Receipt of supplemental social security disability or social security disability benefits, which would provide verification that an individual met the definition of "person with disabilities" as shown in Definition E of Figure 3-6 in Chapter 3 of this handbook; or

   b. *Verification* by a *reliable source* that the individual meets the relevant definition of a "person with a disability (handicap)" for the particular project. *See Chapter 2 regarding individuals' requests for reasonable accommodations.*

      IMPORTANT: See **Appendix 6-B** for the limitations on information that may be verified. **Appendix 6-B** also requires the owner to provide an explanation to the applicant/tenant describing these limitations. In particular, the consent should request the third party to identify any of the relevant definitions that apply to the individual. Any other request for information about the individual is not relevant and may not be asked (e.g., diagnosis, treatment plan).

3. For family members younger than age 18, verification of age may be provided by birth certificate, adoption papers, and/or custody agreements.

T. **Statutory and HUD Regulatory Preferences – Displacement by Government Action or Presidentially Declared Disaster**

(Applicable only to 221(d)(3) BMIR and Section 236 units):

1. <u>Relevant information to verify with third party:</u>

Date of displacement, or, if displacement has not yet occurred, the anticipated date of displacement; The applicant will be displaced if the applicant has vacated or will have to vacate his/her housing unit as a result of one or both of the following actions:

a. A presidentially declared disaster, such as a hurricane, flood or fire, that has made the unit uninhabitable; or

b. Code enforcement, public improvement, or development program activities by a U.S. agency or a State or local government body or agency.

2) Acceptable forms of verification:

a. Displacement by disaster. Verification from a unit or agency of government that an applicant has been or will be displaced as a result of a presidentially declared disaster that results in the uninhabilitability of an applicant's unit.

b. Displacement by government action. Verification from a unit or agency of government that an applicant has been or will be displaced by activity carried on by an agency of the United States or by an State or local government body or agency in connection with code enforcement or a public improvement or development program.

Appendix 7

Fact Sheets – How Rent is Determined

- **Memorandum February 5, 2002: Fact Sheets for Project-Based Assistance Programs**
- **Below Market Interest Rate (BMIR) Fact Sheet**
- **Project-Based Section 8 Fact Sheet**
- **Rental Assistance Payments (RAP) Fact Sheet**
- **Rent Supplement Fact Sheet**
- **Section 202/162 – Project Assistance Contract (PAC)**
  Section 202/811 – Project Rental Assistance Contract (PRAC) Fact Sheet
- **Section 236 Fact Sheet**

FACT SHEET
For HUD ASSISTED RESIDENTS

Below Market Interest Rate (BMIR)

"HOW YOUR RENT IS DETERMINED"

Office of Housing

**** June 2007****

This Fact Sheet is a general guide to inform the Owner/Management Agents (OA) and HUD-assisted residents of the responsibilities and rights regarding income disclosure and verification.

Why Determining Income and Rent Correctly is Important

Department of Housing and Urban Development studies show that many resident families pay incorrect rent. The main causes of this problem are:

- Under-reporting of income by resident families, and
- OAs not granting exclusions and deductions to which resident families are entitled.

OAs and residents all have a responsibility in ensuring that the correct rent is paid.

OAs' Responsibilities:

- Obtain accurate income information
- Verify resident income
- Ensure residents receive the exclusions to which they are entitled
- Accurately calculate Tenant Rent
- Provide tenants a copy of lease agreement and income and rent determinations
- Recalculate rent when changes in family composition are reported
- Recalculate rent when resident income decreases
- Recalculate rent when resident income increases by $200 or more per month
- Provide information on OA policies upon request
- Notify residents of any changes in requirements or practices for reporting income or determining rent

Residents' Responsibilities:

- Provide accurate family composition information
- Report all income
- Keep copies of papers, forms, and receipts which document income and expenses
- Report changes in family composition and income occurring between annual recertifications
- Sign consent forms for income verification
- Follow lease requirements and house rules

Income Determinations

A family's anticipated gross income determines not only eligibility, but also determines the rent a family will pay. The anticipated income, subject to exclusions the family will receive during the next twelve (12) months, is used to determine the family's rent.

What is Annual Income?

Gross Income – Income Exclusions = Annual Income

Determining Tenant Rent

Below Market Interest Rate (BMIR) Rent Formula:

- At move-in or initial occupancy, the family pays the contract rent
- At recertification, they continue to pay the same rent unless their **income is equal to or higher than 110% of the BMIR income limit.** If the income has risen to 110% of the BMIR income limit, they pay the **higher** of the BMIR Market Rent or the amount they now pay.

Income and Assets

HUD assisted residents are required to report **all** income from all sources to the Owner or Agent (OA). Exclusions to income are part of the tenant rent process.

When determining the amount of income from assets to be included in annual income, the actual income derived from the assets is included except when the cash value of all of the assets is in excess of $5,000, then the amount included in annual income is the higher of 2% of the total assets or the actual income derived from the assets.

Annual Income Includes:

- Full amount (before payroll deductions) of wages and salaries, overtime pay, commissions, fees, tips and bonuses and other compensation for personal services
- Net income from the operation of a business or profession
- Interest, dividends and other net income of any kind from real or personal property (See Assets Include/Assets Do Not Include below)
- Full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount **(except for deferred periodic payments of supplemental security income and social security benefits, see Exclusions from Annual Income, below)**
- Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay **(except for lump-sum additions to family assets, see Exclusions from Annual Income, below)**
- Welfare assistance
- Periodic and determinable allowances, such as alimony and child support payments and regular contributions or gifts received from organizations or from persons not residing in the dwelling
- All regular pay, special pay and allowances of a member of the Armed Forces (except for special pay for exposure to hostile fire)
- **For Section 8 programs only, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965, shall be considered income to that individual, except that financial assistance is not considered annual income for persons over the age of 23 with dependent children or if a student is living with his or her parents who are receiving section 8 assistance. For the purpose of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income**

Assets Include:

- Stocks, bonds, Treasury bills, certificates of deposit, money market accounts
- Individual retirement and Keogh accounts
- Retirement and pension funds
- Cash held in savings and checking accounts, safe deposit boxes, homes, etc.
- Cash value of whole life insurance policies available to the individual before death
- Equity in rental property and other capital investments
- Personal property held as an investment
- Lump sum receipts or one-time receipts
- Mortgage or deed of trust held by an applicant
- Assets disposed of for less than fair market value.

Assets Do Not Include:

- Necessary personal property (clothing, furniture, cars, wedding ring, vehicles specially equipped for persons with disabilities)
- Interests in Indian trust land
- Term life insurance policies
- Equity in the cooperative unit in which the family lives
- Assets that are part of an active business
- Assets that are not effectively owned by the applicant
  or are held in an individual's name but:

- The assets and any income they earn accrue to the benefit of someone else who is not a member of the household, and
- that the other person is responsible for income taxes incurred on income generated by the assets

- Assets that are not accessible to the applicant and provide no income to the applicant (Example: A battered spouse owns a house with her husband. Due to the domestic situation, she receives no income from the asset and cannot convert the asset to cash.)
- Assets disposed of for less than fair market value as a result of:
  - Foreclosure
  - Bankruptcy
  - Divorce or separation agreement if the applicant or resident receives important consideration not necessarily in dollars.

Exclusions from Annual Income:

- Income from the employment of children (including foster children) under the age of 18
- Payment received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone
- Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses
- Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member
- Income of a live-in aide
- **Subject to the inclusion of income for the Section 8 program for students who are enrolled in an institution of higher education under Annual Income Includes, above,** the full amount of student financial assistance either paid directly to the student or to the educational institution
- The special pay to a family member serving in the Armed Forces who is exposed to hostile fire
- Amounts received under training programs funded by HUD
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS)
- Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program
- Resident service stipend (not to exceed $200 per month)
- Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs and training of a family member as resident management staff
- Temporary, non-recurring or sporadic income (including gifts)
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era
- Earnings in excess of $480 for each full time student 18 years old or older (excluding head of household, co-head or spouse)
- Adoption assistance payments in excess of $480 per adopted child
- Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts
- Amounts received by the family in the form of refunds or rebates under State of local law for property taxes paid on the dwelling unit
- Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home

Federally Mandated Exclusions:

- Value of the allotment provided to an eligible household under the Food Stamp Act of 1977
- Payments to Volunteers under the Domestic Volunteer Services Act of 1973
- Payments received under the Alaska Native Claims Settlement Act
- Income derived from certain submarginal land of the US that is held in trust for certain Indian Tribes

- Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program
- Payments received under programs funded in whole or in part under the Job Training Partnership Act
- Income derived from the disposition of funds to the Grand River Band of Ottawa Indians
- The first $2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the US. Claims Court, the interests of individual Indians in trust or restricted lands, including the first $2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands
- Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the Federal work-study program or under the Bureau of Indian Affairs student assistance programs
- Payments received from programs funded under Title V of the Older Americans Act of 1985
- Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent*-product liability litigation
- Payments received under the Maine Indian Claims Settlement Act of 1980
- The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990
- Earned income tax credit (EITC) refund payments on or after January 1, 1991
- Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation
- Allowance, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990
- Any allowance paid under the provisions of 38U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran
- Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act
- Allowances, earnings and payments to individuals participating under the Workforce Investment Act of 1998.

Reference Materials

Regulations:

- General HUD Program Requirements;24CFR Part 5

Handbook:

- 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs

Notices:

- "Federally Mandated Exclusions" Notice 66 FR 4669, April 20, 2001

For More Information:

Find out more about HUD's programs on HUD's Internet homepage at http://www.hud.gov

FACT SHEET
For HUD ASSISTED RESIDENTS

Project-Based Section 8

"HOW YOUR RENT IS DETERMINED"

Office of Housing

September 2010

This Fact Sheet is a general guide to inform the Owner/Management Agents (OA) and HUD-assisted residents of the responsibilities and rights regarding income disclosure and verification.

Why Determining Income and Rent Correctly is Important

Department of Housing and Urban Development studies show that many resident families pay incorrect rent. The main causes of this problem are:

- Under-reporting of income by resident families, and
- OAs not granting exclusions and deductions to which resident families are entitled.

OAs and residents all have a responsibility in ensuring that the correct rent is paid.

OAs' Responsibilities:

- Obtain accurate income information
- Verify resident income
- Ensure residents receive the exclusions and deductions to which they are entitled
- Accurately calculate Tenant Rent
- Provide tenants a copy of lease agreement and income and rent determinations Recalculate rent when changes in family composition are reported
- Recalculate rent when resident income decreases
- Recalculate rent when resident income increases by $200 or more per month
- Recalculate rent every 90 days when resident claims minimum rent hardship exemption
- Provide information on OA policies upon request
- Notify residents of any changes in requirements or practices for reporting income or determining rent

Residents' Responsibilities:

- Provide accurate family composition information
- Report all income
- Keep copies of papers, forms, and receipts which document income and expenses
- Report changes in family composition and income occurring between annual recertifications
- Sign consent forms for income verification
- Follow lease requirements and house rules

Income Determinations

A family's anticipated gross income determines not only eligibility for assistance, but also determines the rent a family will pay and the subsidy required. The anticipated income, subject to exclusions and deductions the family will receive during the next twelve (12) months, is used to determine the family's rent.

What is Annual Income?

Gross Income – Income Exclusions = Annual Income

What is Adjusted Income?

Annual Income – Deductions = Adjusted Income

Determining Tenant Rent

Project-Based Section 8 Rent Formula:

The rent a family will pay is the **highest** of the following amounts:

- 30% of the family's monthly *adjusted* income
- 10% of the family's monthly income
- Welfare rent or welfare payment from agency to assist family in paying housing costs.

OR

- $25.00 Minimum Rent

Income and Assets

HUD assisted residents are required to report **all** income from all sources to the Owner or Agent (OA). Exclusions to income and deductions are part of the tenant rent process.

When determining the amount of income from assets to be included in annual income, the actual income derived from the assets is included except when the cash value of all of the assets is in excess of $5,000, then the amount included in annual income is the higher of 2% of the total assets or the actual income derived from the assets.

Annual Income Includes:

- Full amount (before payroll deductions) of wages and salaries, overtime pay, commissions, fees, tips and bonuses and other compensation for personal services
- Net income from the operation of a business or profession
- Interest, dividends and other net income of any kind from real or personal property (See Assets Include/Assets Do Not Include below)
- Full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except for deferred periodic payments of supplemental security income and social security benefits, see Exclusions from Annual Income, below)
- Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except for lump-sum additions to family assets, see Exclusions from Annual Income, below Welfare assistance
- Periodic and determinable allowances, such as alimony and child support payments and regular contributions or gifts received from organizations or from persons not residing in the dwelling
- All regular pay, special pay and allowances of a member of the Armed Forces (except for special pay for exposure to hostile fire)
- For Section 8 programs only, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965, shall be considered income to that individual, except that financial assistance is not considered annual income for persons over the age of 23 with dependent children or if a student is living with his or her parents who are receiving section 8 assistance. For the purpose of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.

Assets Include:

- Stocks, bonds, Treasury bills, certificates of deposit, money market accounts
- Individual retirement and Keogh accounts
- Retirement and pension funds
- Cash held in savings and checking accounts, safe deposit boxes, homes, etc.
- Cash value of whole life insurance policies available to the individual before death
- Equity in rental property and other capital investments
- Personal property held as an investment
- Lump sum receipts or one-time receipts
- Mortgage or deed of trust held by an applicant
- Assets disposed of for less than fair market value.

Assets Do Not Include:

- Necessary personal property (clothing, furniture, cars, wedding ring, vehicles specially equipped for persons with disabilities)
- Interests in Indian trust land
- Term life insurance policies
- Equity in the cooperative unit in which the family lives
- Assets that are part of an active business
- Assets that are not effectively owned by the applicant

or are held in an individual's name but:
  - The assets and any income they earn accrue to the benefit of someone else who is not a member of the household, and
  - that other person is responsible for income taxes incurred on income generated by the assets
- Assets that are not accessible to the applicant and provide no income to the applicant (Example: A battered spouse owns a house with her husband. Due to the domestic situation, she receives no income from the asset and cannot convert the asset to cash.)
- Assets disposed of for less than fair market value as a result of:
  - Foreclosure
  - Bankruptcy
  - Divorce or separation agreement if the applicant or resident receives important consideration not necessarily in dollars.

Exclusions from Annual Income:

- Income from the employment of children (including foster children) under the age of 18
- Payment received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone
- Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses
- Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member
- Income of a live-in aide
- Subject to the inclusion of income for the Section 8 program for students who are enrolled in an institution of higher education under Annual Income Includes, above, the full amount of student financial assistance either paid directly to the student or to the educational institution
- The special pay to a family member serving in the Armed Forces who is exposed to hostile fire
- Amounts received under training programs funded by HUD
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS)
- Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program
- Resident service stipend (not to exceed $200 per month)
- Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs and training of a family member as resident management staff
- Temporary, non-recurring or sporadic income (including gifts)
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era
- Earnings in excess of $480 for each full time student 18 years old or older (excluding head of household, co-head or spouse)
- Adoption assistance payments in excess of $480 per adopted child
- Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts
- Amounts received by the family in the form of refunds or rebates under State of local law for property taxes paid on the dwelling unit
- Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home

Federally Mandated Exclusions:

- Value of the allotment provided to an eligible household under the Food Stamp Act of 1977
- Payments to Volunteers under the Domestic Volunteer Services Act of 1973
- Payments received under the Alaska Native Claims Settlement Act
- Income derived from certain submarginal land of the US that is held in trust for certain Indian Tribes

- Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program
- Payments received under programs funded in whole or in part under the Job Training Partnership Act
- Income derived from the disposition of funds to the Grand River Band of Ottawa Indians
- The first $2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the US. Claims Court, the interests of individual Indians in trust or restricted lands, including the first $2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands
- Payments received from programs funded under Title V of the Older Americans Act of 1985
- Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent*-product liability litigation
- Payments received under the Maine Indian Claims Settlement Act of 1980
- The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990
- Earned income tax credit (EITC) refund payments on or after January 1, 1991
- Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation
- Allowance, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990
- Any allowance paid under the provisions of 38U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran
- Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act
- Allowances, earnings and payments to individuals participating under the Workforce Investment Act of 1998.

Deductions:

- $480 for each dependent including full time students or persons with a disability
- $400 for any elderly family or disabled family
- Unreimbursed medical expenses of any elderly family or disabled family that total more than 3% of Annual Income
- Unreimbursed reasonable attendant care and auxiliary apparatus expenses for disabled family member(s) to allow family member(s) to work that total more than 3% of Annual Income
- If an elderly family has both unreimbursed medical expenses and disability assistance expenses, the family's 3% of income expenditure is applied only one time.
- Any reasonable child care expenses for children under age 13 necessary to enable a member of the family to be employed or to further his or her education.

Reference Materials

Legislation:

- Quality Housing and Work Responsibility Act of 1998, Public Law 105-276, 112 Stat. 2518 which amended the United States Housing Act of 1937, 42 USC 2437, et seq.

Regulations:

- General HUD Program Requirements;24 CFR Part 5

Handbook:

- 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs

Notices:

"Federally Mandated Exclusions" Notice 66 FR 4669, April 20, 2001

For More Information:

Find out more about HUD's programs on HUD's Internet homepage at http://www.hud.gov

FACT SHEET
For HUD ASSISTED RESIDENTS

Rental Assistance Payments (RAP)

"HOW YOUR RENT IS DETERMINED"

Office of Housing

****June 2007****

This Fact Sheet is a general guide to inform the Owner/Management Agents (OA) and HUD-assisted residents of the responsibilities and rights regarding income disclosure and verification.

Why Determining Income and Rent Correctly is Important

Department of Housing and Urban Development studies show that many resident families pay incorrect rent. The main causes of this problem are:

- Under-reporting of income by resident families, and
- OAs not granting exclusions and deductions to which resident families are entitled.

OAs and residents all have a responsibility in ensuring that the correct rent is paid.

OAs' Responsibilities:

- Obtain accurate income information
- Verify resident income
- Ensure residents receive the exclusions and deductions to which they are entitled
- Accurately calculate Tenant Rent
- Provide tenants a copy of lease agreement and income and rent determinations
- Recalculate rent when changes in family composition are reported
- Recalculate rent when resident income decreases
- Recalculate rent when resident income increases by $200 or more per month
- Provide information on OA policies upon request
- Notify residents of any changes in requirements or practices for reporting income or determining rent

Residents' Responsibilities:

- Provide accurate family composition information
- Report all income
- Keep copies of papers, forms, and receipts which document income and expenses
- Report changes in family composition and income occurring between annual recertifications
- Sign consent forms for income verification
- Follow lease requirements and house rules

Income Determinations

A family's anticipated gross income determines not only eligibility for assistance, but also determines the rent a family will pay and the subsidy required. The anticipated income, subject to exclusions and deductions the family will receive during the next twelve (12) months, is used to determine the family's rent.

What is Annual Income?

Gross Income – Income Exclusions = Annual Income

What is Adjusted Income?

Annual Income – Deductions = Adjusted Income

Determining Tenant Rent

Rental Assistance Payment (RAP) Rent Formula:

The rent a family will pay is the **highest** of the following amounts:

- 30% of the family's monthly *adjusted* income
- 10% of the family's monthly income
- Welfare rent or welfare payment from agency to assist family in paying housing costs.

- Note: **An owner may admit an applicant to the RAP program only if the Total Tenant Payment is less than the gross rent for the unit.**

Income and Assets

HUD assisted residents are required to report **all** income from all sources to the Owner or Agent (OA). Exclusions to income and deductions are part of the tenant rent process.

When determining the amount of income from assets to be included in annual income, the actual income derived from the assets is included except when the cash value of all of the assets is in excess of $5,000, then the amount included in annual income is the higher of 2% of the total assets or the actual income derived from the assets.

Annual Income Includes:

- Full amount (before payroll deductions) of wages and salaries, overtime pay, commissions, fees, tips and bonuses and other compensation for personal services
- Net income from the operation of a business or profession
- Interest, dividends and other net income of any kind from real or personal property (See Assets Include/Assets Do Not Include below)
- Full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount **(except for deferred periodic payments of supplemental security income and social security benefits, see Exclusions from Annual Income, below)**
- Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay **(except for lump-sum additions to family assets, see Exclusions from Annual Income, below)**
- Welfare assistance
- Periodic and determinable allowances, such as alimony and child support payments and regular contributions or gifts received from organizations or from persons not residing in the dwelling
- All regular pay, special pay and allowances of a member of the Armed Forces (except for special pay for exposure to hostile fire)
- **For Section 8 programs only, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965, shall be considered income to that individual, except that financial assistance is not considered annual income for persons over the age of 23 with dependent children or if a student is living with his or her parents who are receiving section 8 assistance. For the purpose of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.**

Assets Include:

- Stocks, bonds, Treasury bills, certificates of deposit, money market accounts
- Individual retirement and Keogh accounts
- Retirement and pension funds
- Cash held in savings and checking accounts, safe deposit boxes, homes, etc.
- Cash value of whole life insurance policies available to the individual before death
- Equity in rental property and other capital investments
- Personal property held as an investment
- Lump sum receipts or one-time receipts
- Mortgage or deed of trust held by an applicant
- Assets disposed of for less than fair market value.

Assets Do Not Include:

- Necessary personal property (clothing, furniture, cars, wedding ring, vehicles specially equipped for persons with disabilities)
- Interests in Indian trust land
- Term life insurance policies
- Equity in the cooperative unit in which the family lives
- Assets that are part of an active business
- Assets that are not effectively owned by the applicant

or are held in an individual's name but:
  - The assets and any income they earn accrue to the benefit of someone else who is not a member of the household, and
  - that other person is responsible for income taxes incurred on income generated by the assets
- Assets that are not accessible to the applicant and provide no income to the applicant (Example: A battered spouse owns a house with her husband. Due to the domestic situation, she receives no income from the asset and cannot convert the asset to cash.)
- Assets disposed of for less than fair market value as a result of:
  - Foreclosure
  - Bankruptcy
  - Divorce or separation agreement if the applicant or resident receives important consideration not necessarily in dollars.

Exclusions from Annual Income:

- Income from the employment of children (including foster children) under the age of 18
- Payment received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone
- Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses
- Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member
- Income of a live-in aide
- **Subject to the inclusion of income for the Section 8 program for students who are enrolled in an institution of higher education under Annual Income Includes, above,** the full amount of student financial assistance either paid directly to the student or to the educational institution
- The special pay to a family member serving in the Armed Forces who is exposed to hostile fire
- Amounts received under training programs funded by HUD
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS)
- Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program
- Resident service stipend (not to exceed $200 per month)
- Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs and training of a family member as resident management staff
- Temporary, non-recurring or sporadic income (including gifts)
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era
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- Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home

Federally Mandated Exclusions:

- Value of the allotment provided to an eligible household under the Food Stamp Act of 1977
- Payments to Volunteers under the Domestic Volunteer Services Act of 1973
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- Income derived from certain submarginal land of the US that is held in trust for certain Indian Tribes
- Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program
- Payments received under programs funded in whole or in part under the Job Training Partnership Act
- Income derived from the disposition of funds to the

Grand River Band of Ottawa Indians

- The first $2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the US. Claims Court, the interests of individual Indians in trust or restricted lands, including the first $2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands
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- Any allowance paid under the provisions of 38U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran
- Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act
- Allowances, earnings and payments to individuals participating under the Workforce Investment Act of 1998.

Deductions:

- $480 for each dependent including full time students or persons with a disability
- $400 for any elderly family or disabled family
- Unreimbursed medical expenses of any elderly family or disabled family that total more than 3% of Annual Income
- Unreimbursed reasonable attendant care and auxiliary apparatus expenses for disabled family member(s) to allow family member(s) to work that total more than 3% of Annual Income
- If an elderly family has both unreimbursed medical expenses and disability assistance expenses, the family's 3% of income expenditure is applied only one time
- Any reasonable child care expenses for children under age 13 necessary to enable a member of the family to be employed or to further his or her education.

Reference Materials

Regulations:

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FACT SHEET
For HUD ASSISTED RESIDENTS

Rent Supplement

"HOW YOUR RENT IS DETERMINED"

Office of Housing

****June 2007****

This Fact Sheet is a general guide to inform the Owner/Management Agents (OA) and HUD-assisted residents of the responsibilities and rights regarding income disclosure and verification.

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- OAs not granting exclusions and deductions to which resident families are entitled.

OAs and residents all have a responsibility in ensuring that the correct rent is paid.

OAs' Responsibilities:

- Obtain accurate income information
- Verify resident income
- Ensure residents receive the exclusions and deductions to which they are entitled
- Accurately calculate Tenant Rent
- Provide tenants a copy of lease agreement and income and rent determinations Recalculate rent when changes in family composition are reported
- Recalculate rent when resident income decreases
- Recalculate rent when resident income increases by $200 or more per month
- Provide information on OA policies upon request
- Notify residents of any changes in requirements or practices for reporting income or determining rent

Residents' Responsibilities:

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- Report all income
- Keep copies of papers, forms, and receipts which document income and expenses
- Report changes in family composition and income occurring between annual recertifications
- Sign consent forms for income verification
- Follow lease requirements and house rules

Income Determinations

A family's anticipated gross income determines not only eligibility for assistance, but also determines the rent a family will pay and the subsidy required. The anticipated income, subject to exclusions and deductions the family will receive during the next twelve (12) months, is used to determine the family's rent.

What is Annual Income?

Gross Income – Income Exclusions = Annual Income

What is Adjusted Income?

Annual Income – Deductions = Adjusted Income

Determining Tenant Rent

Rent Supplement Rent Formula:

The rent a family will pay is the **higher** of the following amounts:

- 30% of the family's monthly adjusted income
- 30% of Gross Rent.

If this is a move-in or initial certification, the family is only eligible if their total tenant payment is less than 90% of Gross Rent.

Income and Assets

HUD assisted residents are required to report **all** income from all sources to the Owner or Agent (OA). Exclusions to income and deductions are part of the tenant rent process.

When determining the amount of income from assets to be included in annual income, the actual income derived from the assets is included except when the cash value of all of the assets is in excess of $5,000, then the amount included in annual income is the higher of 2% of the total assets or the actual income derived from the assets.

Annual Income Includes:

- Full amount (before payroll deductions) of wages and salaries, overtime pay, commissions, fees, tips and bonuses and other compensation for personal services
- Net income from the operation of a business or profession
- Interest, dividends and other net income of any kind from real or personal property (See Assets Include/Assets Do Not Include below)
- Full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount **(except for deferred periodic payments of supplemental security income and social security benefits, see Exclusions from Annual Income, below)**
- Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay **(except for lump-sum additions to family assets, see Exclusions from Annual Income, below)**
- Welfare assistance
- Periodic and determinable allowances, such as alimony and child support payments and regular contributions or gifts received from organizations or from persons not residing in the dwelling
- All regular pay, special pay and allowances of a member of the Armed Forces (except for special pay for exposure to hostile fire)
- **For Section 8 programs only, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965, shall be considered income to that individual, except that financial assistance is not considered annual income for persons over the age of 23 with dependent children or if a student is living with his or her parents who are receiving section 8 assistance. For the purpose of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.**

Assets Include:

- Stocks, bonds, Treasury bills, certificates of deposit, money market accounts
- Individual retirement and Keogh accounts
- Retirement and pension funds
- Cash held in savings and checking accounts, safe deposit boxes, homes, etc.
- Cash value of whole life insurance policies available to the individual before death
- Equity in rental property and other capital investments
- Personal property held as an investment
- Lump sum receipts or one-time receipts
- Mortgage or deed of trust held by an applicant
- Assets disposed of for less than fair market value.

Assets Do Not Include:

- Necessary personal property (clothing, furniture, cars, wedding ring, vehicles specially equipped for persons with disabilities)
- Interests in Indian trust land
- Term life insurance policies
- Equity in the cooperative unit in which the family lives
- Assets that are part of an active business
- Assets that are not effectively owned by the applicant
  or are held in an individual's name but:
  - The assets and any income they earn accrue to the benefit of someone else who is not a member of the household, and
  - that other person is responsible for income taxes

incurred on income generated by the assets

- Assets that are not accessible to the applicant and provide no income to the applicant (Example: A battered spouse owns a house with her husband. Due to the domestic situation, she receives no income from the asset and cannot convert the asset to cash.)
- Assets disposed of for less than fair market value as a result of:
  - Foreclosure
  - Bankruptcy
  - Divorce or separation agreement if the applicant or resident receives important consideration not necessarily in dollars.

Exclusions from Annual Income:

- Income from the employment of children (including foster children) under the age of 18
- Payment received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone
- Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses
- Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member
- Income of a live-in aide
- **Subject to the inclusion of income for the Section 8 program for students who are enrolled in an institution of higher education under Annual Income includes, above,** the full amount of student financial assistance either paid directly to the student or to the educational institution
- The special pay to a family member serving in the Armed Forces who is exposed to hostile fire
- Amounts received under training programs funded by HUD
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS)
- Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program
- Resident service stipend (not to exceed $200 per month)
- Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs and training of a family member as resident management staff
- Temporary, non-recurring or sporadic income (including gifts)
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era
- Earnings in excess of $480 for each full time student 18 years old or older (excluding head of household, co-head or spouse)
- Adoption assistance payments in excess of $480 per adopted child
- Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts
- Amounts received by the family in the form of refunds or rebates under State of local law for property taxes paid on the dwelling unit
- Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home

Federally Mandated Exclusions:

- Value of the allotment provided to an eligible household under the Food Stamp Act of 1977
- Payments to Volunteers under the Domestic Volunteer Services Act of 1973
- Payments received under the Alaska Native Claims Settlement Act
- Income derived from certain submarginal land of the US that is held in trust for certain Indian Tribes
- Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program
- Payments received under programs funded in whole or in part under the Job Training Partnership Act
- Income derived from the disposition of funds to the Grand River Band of Ottawa Indians
- The first $2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the US. Claims Court, the interests

of individual Indians in trust or restricted lands, including the first $2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands

- Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the Federal work-study program or under the Bureau of Indian Affairs student assistance programs
- Payments received from programs funded under Title V of the Older Americans Act of 1985
- Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent*-product liability litigation
- Payments received under the Maine Indian Claims Settlement Act of 1980
- The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990
- Earned income tax credit (EITC) refund payments on or after January 1, 1991
- Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation
- Allowance, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990
- Any allowance paid under the provisions of 38U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran
- Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act
- Allowances, earnings and payments to individuals participating under the Workforce Investment Act of 1998.

Deductions:

- $480 for each dependent including full time students or persons with a disability
- $400 for any elderly family or disabled family
- Unreimbursed medical expenses of any elderly family or disabled family that total more than 3% of Annual Income. Family income expenditure is applied only one time
- Unreimbursed reasonable attendant care and auxiliary apparatus expenses for disabled family member(s) to allow family member(s) to work that total more than 3% of Annual Income
- If an elderly family has both unreimbursed medical expenses and disability assistance expenses, the family's 3% of income expenditure is applied only one time
- Any reasonable child care expenses for children under age 13 necessary to enable a member of the family to be employed or to further his or her education.

Reference Materials

Regulations:

- General HUD Program Requirements;24 CFR Part 5

Handbook:

- 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs

Notices:

- "Federally Mandated Exclusions" Notice 66 FR 4669, April 20, 2001

For More Information:

Find out more about HUD's programs on HUD's Internet homepage at http://www.hud.gov

FACT SHEET
For HUD ASSISTED RESIDENTS

Section 202/162 – Project Assistance Contract (PAC)
Section 202/811 – Project Rental Assistance Contract (PRAC)

"HOW YOUR RENT IS DETERMINED"

Office of Housing

****June 2007****

This Fact Sheet is a general guide to inform the Owner/Management Agents (OA) and HUD-assisted residents of the responsibilities and rights regarding income disclosure and verification.

Why Determining Income and Rent Correctly is Important

Department of Housing and Urban Development studies show that many resident families pay incorrect rent. The main causes of this problem are:

- Under-reporting of income by resident families, and
- OAs not granting exclusions and deductions to which resident families are entitled.

OAs and residents all have a responsibility in ensuring that the correct rent is paid.

OAs' Responsibilities:

- Obtain accurate income information
- Verify resident income
- Ensure residents receive the exclusions and deductions to which they are entitled
- Accurately calculate Tenant Rent
- Provide tenants a copy of lease agreement and income and rent determinations
- Recalculate rent when changes in family composition and decreases or increases in income are reported by $200 more per month
- Provide information on OA policies upon request
- Notify residents of any changes in requirements or practices for reporting income or determining rent

Residents' Responsibilities:

- Provide accurate family composition information
- Report all income
- Keep copies of papers, forms, and receipts which document income and expenses
- Report changes in family composition and income occurring between annual recertifications
- Sign consent forms for income verification
- Follow lease requirements and house rules

Income Determinations

A family's anticipated gross income determines not only eligibility for assistance, but also determines the rent a family will pay and the subsidy required. The anticipated income, subject to exclusions and deductions the family will receive during the next twelve (12) months, is used to determine the family's rent.

What is Annual Income?

Gross Income – Income Exclusions = Annual Income

What is Adjusted Income?

Annual Income – Deductions = Adjusted Income

Determining Tenant Rent

The rent a family will pay is the **highest** of the following amounts:

- 30% of the family's monthly *adjusted* income
- 10% of the family's monthly income
- Welfare rent or welfare payment from agency to assist family in paying housing costs.

Note: An owner may admit an applicant to the PAC program only if the Total Tenant Payment is less than the gross rent. This note does not apply to the PRAC program. In some instances under the PRAC program a

tenant's Total Tenant Payment will exceed the PRAC operating rent (gross rent).

Income and Assets

HUD assisted residents are required to report **all** income from all sources to the Owner or Agent (OA). Exclusions to income and deductions are part of the tenant rent process.

When determining the amount of income from assets to be included in annual income, the actual income derived from the assets is included except when the cash value of all of the assets is in excess of $5,000, then the amount included in annual income is the higher of 2% of the total assets or the actual income derived from the assets.

Annual Income Includes:

- Full amount (before payroll deductions) of wages and salaries, overtime pay, commissions, fees, tips and bonuses and other compensation for personal services
- Net income from the operation of a business or profession
- Interest, dividends and other net income of any kind from real or personal property (See Assets Include/Assets Do Not Include below)
- Full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount **(except for deferred periodic payments of supplemental security income and social security benefits, see Exclusions from annual Income, below)**
- Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay **(except for lump-sum additions to family assets, see Exclusions from Annual Income, below)**
- Welfare assistance
- Periodic and determinable allowances, such as alimony and child support payments and regular contributions or gifts received from organizations or from persons not residing in the dwelling
- All regular pay, special pay and allowances of a member of the Armed Forces (except for special pay for exposure to hostile fire)
- **For Section 8 programs only, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965, shall be considered income to that individual, except that financial assistance is not considered annual income for persons over the age of 23 with dependent children or if a student is living with his or her parents who are receiving section 8 assistance. For the purpose of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.**

Assets Include:

- Stocks, bonds, Treasury bills, certificates of deposit, money market accounts
- Individual retirement and Keogh accounts
- Retirement and pension funds
- Cash held in savings and checking accounts, safe deposit boxes, homes, etc.
- Cash value of whole life insurance policies available to the individual before death
- Equity in rental property and other capital investments
- Personal property held as an investment
- Lump sum receipts or one-time receipts
- Mortgage or deed of trust held by an applicant
- Assets disposed of for less than fair market value.

Assets Do Not Include:

- Necessary personal property (clothing, furniture, cars, wedding ring, vehicles specially equipped for persons with disabilities)
- Interests in Indian trust land
- Term life insurance policies
- Equity in the cooperative unit in which the family lives
- Assets that are part of an active business
- Assets that are not effectively owned by the applicant
  or are held in an individual's name but:
  - The assets and any income they earn accrue to the benefit of someone else who is not a member of the household, and
  - that other person is responsible for income taxes incurred on income generated by the assets
- Assets that are not accessible to the applicant and provide no income to the applicant (Example: A battered spouse owns a house with her husband. Due to the domestic situation, she receives no income from the asset and cannot convert the asset to cash.)
- Assets disposed of for less than fair market value as a result of:
  - Foreclosure
  - Bankruptcy
  - Divorce or separation agreement if the applicant

or resident receives important consideration not necessarily in dollars.

Exclusions from Annual Income:

- Income from the employment of children (including foster children) under the age of 18
- Payment received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone
- Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses
- Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member
- Income of a live-in aide
- **Subject to the inclusion of income for the Section 8 program for students who are enrolled in an institution of higher education under Annual Income Includes, above,**The full amount of student financial assistance either paid directly to the student or to the educational institution
- The special pay to a family member serving in the Armed Forces who is exposed to hostile fire
- Amounts received under training programs funded by HUD
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS)
- Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program
- Resident service stipend (not to exceed $200 per month)
- Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs and training of a family member as resident management staff
- Temporary, non-recurring or sporadic income (including gifts)
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era
- Earnings in excess of $480 for each full time student 18 years old or older (excluding head of household, co-head or spouse)
- Adoption assistance payments in excess of $480 per adopted child
- Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts
- Amounts received by the family in the form of refunds or rebates under State of local law for property taxes paid on the dwelling unit
- Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home

Federally Mandated Exclusions:

- Value of the allotment provided to an eligible household under the Food Stamp Act of 1977
- Payments to Volunteers under the Domestic Volunteer Services Act of 1973
- Payments received under the Alaska Native Claims Settlement Act
- Income derived from certain submarginal land of the US that is held in trust for certain Indian Tribes
- Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program
- Payments received under programs funded in whole or in part under the Job Training Partnership Act
- Income derived from the disposition of funds to the Grand River Band of Ottawa Indians
- The first $2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the US. Claims Court, the interests of individual Indians in trust or restricted lands, including the first $2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands
- Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the Federal work-study program or under the Bureau of Indian Affairs student assistance programs
- Payments received from programs funded under Title V of the Older Americans Act of 1985
- Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund

established pursuant to the settlement in *In Re Agent*-product liability litigation
- Payments received under the Maine Indian Claims Settlement Act of 1980
- The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990
- Earned income tax credit (EITC) refund payments on or after January 1, 1991
- Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation
- Allowance, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990
- Any allowance paid under the provisions of 38U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran
- Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act
- Allowances, earnings and payments to individuals participating under the Workforce Investment Act of 1998

Deductions:

- $480 for each dependent including full time students or persons with a disability
- $400 for any elderly family or disabled family
- Unreimbursed medical expenses of any elderly family or disabled family that total more than 3% of Annual Income the expenditure is applied only one time
- Unreimbursed reasonable attendant care and auxiliary apparatus expenses for disabled family member(s) to allow family member(s) to work that total more than 3% of Annual Income
- If an elderly family has both unreimbursed medical expenses and disability assistance expenses, the family's 3% of income expenditure is applied only one time
- Any reasonable child care expenses for children under age 13 necessary to enable a member of the family to be employed or to further his or her education.

Reference Materials

Regulations:

- General HUD Program Requirements;24 CFR Part 5 and CFR 24 Part 891.

Handbook:

- 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs

Notices:

- "Federally Mandated Exclusions" Notice 66 FR 4669, April 20, 2001

For More Information:

Find out more about HUD's programs on HUD's Internet homepage at http://www.hud.gov

FACT SHEET
For HUD ASSISTED RESIDENTS

Section 236

"HOW YOUR RENT IS DETERMINED"

Office of Housing

****June 2007****

This Fact Sheet is a general guide to inform the Owner/Management Agents (OA) and HUD-assisted residents of the responsibilities and rights regarding income disclosure and verification.

Why Determining Income and Rent Correctly is Important

Department of Housing and Urban Development studies show that many resident families pay incorrect rent. The main causes of this problem are:

- Under-reporting of income by resident families, and
- OAs not granting exclusions and deductions to which resident families are entitled.

OAs and residents all have a responsibility in ensuring that the correct rent is paid.

OAs' Responsibilities:

- Obtain accurate income information
- Verify resident income
- Ensure residents receive the exclusions and deductions to which they are entitled
- Accurately calculate Tenant Rent
- Provide tenants a copy of lease agreement and income and rent determinations
- Recalculate rent when changes in family composition are reported
- Recalculate rent when resident income decreases
- Recalculate rent when resident income increases by $200 or more per month
- Provide information on OA policies upon request
- Notify residents of any changes in requirements or practices for reporting income or determining rent

Residents' Responsibilities:

- Provide accurate family composition information
- Report all income
- Keep copies of papers, forms, and receipts which document income and expenses
- Report changes in family composition and income occurring between annual recertifications
- Sign consent forms for income verification
- Follow lease requirements and house rules

Income Determinations

A family's anticipated gross income determines not only eligibility, but also determines the rent a family will pay. The anticipated income, subject to exclusions and deductions the family will receive during the next twelve (12) months, is used to determine the family's rent.

What is Annual Income?

Gross Income – Income Exclusions = Annual Income

What is Adjusted Income?

Annual Income – Deductions = Adjusted Income

Determining Tenant Rent

Section 236 Rent Formulas:

All Section 236 Projects have a minimum rent (Basic Rent) and a maximum rent (Market Rent).

Section 236 with NO Utility Allowance; the **higher** of:

- 30% of the family's monthly adjusted income
- Basic Rent
- But not more than Market Rent

Section 236 WITH Utility Allowance; the **highest** of:

- 30% of the family's monthly adjusted income less the Utility Allowance
- 25% of the family's monthly adjusted income
- Basic Rent
- But not more than Market Rent

A **Utility Allowance** is approved by HUD when the cost of all or a portion of the utilities (except telephone) is not included in the unit rent and payment for the utilities is the responsibility of the family occupying the unit.

The utility allowance is not meant to pay all actual utility costs, but rather it is an allowance provided to the family to assist them in payment of their utility expenses.

Income and Assets

HUD assisted residents are required to report **all** income from all sources to the Owner or Agent (OA). Exclusions to income and deductions are part of the tenant rent process.

When determining the amount of income from assets to be included in annual income, the actual income derived from the assets is included except when the cash value of all of the assets is in excess of $5,000, then the amount included in annual income is the higher of 2% of the total assets or the actual income derived from the assets.

Annual Income Includes:

- Full amount (before payroll deductions) of wages and salaries, overtime pay, commissions, fees, tips and bonuses and other compensation for personal services
- Net income from the operation of a business or profession
- Interest, dividends and other net income of any kind from real or personal property (See Assets Include/Assets Do Not Include below)
- Full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount **except for deferred periodic payments of supplemental security income and social security benefits, see Exclusions from Annual Income, below)**
- Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay **(except for lump-sum additions to family assets, see Exclusions from Annual Income, below)**
- Welfare assistance
- Periodic and determinable allowances, such as alimony and child support payments and regular contributions or gifts received from organizations or from persons not residing in the dwelling
- All regular pay, special pay and allowances of a member of the Armed Forces (except for special pay for exposure to hostile fire)
- **For Section 8 programs only, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965, shall be considered income to that individual, except that financial assistance is not considered annual income for persons over the age of 23 with dependent children or if a student is living with his or her parents who are receiving section 8 assistance. For the purpose of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income**

Assets Include:

- Stocks, bonds, Treasury bills, certificates of deposit, money market accounts
- Individual retirement and Keogh accounts
- Retirement and pension funds
- Cash held in savings and checking accounts, safe deposit boxes, homes, etc.
- Cash value of whole life insurance policies available to the individual before death
- Equity in rental property and other capital investments
- Personal property held as an investment
- Lump sum receipts or one-time receipts
- Mortgage or deed of trust held by an applicant
- Assets disposed of for less than fair market value.

Assets Do Not Include:

- Necessary personal property (clothing, furniture, cars, wedding ring, vehicles specially equipped for persons with disabilities)
- Interests in Indian trust land
- Term life insurance policies
- Equity in the cooperative unit in which the family lives
- Assets that are part of an active business
- Assets that are not effectively owned by the applicant
  or are held in an individual's name but:
  - The assets and any income they earn accrue to the benefit of someone else who is not a member of the household, and
  - that other person is responsible for income taxes incurred on income generated by the assets
- Assets that are not accessible to the applicant and provide no income to the applicant (Example: A battered spouse owns a house with her husband. Due to the domestic situation, she receives no income from the asset and cannot convert the asset to cash.)
- Assets disposed of for less than fair market value as a result of:

- Foreclosure
- Bankruptcy
- Divorce or separation agreement if the applicant or resident receives important consideration not necessarily in dollars.

Exclusions from Annual Income:

- Income from the employment of children (including foster children) under the age of 18
- Payment received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone
- Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses
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- Amounts received under training programs funded by HUD
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS)
- Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program
- Resident service stipend (not to exceed $200 per month)
- Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs and training of a family member as resident management staff
- Temporary, non-recurring or sporadic income (including gifts)
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era
- Earnings in excess of $480 for each full time student 18 years old or older (excluding head of household, co-head or spouse)
- Adoption assistance payments in excess of $480 per adopted child
- Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts
- Amounts received by the family in the form of refunds or rebates under State of local law for property taxes paid on the dwelling unit
- Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home

Federally Mandated Exclusions:

- Value of the allotment provided to an eligible household under the Food Stamp Act of 1977
- Payments to Volunteers under the Domestic Volunteer Services Act of 1973
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- Income derived from certain submarginal land of the US that is held in trust for certain Indian Tribes
- Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program
- Payments received under programs funded in whole or in part under the Job Training Partnership Act
- Income derived from the disposition of funds to the Grand River Band of Ottawa Indians
- The first $2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the US. Claims Court, the interests of individual Indians in trust or restricted lands, including the first $2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands
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- Payments received from programs funded under Title V of the Older Americans Act of 1985
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- Payments received under the Maine Indian Claims Settlement Act of 1980
- The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990
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- Allowance, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990
- Any allowance paid under the provisions of 38U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran
- Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act
- Allowances, earnings and payments to individuals participating under the Workforce Investment Act of 1998.

Deductions:

- $480 for each dependent including full time students or persons with a disability
- $400 for any elderly family or disabled family
- Unreimbursed medical expenses of any elderly family or disabled family that total more than 3% of Annual Income
- Unreimbursed reasonable attendant care and auxiliary apparatus expenses for disabled family member(s) to allow family member(s) to work that total more than 3% of Annual Income
- If an elderly family has both unreimbursed medical expenses and disability assistance expenses, the family's 3% of income expenditure is applied only one time.
- Any reasonable child care expenses for children under age 13 necessary to enable a member of the family to be employed or to further his or her education.

Reference Materials

Regulations:

- General HUD Program Requirements;24 CFR Part 5

Handbook:

- 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs

Notices:

- "Federally Mandated Exclusions" Notice 66 FR 4669, April 20, 2001

For More Information:

Find out more about HUD's programs on HUD's Internet homepage at http://www.hud.gov