HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs

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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, and Performance-Based and Non-Performance Based 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.

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.

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. Over the past 40 years, 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 past 40 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 provides 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.

5. 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. Non-Performance Based Contract Administrators. These Contract Administrators have been used for over 20 years and have Annual Contributions Contracts (ACCs) with HUD. Under non-performance based ACCs, 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 Non-Performance Based 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://www.hud.gov. 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://www.hud.gov/offices/hsg/hsgmulti.cfm. 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://www.hud.gov/offices/hsg/mfh/hsgrent.cfm. 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://hudweb.hud.gov/po/e/FEReview/CRREVIEW.htm. 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://www.hud.gov/offices/fheo/disabilities/index.cfm. This website contains information on the rights of persons with disabilities living in HUD-subsidized housing (Section 504), as well as affirmatively furthering fair housing and the accessibility requirements of the Fair Housing Act.

5. TRACS Website. http://www.hud.gov/fha/mfh/trx/html/trxsum.html. 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 e-mail TRACS with questions, comments, and concerns.

6. TRACS Information Packet (Yellow Book). The TRACS Information Packet (commonly known as the "Yellow Book") contains general information for owners, management agents, and Contract Administrators transmitting 50059 data requirements electronically to TRACS. The TRACS Information Packet is intended to assist in the collection of tenant and voucher data for TRACS. This document is available from the TRACS website listed above.

7. 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 at http://www.hud.gov/offices/hsg/mfh/mfinfo.cfm or can be ordered by phone as noted below under subparagraph C Ordering Publications below.

8. HUDCLIPS Website. http://www.hudclips.org. 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.

C. **Ordering Publications**

For those who do not have Internet access, documents can be ordered by calling HUD at 800-767-7468 or faxing 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 Statutes 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
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 Statutes 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 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
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 • 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

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- **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.

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 2-5C 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. 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-935.2, *Affirmative Fair Housing Marketing Plan*, 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 a 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.

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 3-17 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, or are treated as a whole for processing purposes, 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.

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.)

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, 50059 data requirements, 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;

   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 3-27 B and in Appendix 15.

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 3-20 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.

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. Substantial alterations.

   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, 3-28 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.

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.

2-46 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

2-47 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.

2-48 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*.

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Chapter 2 Exhibits

2-1 Distribution of Accessible Units

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

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

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

2-5 Examples of Fundamental Alterations

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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, 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 • Evidence of citizenship or eligible status • Family • Income limit	• 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

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 except as discussed in paragraph 3-15. 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, social security numbers, and consent forms.

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

B. Applicants must disclose social security numbers for all family members at least 6 years of age and older and provide proof of the numbers reported.

C. All adults in each applicant family must sign an Authorization for 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 www.huduser.org.

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. This program uses the low-income limit 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 A7 and 3-19 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	Low, 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, except 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 aides. 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 person(s);

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

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

      While a relative may be considered to be a live-in aide/attendant, they must meet the above requirements, especially the last. The live-in aide qualifies for occupancy only as long as the individual needing supportive services requires the aide's services and remains a tenant, and 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 6-12 C 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.

   b. Foster children or foster adults. (See the Glossary for the definition.)

   c. 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 C.

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 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, and 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 3-19 G.1)

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 3-19 G.1)

4. For Section 202/8, Section 202 PAC and Section 202 PRAC and Section 811 PRAC, also see paragraph 3-19 G.2 and 5 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. 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.)

5. 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

Applicants must disclose social security numbers (SSNs) in order for the owner to make an eligibility determination. This paragraph explains the requirements and responsibilities of applicants or residents to supply owners with this information, the responsibility of owners to obtain this information, and the consequences for failure by either party.

A. Key Requirements

1. The head of household/spouse/co-head must disclose SSNs for all family members at least six years of age and older.

2. If no SSN has been assigned to a particular family member, the applicant must sign a certification stating that no SSN has been assigned.

B. Required Documentation

Applicants must provide documentation of SSNs. Adequate documentation means a social security card issued by the Social Security Administration (SSA) or other acceptable evidence of the SSN. See **Appendix 3** for documentation requirements.

C. Provisions for Accepting Applicants without Documentation of Social Security Numbers

1. When an applicant has a SSN but does not have the required documentation, the applicant may submit the SSN and certify that the number is accurate but that acceptable documentation could not be provided.

2. Individuals who have applied for legalization under the Immigration and Reform Control Act of 1986 will be able to disclose the social security numbers, but unable to supply the cards for documentation. Social security numbers are assigned to these persons when they apply for amnesty. The cards go to the Department of Homeland Security (DHS) until the persons are granted temporary lawful resident status. Until that time, their acceptable documentation is a letter from the DHS indicating social security numbers have been assigned.

3. Owners must accept the certification and continue to process the individual's application.

4. However, an applicant may not become a participant in the program unless the applicant submits the required SSN documentation to the owner. The applicant must provide SSN documentation to the owner within 60 days from the date on which the applicant certified that the documentation was not available.

5. If the owner has determined that the applicant is otherwise eligible for admission into the property, and the only outstanding verification is that of the SSN, the applicant may retain his or her place on the waiting list for

the 60-day period during which the applicant is trying to obtain documentation.

6. After 60 days, if the applicant has been unable to supply the required SSN documentation, the applicant should be determined ineligible and removed from the waiting list (see paragraph 4-20 A).

7. An owner may extend the time period for an additional 60 days if the applicant is at least 62 years old and unable to submit the required documentation within the first 60-day period.

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.

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, or project-based Section 8 housing assistance, including Section 202/8.

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 and 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.

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 and spouse regardless of age must sign 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*). Each family member age 18 and older must sign form HUD-9887 and form HUD-9887-A. It is not necessary to have each sign a separate form. All adults regardless of whether they report income must sign these forms.

2. 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).

3. 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 15** for sample formats.

4. 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.

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 tenant (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 who have eligible immigration status as determined by HUD.

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 declaration format.)

4. Noncitizens (except those age 62 and older) must sign a Verification Consent Form (see Exhibit 3-6 for a sample) 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.

5. A mixed family—a family with one or more ineligible family members and one or more eligible family members—may receive either prorated

assistance, continued assistance, or a temporary deferral of termination of assistance.

6. 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 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 Exhibit 3-7 for a sample sheet 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 except 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 3-4. 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 Department of Homeland Security (DHS) the validity of documents provided by applicants. To do so, owners must:

1. Obtain computer software to install on the owner's personal computer, an access code and user ID by calling the Office of Multifamily Housing at HUD headquarters. HUD will record the required information and notify DHS to provide the computer software and access to the verification system to the owner. If more than one personal computer is used, it is necessary to request computer software and user IDs for each computer. Multiple users can use a single computer but a unique user ID is needed for each computer user.

2. Upon receipt of the software, access code and user ID, the owner is able to use the automated system to obtain primary and in many instances, secondary verification.

3. If the owner does not have a personal computer or a CD drive and Windows on their personal computer, 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.

4. **Appendix 2** of this handbook is the instruction manual providing specific and detailed instructions on use of the Systematic Alien Verifications for Entitlements System (SAVE) and interpretation of results of DHS verification information.

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.

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 information 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 submitted the required documentation in a timely manner, the owner must offer the family a unit and provide prorated assistance to those family members whose documents were received on time.

b. Owners continue to provide prorated assistance to such families until information establishing the immigration status of any remaining noncitizen family members has been received and verified.

Figure 3-4: Acceptable DHS Documents

- Form I-551, *Alien Registration Receipt Card* (for permanent resident aliens).
- 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).
- Form I-688, *Temporary Resident Card* annotated "Section 245A" or "Section 210."
- Form I-668B, *Employment Authorization Card* annotated "Provision of Law 274a.12(11)" or "Provision of Law 274a.12."
- 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.
- Form I-151, *Alien Registration Receipt Card*.
- 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*.

Example – DHS Verification Process Delayed

John and Mary Yu brought in the immigration documents for themselves and their two daughters immediately upon the owner's request. 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 Yus are eligible except for the missing immigration verification.

The owner must offer the Yus the available 3-bedroom unit. The owner will provide prorated assistance assuming all members are eligible, except John's brother. The prorated assistance will be 4/5 of full assistance. If the documentation collected later indicates that all five family members are eligible, full assistance will be provided.

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 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 ASVI database, the Department of Homeland Security (DHS) automated system. After obtaining computer software, access code and user ID by contacting the Office of Multifamily Housing at HUD (see subparagraph H above), owners can access SAVE with a personal computer.

c. After accessing the ASIV 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 Section 4 of the SAVE User Manual, Appendix 2 of this handbook.

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 Number of ineligible family members / Total number of family members	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. Currently assisted families that have no eligible members and those that qualify only for prorated assistance and choose not to accept the partial assistance are eligible for temporary deferral of termination of assistance. 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.

2. 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.

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 current rent, 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.

Section 2: Project Eligibility

3-13 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)

3-14 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 specific 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.

3-15 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 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 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.

3-16 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 and 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 – Family and 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 3-17B.	Note: For Section 236 and 221(d)(3) properties, see Paragraph 3-17B.
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 – Family and Elderly Family. ***[24 CFR 5.403]***

Family. 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.

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)

Deleted:

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)

Figure 3-6: Applicable Definitions of Elderly and Disability - Determining Project Eligibility

(*taken from federal regulations as cited at each definition***)**

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.

*** 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.

3-17 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 3-17 A provides guidance on the optional elderly preference for covered Section 8 properties. Section 3-17 B provides guidance on restricting occupancy to elderly families in other federal assistance programs.

A. Owner-Adopted Preferences for Elderly, Near-Elderly, Nonelderly Disabled, and 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 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.

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;

   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).

      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 that 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.

3-18 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 definiton 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.

3-19 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 3-17 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 project tenants who are willing to move, as well as prospective applicants in the newly approved category.

   The request and recommendation of the HUD field office is sent to the HUD Multifamily HUB Director for approval.

3-20 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.

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 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 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. 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. 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.

3-21 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 base don 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.

c. 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.

d. 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.

e. 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.

3-22 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 should have written standards describing the project eligibility criteria. Owners have some discretion in developing specific occupancy standards for a property, as long as the standards do not violate fair housing requirements or contain prohibited policies. See Exhibit 3-3 for HUD policy guidance.

3. The owner's occupancy standards must comply with the following:

   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, 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 3-3. 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 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.

   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:

   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.

(2) 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

3-23 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

3-24 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.

3-25 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. Three methods of verification are acceptable to HUD:

1. Third-party verification (written or oral);

2. Review of documents provided by the applicant; or

3. Self-certification.

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, and **Appendix 3** for information about verification methods.

3-26 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, or a new driver's license or utility bill showing the departed member's name and a new address.

D. If an owner determines it necessary to verify family composition, information may be collected from sources listed in **Appendix 3**.

3-27 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 the individual's physician, care worker of the elderly, social worker, psychiatrist, 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. Because the Section 202 and Section 811 programs do not use this definition of

disability, this note does not apply to applicants for units in Section 202 or 811 projects.

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**.

3-28 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.

3-29 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.

3-30 Collecting Proof of Social Security Numbers

A. Applicants must disclose social security numbers (SSNs) for all family members at least 6 years of age and older, or, if no SSN has been assigned, the member must complete a certification that no SSN has been assigned.

B. The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN is a valid SSN card issued by the Social Security Administration or one of the documents listed in **Appendix 3**.

C. If the applicant cannot supply the original Social Security card and supplies one of the documents listed in **Appendix 3**, the applicant must also certify that the document provided is complete and accurate.

3-31 Verification of Citizenship and Immigration Status

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.

Chapter 3 Exhibits

3-1. Sample Request for Exception to Limitations on Admission of Families with Incomes Above 50% of the Area Median Income

3-2. 12/18/98 Federal Register Notice: Fair Housing Enforcement—Occupancy Standards Notice of Statement of Policy

3-3. Owner's Notice No. 1

3-4. The Family Summary Sheet

3-5. Declaration Format

3-6. Verification Consent Format

3-7. Owner's Summary of Family

3-8. Owner's Notice No. 2 for a Tenant Family

3-9. Owner's Notice No. 2 for an Applicant Family

3-10. Owner's Notice No. 3 for a Tenant Family Final Decision on Immigration Status

3-11. Owner's Notice No. 3 for an Applicant Family Final Decision on Immigration Status

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

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

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

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Exhibit 3-1: Sample 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.

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 contracting 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)
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

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
4. Accounts payable
   a. From routine operations
   b. Mortgage delinquency
   c. Other
5. Cash on hand

Exhibit 3-2: 12/18/98 Federal Register Notice: Fair Housing Enforcement – Occupancy Standards Notice of Statement of Policy

Exhibit 3-3: 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 (identified as Exhibit 3-5) 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 Declaration (see Exhibit 3-6). If there are 10 people listed on the Family Summary Sheet, you should have 10 completed copies of the Declaration. The Declaration has easy-to-follow instructions and explains what, if any other forms and/or evidence must be submitted with each Declaration.

3. Submit the Family Summary Sheet, the 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 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: The 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: Declaration Format

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 (Exhibit 3-7).

AND

b. One of the following documents:

(1) Form I-551, *Alien Registration Receipt Card* (for permanent resident aliens).

(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).

(4) Form I-688, *Temporary Resident Card*, which must be annotated "Section 245A" or "Section 210."

(5) Form I-688B, *Employment Authorization Card*, which must be annotated "Provision of Law 274a.12(11)" or "Provision of Law 274a.12."

(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) Form I-151 Alien Registration Receipt Card.

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: Verification Consent Form

INSTRUCTIONS: Complete this format for each noncitizen family member who declared eligible immigration status on the 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: 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: 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.

Availability.

1. It is available to a mixed tenant family who qualifies for prorated assistance but decides not to accept prorated assistance; or

2. 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: 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:

4. A copy of this letter (Notice No. 2);
5. A letter requesting the appeal;
6. Additional documentation of immigration status or a written explanation in support of the appeal;
7. 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
8. 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: 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

What it is? 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.

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 three years.

Availability.

1. 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; OR

2. 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: 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 3-15.

A. **Calculate the Total Tenant Payment (TTP) and the resulting assistance payment without prorations.**

1. _____ Enter the Gross Rent. Follow the instructions in Field B55, Gross Rent, of the 50059 data requirements.

2. _____ Determine the TTP. Follow the instructions in Field B60, Total Tenant Payment, of the 50059 data requirements.

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 Field B63, Assistance Payment Amount, in completing this item.)

B. **Calculate the prorated assistance payment. Enter this amount in Field B63, 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 Field B63, Assistance Payment Amount. This is the Prorated Housing Assistance Payment for this family.

C. **Calculate the prorated TTP.**

7. _____ Enter the Gross Rent from Field B55, Gross Rent (not Market Rent), of the 50059 data requirements.

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 Field B60, Total Tenant Payment, of the 50059 data requirements.

D. **Calculate the prorated tenant rent and any utility reimbursement.**

9. _____ Enter the Utility Allowance from Field B54, Utility Allowance Amount, of the 50059 data requirements.

10. _____ Subtract the Utility Allowance in line 9 from the Prorated TTP in line 8 and enter the amount here and in Field B61, Tenant Rent, of the 50059 data requirements. Follow the instructions in Field B61, Tenant Rent. This is the Prorated Tenant Rent.

If you entered zero in line 10 (and in Field B61, Tenant Rent, of the 50059 data requirements), 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 Field B62, Utility Reimbursement, of the 50059 data requirements. Otherwise leave this line and Field B62, 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 3-15.

A. **Calculate the difference between market rent and tenant rent without prorations.**

1. _____ Enter the Market Rent from Field B44, Market Rent, of the 50059 data requirements.

2. _____ Determine the Tenant Rent in accordance with the instructions for Field B61, Tenant Rent, of the 50059 data requirements.

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 Field B61, Tenant Rent.

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 additional assistance)

A. **Calculate the difference between market rent and the contract rent/basic rent for the unit (without prorations).**

1. _____ Enter the Market Rent from Field B44, Market Rent, of the 50059 data requirements.

2. _____ Enter the Contract/Basic Rent from Field B53, Contract Rent Amount, of the 50059 data requirements.

3. _____ Subtract line 2, Contract/Basic Rent, from line 1, Market Rent, and enter the difference here.

B. **Calculate the prorated difference between the market rent and the contract/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 Contract/Basic Rent. Multiply line 3 difference between the Contract/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 Field B55, Gross Rent (not Market Rent), of the 50059 data requirements.

8. _____ Determine the Total Tenant Payment (TTP). Follow the instructions in Field B60, Total Tenant Payment, of the 50059 data requirements. This is the TTP the family would pay without prorations.

9. _____ Subtract the TTP entered in line 2 from the Gross Rent entered in line 1. 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 Field B63, Assistance Payment Amount, 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 9 + line 10. Enter the sum in line 11. 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.

E. **Calculate the prorated assistance payment.**

12. _____ Enter the Gross Rent for this unit from Field B55, Gross Rent (not Market Rent), of the 50059 data requirements.

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 Field B54, Utility Allowance Amount,of the 50059 data requirements.

15. _____ Subtract the Utility Allowance in line 14 from the Prorated TTP in line 11, and enter the amount here and in Field B61, Tenant Rent, of the 50059 data requirements. Follow the instructions in Field B61, Tenant Rent. This is the Prorated Tenant Rent.

If you entered zero in line 15 (and in Field B61, Tenant Rent, of the 50059 data requirements), 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 Field B62, Utility Reimbursement, of the 50059 Data Requirements. Otherwise leave this line and Field B62, 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
• Income-targeting	• Tenant selection plan
• 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. **Screening for Suitability**

- 24 CFR 5.655 Owner Preferences in Selection for a Project or Unit

F. **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)

G. **Denial of Assistance to Noncitizens and DHS Appeal Process**

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

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 become 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;
     - 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).

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), and under what circumstances the owner will permit a temporary deferral of termination of assistance.

   c. Social security number (SSN) requirements. Requirements for providing SSNs, allowing extended time to provide proof of SSNs and procedures used when an individual has no SSN, must be described.

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), 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 and The Fair Housing Act Amendments of 1988.

   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.

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 certifications.

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) Method 1 – Admit only extremely low-income families until the 40% target is met. 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

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 certifications.

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.

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 may not be used for the purpose or effect of delaying or otherwise denying admission to a project or unit based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant family.

   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 108.25.

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. Owners may adopt a preference for admission of families that include victims of domestic violence.

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. Screening criteria must be included in the tenant selection plan. (See paragraph 4-4 C and Figure 4-2.)

4. Owners must apply screening criteria uniformly to all applicants to prevent discrimination and avoid fair housing violations.

5. 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. 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.

6. 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.

7. 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 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. There are 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: 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.

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. 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. 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.

    a. 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.

    b. 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.

E. 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.

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, 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. 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 document SSNs of all household members who are at least 6 years old, or does not execute a certification stating that no SSNs have been assigned;

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; and

   b. The applicant's right to respond to the owner in writing or request a meeting within 14 days to dispute the rejection.

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 108.40 (Affirmative fair housing marketing compliance reviews)
2. 24 CFR, part 110 – Fair Housing Poster
3. 24 CFR part 200, subpart M – Affirmative Fair Housing Marketing Regulations
4. 24 CFR 880.601, 881.601, 883.701 (Responsibilities of owner/borrower)
5. 24 CFR 884.214, 886.121, 886.321 (Marketing)
6. 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-935.2). Projects built or rehabilitated before July 1972 are not required to have a plan in the prescribed form; however, they 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 and Fair Housing Poster

This paragraph describes affirmative fair housing marketing activities and implementation of the Affirmative Fair Housing Marketing Plan (form HUD-935.2) 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 AFHMP 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. However, owners of such properties are required to affirmatively market their units to those least likely to apply.

C. **Special Marketing Requirements**

1. All Section 8 units. 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. New construction and substantial rehabilitation units NOT designed for disabled or elderly persons (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 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, available units cannot be filled from a waiting list, or if 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.

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 and update as needed to ensure compliance with 24 CFR 200.620. The plan must be revised whenever a substantial change takes place or the local Consolidated Plan is updated. The revised plan must be submitted to HUD for approval. When HUD or another contract administrator conducts an on-site review, it will monitor that affirmative marketing is actually being performed in accordance with the Affirmative Fair Housing Marketing Plan.

3. A five-year review may indicate that revisions to the Affirmative Fair Housing Marketing Plan are necessary if the population of the property area has changed over time, and thus targeted marketing efforts should change. The owner should review the demographics of the project area and determine whether advertising efforts should be targeted to different groups. For example, in a neighborhood in which the population has changed, it may be more appropriate to switch to advertising in Vietnamese rather than Spanish media sources.

4. When reviewing and updating the plan, the owner should also determine whether the advertising sources still exist and whether advertising sources used in the past should be changed or expanded.

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. **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.

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.

B. **Contents of Application**

Although HUD does not prescribe an application format, a written application form used to initiate verification of eligibility factors should include the following data:

1. 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;

2. General household contact information – address, phone number;

3. Identification of the approved preferences, if HUD approval is required, for which the household qualifies (only if preferences are used at the property);

4. Source(s) and estimate(s) of household's anticipated annual income and assets;

5. Citizenship declaration and consent forms. (This is not required for 221(d)(3) (without Section 8 or any other assistance), 202 (without Section 8), 202 PAC, 202 PRAC, and 811 PRAC properties that have no other subsidy);

6. Marketing information to understand how the applicant heard about the property; and

7. Screening information – prior landlords, credit, and drug and criminal history consistent with the property's tenant selection policies.

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.

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 3-22 G for more information about assigning units larger than required.

4-16 Creating and Maintaining Waiting Lists

A. Key Requirements

1. Receiving the application. Upon receipt of an application for tenancy or assistance, the owner must process the application for admission, 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. Recording the application. The owner's records must indicate the date and time the applicant submitted an application.

3. 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.)

4. 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 3-20.)

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. 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.

3. 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.)

4. 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 family may be assigned to wait for a different unit size but will retain the original application date. 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 3-22 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. Mail sent to the applicant's address is returned as undeliverable; or

5. 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 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 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, 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 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. 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, 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, 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 and consent forms for verification from all household members as appropriate.

7. Inform the applicant of the screening requirements used by the owner. (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 the head, spouse, or co-head and all family members age 6 or older to disclose and document all SSNs or execute a certification when a SSN has not been assigned. (See paragraph 3-9 for more information on SSN disclosure.) If one or more members of the family are under 18 years of age, the certification will be executed by their parent or guardian.

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.

11. Tell the family that a final decision on eligibility cannot be made until all verifications are complete.

12. Provide each tenant with a copy of the appropriate HUD fact sheet, which describes how the tenant's rent is calculated. See **Appendix 14** for copies of these fact sheets.

13. 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.

14. 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. The requirement to execute a meals contract. 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 certifications that occur after move-in is important to ensure accurate tracking.

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 certification 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.) 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;

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.

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. 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 make the screening determination.

   b. The owner may use alternative sources, including private credit and screening services, to check available databases storing criminal history.

4. If the owner selects a PHA to obtain criminal conviction records, the PHA will use the criminal records 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 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 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, 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 in a confidential manner and may not disclose the contents to the owner.

5. 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

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.

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, except the following:

1. Section 221(d)(3) BMIR properties;

2. Section 202 PAC;

3. Section 202 PRAC; and

4. Section 811 PRAC.

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, 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 to the family.

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.

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Chapter 4 Exhibits

4-1. Sample List of Records and Documents Owners May Ask Applicants to Bring to the Certification or Recertification Interview

4-2. DHS Document Verification Request Form

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Exhibit 4-1: Sample List of Records and Documents That Owners May Ask Applicants to Bring to the Certification or Recertification Interview

NOTE: Owners must attempt to collect third-party verifications where possible, but having the applicant bring the following information to the interview will assist the owner in obtaining the third-party verification. The records and documents provided by the applicant could be used when third-party verification is not returned or obtainable.

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
- Unemployment compensation – determination letter Form 2000, Form UC 30, or latest check stub
- SSI – award 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.

Exhibit 4-2: DHS Document Verification Request Form

NOTE: See next page.

DHS Document Verification Request Form

U.S. Department of Justice
Immigration and Naturalization Service

SAVE

OMB #1115-0122
Document Verification Request

Section A *to be completed by the submitting agency*

To: Immigration and Naturalization Service

6. Verification Number

7. ☐ Photocopy of Document Attached.
(If printed on both sides, attach a copy of the front and of the back.)
☐ Other Information Attached *(Specify documents).*

From: Typed or Stamped Name and Address of Submitting Agency

8. *(Benefit)*	*(Your Case Number)*
☐ AFDC	
☐ Education Grant/Loans/Workstudy	
☐ Food Stamp	
☐ Housing Assistance	
☐ Medicaid/Medical Assistance	
☐ Unemployment Insurance	
☐ Employment Authorization	
☐ **Other** *(specify)*	

Attn: Status Verifier
(INS may use above address with a #20 window envelope.)

1. Alien Registration or I-94 Number
2. Applicant's Name *(Last, First, Middle)*
3. Nationality
4. Date of Birth *(Month/Day/Year)*
5. Social Security Number

9. Name of Submitting Official
10. Title of Submitting Official
11. Date
12. Telephone Number

Section B *to be completed by INS*

INS RESPONSE: From the documents or information submitted and/or a review of our records we find that:

1. ☐ This document appears valid and relates to a **Lawful Permanent Resident alien** of the United States.
2. ☐ This document appears valid and relates to a **Conditional Resident alien** of the United States.
3. ☐ This document appears valid and relates to an alien **authorized employment** as indicated below:
   a. ☐ Full-Time
   b. ☐ Part-Time
   c. ☐ No Expiration (Indefinite)
   d. ☐ Expires on
   (specify Month/Day/Year, below)
4. ☐ This document appears valid and relates to an alien who has an application pending for
   (specify INS benefit below)
5. ☐ This document relates to an alien having been **granted asylum/refugee** status in the United States.
6. ☐ This document appears valid and relates to an alien **paroled** into the United States pursuant to Section 212 of the I&N Act.
7. ☐ This document appears valid and relates to an alien who is a **Cuban/Haitian entrant**.
8. ☐ This document appears valid and relates to an alien who is a **conditional entrant**.
9. ☐ This document appears valid and relates to an alien who is a **nonimmigrant**
   (specify type or class below)
10. ☐ This document appears valid and relates to an alien **not authorized employment** in the United States.
11. ☐ Continue to process as legal alien. INS is searching indices for further information.
12. ☐ This document is **not valid** because it appears to be *(check all that apply)*
    a. ☐ Expired
    b. ☐ Altered
    c. ☐ Counterfeit

INS Stamp

Form G-845S (Rev. 06/06/89) Y

☐ **Please see reverse for additional comments.**

Comments

13. ☐ No determination can be made from the information submitted. Please obtain a copy of the **original** alien registration documentation and resubmit.
14. ☐ No determination can be made without seeing **both** sides of the document submitted *(please resubmit request)*.
15. ☐ Copy of document is not readable *(please resubmit request)*.

"PRUCOL"

For Purposes Of Determining If Alien Is Permanently Residing Under Color Of Law Only!

16. ☐ INS actively pursues the expulsion of an alien in this class/category.
17. ☐ INS **is not** actively pursuing the expulsion of an alien in this class/category, at this time.

18. ☐ Other

Instructions

- **Submit copies of both** *front and back* **of alien's original documentation.**
- **Make certain a** *complete return address* **has been entered in the "From" portion of the form.**
- The Alien Registration Number ("A" Number) is the letter "A" followed by a series of (7) or (8) digits. Also in this block may be recorded the number found on Form I-94. (Check the front and back of the I-94 document and if the "A" Number appears, record that number when requesting information instead of the longer admission number as the "A" Number refers to the most integral record available.)
- If Form G-845 is submitted without copies of applicant's original documentation, it will be returned to the submitting agency without any action taken.
- Address this verification request to the local office of the Immigration and Naturalization Service.

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 resulting from 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
• Extremely low-income family	• Tenant rent
• Foster adult	• Total tenant payment
• Foster children	• Unearned income
• Full-time student	• Utility allowance
• Gross rent	• Utility reimbursement
• Hardship exemption	• Very low-income family
• Head of household	• Welfare assistance
• Housing assistance payment (HAP)	• Welfare rent
• 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 5.609 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 the complete 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 two 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 and divide that total by 12 months. For example, if a verification source reports that a union contract calls for a

2% pay increase midway through the year, the owner may add the total income for the months before, and the total for the months after the increase and divide that sum by 12 months.

Example – Calculating Anticipated Annual Income

A teacher's assistant works nine months annually and receives $1,300 per month. During the summer recess, the teacher's assistant works for the Parks and Recreation Department for $600 per month. The owner may calculate the family's income using either of the following two methods:

1. Calculate annual income based on current income: $15,600 ($1,300 x 12 months).

   The owner would then conduct an interim recertification at the end of the school year to recalculate the family's income during the summer months at reduced annualized amount of $7,200 ($600 x 12 months). The owner would conduct another interim recertification when the tenant returns to the nine-month job.

2. Calculate annual income based on anticipated changes through the year:

   $11,700 ($1,300 x 9 months)

   + 1,800 ($ 600 x 3 months)

   $13,500

   Using the second method, the owner would not conduct an interim re-examination at the end of the school year. In order to use this method effectively, history of income from all sources in prior years should be available.

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	Yes	Yes
Dependents		
-Child under 18	No	Yes
Full-time student over 18	See Note	Yes
Nonmembers		
Foster child	No	No
Foster adult	No	No
Live-in aide	No	No

NOTE: The earned income of a full-time student 18 years old or older who is not the head, co-head, or spouse 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. Although full-time students who are 18 years of age or older are considered as 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 or spouse or co-head. If the income is less than $480 annually, count all the income. If the annual income exceeds $480, 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 50059 facsimile.

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. **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 has a choice with regard to how the permanently confined individual's income will be counted. The family may elect *either* of the following:

a. *Include* the individual's income and receive allowable deductions related to the medical care of the permanently confined individual; or

b. *Exclude* the individual's income and not receive allowances based on the medical care of the permanently confined individual.

2. The permanently confined member is listed on the 50059 facsimile 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.

D. 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. This is true whether the assistance is paid to the student or directly to the educational institution.

E. 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.

F. **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 child care provider by persons not living in the unit are excluded from annual income.

3. Temporary, nonrecurring, or sporadic income (including gifts) is not counted.

G. **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.

H. 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.

I. 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

J. 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 N 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 5.7 G.4).

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.)

K. 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.

3. 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.

L. **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.

M. **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.

6. 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.

N. 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 unless the family can document that the amounts withdrawn are reimbursement of amounts invested. When a family is making regular withdrawals from an account in which it has made an investment, the withdrawals will count as income only after the amount invested has been totally paid out. Withdrawals from investments will be treated as income only when the withdrawals are made on a regular basis, as in the monthly payments received from an annuity.

Example – Documenting That Amounts Withdrawn Are Reimbursement of Amounts Invested

- David Dow purchased an annuity many years ago. Now that he is retired, he is receiving monthly payments of $650. When he purchased the annuity, he paid $75,000. The payments he receives from the annuity should not be counted as income until he has received payments for the full $75,000 invested.

  David has received $6,500 from the annuity. He will not have received the full $75,000 for another 8.8 years. The owner should maintain the insurance company information in David's file and should review the payments and status of the annuity with David at each annual recertification, but the annuity payments should not be counted as income for the next 8 years. (The annuity will also not be counted as an asset because David does not have the ability to withdraw the principal amount in the annuity.)

- Josefina and Rodrigo Gomez have received $300 a month from an annuity for 9.5 years. The Gomez's paid $36,000 for the annuity when they purchased it years ago. Six months after the current annual recertification becomes effective, the Gomezes will have reclaimed the full amount of their investment. For the second 6 months of the coming year, therefore, the owner will include the $300 monthly payment from the annuity as income.

- An applicant, Charlie Curran, is receiving $150 a month from his annuity. He purchased the annuity by making payments of $25 a month for 20 years. Although he did miss a payment occasionally during the period he was purchasing the annuity, the owner has talked with the insurance company and has received written verification that the total amount Charlie paid for the annuity over time was $4,750. He began receiving payments from the annuity 3 years ago. To date he has received $5,400 in annuity payments; therefore, all of the $150 monthly annuity payments Charlie receives in the coming year will be counted as income.

O. 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. 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.

4. Lottery winnings paid in one payment are treated as assets. Lottery winnings *paid in periodic payments* must be counted as income.

P. 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 are 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

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.

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 is 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.
- Student financial assistance. Jeff Alkire won a scholarship from the local civic association. The association sends him a $1,000 check each semester to help with tuition costs. These funds are excluded from annual income.

5-7 Calculating Income from Assets

Annual income includes amounts derived from assets to which family members has access.

A. What is Considered to Be 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.

- However, the amount that the holder invested in the annuity will not be counted as income (see paragraph 5.6 N on regarding the amount a family has invested in an asset).

Example – Income from an Annuity

Christina Cross receives $200 a month from an annuity. The owner has asked the insurance company to verify the total amount Christina paid and the total amount she has received in payments to date. The verification documents that she paid $40,000 for the annuity over the years while she was working and she has received a total of $4,800 in payments since she retired. The owner will not count the annuity payments as income until Christina has received $40,000 from the insurance company.

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. If total net assets exceed $5,000, 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 A4 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.

   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.

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.
- Stephen King is retired. Each month he withdraws $1,000 from his IRA account. The balance in his IRA account is $200,000. The balance in his IRA at the end of the year, including interest earned, will be $194,000. That is the amount that should be counted as an asset. (The $1,000 withdrawn each month is not counted as income because Stephen has verified that the funds in his IRA are funds he invested.)

5. 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 which includes interest and principal. The value of the asset is determined by calculating the unpaid principal at the end of the 12-month period following 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.

6. 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, then the tenant may request an interim recertification to remove the disposed asset(s).

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, divorce, 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 judgements.

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 B2 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 who is:

   a. Under 18 years of age;

   b. A person with disabilities; or

   c. A full-time student of any age.

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, 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 family 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. The expense for child care while that family member is at school or looking for work 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 (including 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 not 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. 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.

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 the certification form 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 J.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 5.659 Family Information and Verification

C. 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. 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.

3. Family members 6 years of age and older must provide the owner with a complete and accurate social security number. For any members of the family who do not have a social security number, the applicant or family member must certify that the individual has never received a social security number. This requirement is described in paragraphs 3-9 and 3-28 of this handbook.

4. 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 who is 6 years old or older.

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 age 6 years and older, have and use. Giving the social security numbers of all household members 6 years of age and older 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 initial 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. HUD accepts three methods of verification. These are, in order of acceptability, third-party verification, review of documents, and 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

The following describes ways in which third-party verification may be obtained.

1. Written. Written documentation sent directly by a third-party source is the preferred method of verification. It is assumed that third-party sources will send written verification to the owner through the mail. (For information about electronic documentation, see subparagraph B3 below.)

   The applicant or tenant should not hand-carry the verification to or from the third-party source. If the verification does not contain an original signature or is delivered by the applicant or tenant, the owner should examine the document for evidence of tampering. In these situations, the owner may, but does not have to, accept the document as acceptable verification.

2. Oral. Oral verification, by telephone, from a reliable third-party source is an acceptable verification method. Owners frequently use this method when the third party does not respond to the written verification request. 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 5-19 C.

   NOTE: Appendix 3 includes selected phone numbers of verification sources for employment and income records. However, they do not take the place of third party verification. The phone numbers contained in **Appendix 3** are not toll free but such calls are valid project expenses.

3. Electronic. The owner may obtain accurate third-party written verification by facsimile, e-mail, 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. E-mail. Similar to faxed information, information verified by e-mail is more reliable when preceded by a telephone conversation and/or when the e-mail 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 a 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.

C. **Review of Documents**

1. An owner may review documents submitted by the applicant or tenant in one of the following situations:

a. Third-party verification is not possible or is not required. For example, verifying that a family member is over 62 years old is more appropriately accomplished by examining a birth certificate than through third-party verification.

b. Third-party verification is delayed. If information from a third party is not received within two weeks of its request, owners may consider original documents submitted by the tenant. 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.

Examples – Appropriate Occasions to Verify Information through a Review of Documents

- The owner sent a verification request to the tenant's employer but did not receive a response. The owner then made several calls to the employer but has not received a return call. The owner may use a review of documents (pay stubs) for verification. The owner should insist on a series of consecutive, recent pay stubs and should have a standard policy indicating the number of consecutive pay stubs required.
- The tenant's bank charges the bank account a fee for completing verification requests. The owner allows the resident to provide a current savings account statement or checking account statements for the past six months.
- The tenant's employer uses a 900 phone number, which results in a charge to the owner's phone to provide income verification. (In this case, the owner will accept the most recent consecutive eight pay stubs to verify earned income.)
- In cases where there is no third party available, a review of documents will always be appropriate. To verify a person's age, a birth certificate may be used. A social security card is the best verification of a social security number.

2. An owner must place copies of the reviewed documents in the applicant's or tenant's file. If copies cannot be made, the person reviewing the original documents must list the reviewed documents and the information provided on the documents, and must initial and date the notation.

3. Obtaining accurate verification through a review of documents requires the owner to consider the following:

   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 weeks of 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 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.

D. **Family Certification**

An owner may accept a tenant's notarized statement regarding the veracity of information submitted if the information cannot be verified by another acceptable verification method.

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, medical professionals, and others. Families sign these and the two HUD consent forms at the time of initial 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, a HUD Fact Sheet, and the Resident Rights and Responsibilities brochure.

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. The head of household, spouse, co-head and each family member who is at least 18 years of age must sign this form. 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, the Social Security Administration, and with state agencies that maintain wage and unemployment claim information. 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 and each family member who is at least 18 years of age must sign this form. Each adult member must sign the 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 and a copy of the Resident Rights and Responsibilities 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 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 Fact Sheet.

2. Resident Rights and Responsibilities Brochure. In addition, owners must provide applicants and tenants with a copy of the Resident Rights and Responsibilities brochure at move-in and annually at recertification. Copies of the brochure may be obtained by calling the HUD National Multifamily Clearinghouse at 800-685-8470.

D. Owner-Created Verification Forms

1. Owners must create verification forms for specific verification needs and must include the language required by HUD as shown in Figure 5-5. **Appendix 15** 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 in 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 42 U.S.C. 208(f)(g) and (h). Violation of these provisions are cited as violations of 42 U.S.C. 408 (f), (g) and (h).

5-16 Social Security and Supplemental Security Income Data Match

A. Owners verify social security income and supplemental security income electronically through TRACS. If there is a discrepancy between income reported by the tenant or applicant and income provided by the Social Security Administration (SSA), TRACS will automatically generate a message that is sent to the owner. The owner must attempt to contact the applicant or tenant to disclose the discrepancy. Exhibit 5-8 provides detailed guidance on verifying social security and supplemental security income.

B. Additional information is available on HUD's website page describing the tenant assessment system (for tenant income verification) (TASS):

www.hud.gov/offices/reac/products/prodtass.cfm

TASS is a computer-based tool to assist owners in verifying tenant incomes by comparing tenant-reported information to information in other HUD systems from the Social Security Administration and the Internal Revenue Service.

5-17 Effective Term of Verifications

Signed verification and consent forms must be used within a reasonable time after the applicant or tenant has signed if the tenant's signature is to represent a valid and current authorization by the family. Therefore, 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 9887-A expire 15 months after they are signed. Owners must ensure that the forms HUD 9887 and 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. <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 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 90 days from the date of receipt by the owner.

2. For the next 30 days (days 91–120), the owner may update the verifications orally with the verification source. As with any oral verification, the owner must include written documentation in the file.

3. If verifications are more than 120 days old, the owner must obtain new verifications.

4. 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. Time limits also do not apply to the verification of social security numbers; however, at each recertification any family member who has previously reported having never received a social security number, must be asked:

   a. To supply verification of a social security number if one has been received; or

   b. To certify, again, that he/she has never received a social security number.

5-18 Inconsistent Information Obtained Through Verifications

An owner may not take any action to reduce, suspend, deny, or terminate assistance based on inconsistent information received during the verification process until the owner has independently investigated the information. The owner should follow procedures for addressing errors and fraud and for terminating assistance in accordance with Chapter 8.

5-19 Documenting Verifications

A. **Key Requirement**

Owners must include verification documentation in the tenant file.

B. **Documenting Third-Party Verification**

Third-party verification received through the mail or by facsimile transmission must be put in the tenant file.

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 should be placed in the tenant file. 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.

NOTE: It is not mandatory that social security cards be copied. See **Appendix 3** for alternate methods.

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 for four weeks or more 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.

5-20 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 50059 facsimile 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.

5-21 Refusal to Sign Consent Forms

A. If an applicant refuses to sign forms HUD 9887 or 9887-A or the owner's verification forms, the owner must deny assistance.

B. If a tenant refuses to sign the required verification and consent forms, the owner must terminate 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 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 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; and

3. Third-party verifications.

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. 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 9887-A describe the penalties for the improper use of consent forms.

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)

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 5-9 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 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 <u>not</u> 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. (See paragraph 9-13 for more information on utility reimbursements when 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.

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	$5,000
Elderly family deduction	- $400
Medical expense deduction	- $900
Annual adjusted income	$3,700
Monthly adjusted income	$308 ($3,700/12 months)
30% of monthly adjusted income	$92
10% of monthly gross income	$42
Minimum rent	$25
TTP for Resident A =	$92
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 =	$92
Assistance payment for Tenant A is $400 less $92 =	$308
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

Gross rent for unit	$800
Half the contract rent for the unit	$400

Tenant C has a monthly adjusted income of $1,500 per month. If 30% of $1,500 equals $450. Tenant C's rent is capped at $400, which represents the maximum Tenant C will pay.

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. Contract Rent and Assistance Payment in Section 811 Group Homes

1. 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.

2. In the Section 811 double occupancy unit, both occupants will pay the calculated TTP amount regardless of the operating rent for the unit.

Example – Calculating the Assistance Payment for a Double Occupancy Unit in a Section 811 Group Home

Operating rent for unit	$310
TTP Tenant A =	$160
TTP Tenant B =	$75
Assistance payment is $310 – ($160+$75) =	$75

Example – Section 811 Total Tenant Payments

Operating rent for the unit	$310
TTP Tenant A =	$330
TTP Tenant B =	$240

Assistance payment is zero; calculated as $310 – ($330 + $240) = $(260).

Although the assistance payment is zero, the monthly voucher must indicate that $260 over the operating rent was collected on this unit. This is generally indicated by bracketing the $260.

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 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 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 HAP 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	$92
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.

3. In a Section 811 double-occupancy room, the rent calculation at a change in occupancy is based on the operating rent for the entire unit less the TTP for the remaining tenant in occupancy.

Example – Section 811 Rent Calculation at a Change in Occupancy

Operating rent for the unit	$310
Tenant A moves out.	
Tenant B remains in the unit alone.	
TTP for Resident B =	$240
Assistance payment is $310 – $240 =	$70

If a new tenant moves into the unit thereafter, the assistance payment will change again, but the operating rent for the unit and the TTP for Resident B will remain the same.

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 50059 data requirements 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. Models of the certification statements are provided in Figure 5-7. Additional information on the 50059 data requirements and the certification may be found in Chapter 9.

Figure 5-7: Model Certification of the Accuracy of Information Provided

Tenant Certification

I/We certify that the information I/we have provided is true and complete to the best of my/our knowledge and belief.

I/we understand that if I/we furnish false or incomplete information I/we can be fined up to $10,000 or imprisoned up to five years, or lose the subsidy HUD pays and have my/our rent increased.

I/We have read the Privacy Act Notice.

Owner Certification

I certify that this tenant's eligibility, rent, and assistance payment have been computed in accordance with HUD's regulations and administrative procedures and that all required verifications were obtained. I also certify that the computations are based upon the data provided by the tenant. I have read and understand the purpose and uses of collecting the required information from applicants and tenants, and I understand that misuse of this information can lead to personal penalties to me.

D. The owner must give a copy of the printed 50059 data requirements with the required signatures to the tenant and place another copy in the tenant file.

E. The 50059 data requirements are then transmitted electronically to TRACS either directly or through the Contract Administrator. Refer to Chapter 9 for information on 50059 data requirements.

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Chapter 5 Exhibits

5-1. Income Inclusions and Exclusions

5-2. Assets

5-3. Medical Expenses That Are Deductible and Nondeductible

5-4. Certification for Qualified Long-Term Care Insurance Expenses

5-5. Form HUD-9887, *Notice and Consent for the Release of Information to HUD and to a PHA*

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*

5-7. HUD Fact Sheet – Verification of Information Provided by Applicants and Tenants of Assisted Housing

5-8. Guidance on Social Security Verification

5-9. Tenant Rent Formulas

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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, except as provided in paragraph (13) under Income Exclusions (e.g., Black Lung Sick benefits, Veterans Disability, Dependent Indemnity Compensation, payments to the widow of a serviceman killed in action);

(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 regular 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.

INCOME EXCLUSIONS

(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;

(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 O 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 at the end of the 12-month period following 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. 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). In calculating the imputed income for the following year, the owner would multiply the $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: 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 or other accepted standard
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. 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. Also, certain maintenance or personal care services provided for qualified long-term care can be included in medical expenses.
Medical savings account (MSA)	Do not deduct as a qualified medical expense amounts contributed to an Archer MSA. Do not deduct qualified medical expenses as an itemized deduction if paid with a tax-free distribution from an Archer MSA.
Nutritional supplements	Do not include in medical expenses the cost of nutritional supplements, vitamins, herbal supplements, "natural medicines," etc., unless these can be obtained legally only with a physician's prescription.

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 can be included with medical expenses.
Nonprescription medicines	Nonprescription medicines unless prescribed by a physician for a particular medical condition.

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

Exhibits 5-5, 5-6, 5-7: Document Package for Applicant's/Tenant's Consent to the Release of Information

These exhibits contain form HUD-9887, *Notice and Consent for the Release of Information to HUD and to a PHA*, and form HUD-9887-A, *Applicant's and Tenant's Consent to the Release of Information – Verification by Owners of Information Supplied by Individuals Who Apply for Housing Assistance*, as well as the accompanying HUD Fact Sheet.

Exhibit 5-8: Guidance on Social Security Verification

NOTE: See next page.

Exhibit 5-9: 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 and Lease Attachments** describes the lease requirements for the applicable programs described in paragraph 1-3. It also addresses lease 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, 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 • 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, 880.701, 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)

6-4 Leases and Lease Attachments – General

A. This section identifies the regulatory requirements regarding an owner's lease and the 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.

B. 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 recertification, termination of assistance, and fraud penalties found in the Model Lease for Subsidized Programs. (See paragraph 6-5 A for more information.)

C. 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.

D. Changes to the Model Lease for Subsidized Programs may be only for documented state or local laws, or a management practice generally used by management entities of assisted projects. Before implementing lease changes, owners must obtain written approval from HUD/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 6-5 E.

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

1. 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**.)	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)
Model Lease for Section 202/8 or Section 202 PACs (See **Appendix 4**.)	Section 202 Programs for the Elderly and Persons with Disabilities in conjunction with Section 8 assistance 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**.)	Section 202 Program of Supportive Housing for the Elderly
Model Lease for Section 811 PRACs (See **Appendix 4**.)	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

2. 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.)

3. 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, recertification, termination of

assistance, and fraud penalties found in paragraphs 15, 16, 17, and 25 of the Model Lease for Subsidized Programs.

4. Required attachments.

The following documents must be attached to the lease:

a. 50059 facsimile signed by the tenant and the owner;

b. Move-in inspection report signed by both the owner and tenant;

c. House Rules, if such rules have been developed by the owner;

d. Lead-based paint disclosure form (if applicable);

e. Pet rules (if applicable); and

f. 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.

B. **Key Requirements under HUD's Model Leases**

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.

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, please 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).

2. HUD will permit modifications to the Model Lease for Subsidized Programs, but modifications must be 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 and Section 202 PACs, Section 202 PRACs, and for 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. Instead of modifying the Model Lease for Subsidized Programs to include the pet provisions from the Model Lease for Section 202/8 and Section 202 PACs, owners may attach a HUD-approved lease addendum.

5. Additional lease provision for authorized police/security personnel. The lease 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.

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.

E. **Model Lease for Section 202 PRACs and Section 811 PRACs**

1. The Model Lease for the Section 202/8 or Section 202 PACs may only be modified for documented state or local laws or as noted in the following paragraph.

2. The regulations for Section 202 and Section 811 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. See Exhibit 6-2 at the end of Chapter 6 for a copy of the provision for RHS 515 with Section 8 properties. These provisions must be added to the lease developed by

RHS. However, Rural Housing Service encourages owners to use the HUD model lease and add the USDA provisions found in USDA regulations at 1930-C.

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 6-3. 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 6-3.

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 6-3: 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 6-4 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 6-4: 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.

3. **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.

4. 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 and found to be free of lead hazards.

5. 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. Lead Hazard Information Pamphlet. 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'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 6-5 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 6-5: 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. House rules are listed in the lease as an attachment and must be attached to the lease.

4. Owners must give tenants written notice 30 days prior to implementing new house rules.

5. If HUD staff becomes aware (through routine monitoring, site inspections, tenant complaints, etc.) that house rules circumvent or conflict with HUD requirements, the Field Office will require the owner 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 (service 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 the Glossary);

   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 50059 data requirements (the 50059 facsimile) 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 50059 facsimile.

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 PRACs, and Section 811 PRACs is located at paragraphs 6-5 D and 6-5 E.

B. Key Requirements

1. A lease change provided by HUD may be incorporated into the lease without HUD 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 receive prior written approval of HUD or the Contract Administrator before providing the modification to the tenant(s).

   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.

5. 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.

6. 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.

7. 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. 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. The Contract Administrator will follow the same procedural steps as the HUD Field Office when modifications are submitted to the Contract Administrator.

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, State Agencies, and Contract Administrators 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 an 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 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.

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 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 6-6 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.

REMINDER: If the entire security deposit is not paid before a tenant moves out, the unit is not eligible for special claims payments. (Paragraph 9-14 discusses special claims payments.)

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 6-6: 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. (See paragraph 9.14 for information on special claims.)

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.

Helpful Hint!

An owner should review the requirements and procedures for special claims outlined in paragraph 9-14 of this handbook, for information regarding specific requirements and funds available to a property.

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)

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. **NOTE:** This 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. 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.

C. 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.

D. 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.

E. 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 6-7. 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 that assist persons with disabilities are considered to be auxiliary aids and are exempt from the pet policy and from the refundable pet deposit.

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 6-7: 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 require a tenant to pay allowable charges identified under subparagraphs B, C, D, and E below only if:

1. HUD or the 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 6-5.

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 and 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.

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.

3. 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.

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., 50059 facsimile, move-in inspection report, house rules, lead-based paint disclosure form, pet rules, and live-in aide 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;

j. Penalties for fraud*;*

k. Termination of assistance*;*

l. Termination of tenancy*;* and

m. General rules.

2. Exhibit 6-6 provides 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.

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 that 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 jointly 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 30 days after the effective date of the lease.

3. Both the owner and the tenant must sign and date the inspection form.

4. The tenant has 5 days 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 6-8.

Figure 6-8: Summary of Documents for Tenants

Documents
Lease, with the 50059 facsimile
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)
Live-in Aide addendum (if applicable)
Resident Rights and Responsibilities brochure

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Chapter 6 Exhibits

6-1 Required State Agency Lease Provisions

6-2 Required RHS 515 with Section 8 Lease Provisions

6-3 Disclosure Form for Target Housing Rentals and Leases

6-4 Mandatory and Discretionary Pet Rules

6-5 How to Develop Pet Rules

6-6 Tenant Briefing Topics

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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 with Section 8 Lease Provisions

For RHS 515 with Section 8 properties, the lease must contain the following additional provision or addendum:

The following additional lease provisions are incorporated in full in the Lease between _____ (lessor) and _____ (lessee) 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 or at the direction of HUD as housing assistance payments on behalf of the Lessee and $_____ shall be payable by the Lessee. These amounts will be subject to change by reason of changes in the Lessee'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 adjustment by HUD, or the PHA, if appropriate, of any applicable Allowance for Utilities and other services. Any such change will be effective as of the date stated in a notification to the Tenant.

The Lessor will not discriminate against the Lessee in the provision of services, or in any other manner, on the grounds of race, color, creed, religion, sex, national origin or familial status.

The Lessor will provide the following services and maintenance:_____
_____

Lessor: _____

By: _____

Date: _____

Lessee: _____

Date: _____

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.	**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.
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.	

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: 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.

<table>
<tr><th>Topics Related to Tenant Responsibilities</th><th>Topics Related to Owner Responsibilities</th></tr>
<tr><td colspan="2">Signatures
The lease must be signed by the head, spouse, any individual listed as co-head, and all adult members of the household.</td></tr>
<tr><td>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.</td><td>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.</td></tr>
<tr><td>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.
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.</td><td>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.</td></tr>
<tr><td>Rent
Tenant rent amount.
Rent due date.
Change in rent if the family circumstances change.</td><td>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.</td></tr>
</table>

Topics Related to Tenant Responsibilities	Topics Related to Owner Responsibilities
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 • 50059 facsimile signed by the tenant and the owner. • 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).
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.	

Topics Related to Tenant Responsibilities	Topics Related to Owner Responsibilities
General Rules • Not subletting the unit. • Prohibited involvement in unlawful activities in unit/project. • 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 • Assets • Assistance payment • Assisted tenant • Contract rent • Deductions • Family composition	• Gross rent change • Market rent • Recertification anniversary date • Total tenant payment (TTP) • Unit transfer • 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

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 owners must obtain third-party verification of the following items and document them in the tenant file (or document why third-party verification was unavailable). (See Chapter 5, Section 3, for more information about verification of income.)

   a. Reported family annual income;

   b. The value of family assets;

   c. Expenses related to deductions from annual income; and

   d. Other factors that affect the determination of adjusted income.

4. At each recertification, the owner must provide the tenant with a copy of the HUD fact sheet describing how the tenant's rent is calculated. These fact sheets are included in **Appendix 14**.

5. 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, including those tenants not receiving rental assistance, must be supported in Tenant Rental Assistance Certification System (TRACS) with a submission of the required 50059 data. (See Chapter 9, Section 1, about the Tenant Rental Assistance Certification System for more information on submitting information through TRACS.)

   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 requested 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, 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.

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

A. It is the owner's responsibility to process all recertifications in a timely manner. HUD Headquarters will terminate assistance payments 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.

B. Owners and tenants must complete the applicable steps listed in Figure 7-2.

C. Owners must maintain a tracking system to facilitate timely completion of recertifications.

D. 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 7-2 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 7-3 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).

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 7-2: 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.	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 family members 6 years of age or older.	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. (See Chapter 9, Section 1, for more information on TRACS.)	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 facsimile with the required data electronically generated by owner's (or service bureau's) software package. Owner representative signs the HUD 50059 facsimile and provides the tenant with a copy. Only after the tenant and owner representative sign the HUD 50059 facsimile, 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 7-3: Recertification Notice Due Dates (Step 2 from Figure 7-2)

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 at the end of this chapter.

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 days 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 market rent in a 236 project, 110% of BMIR rent or the full contract

rent in a Section 8 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 at the end of this chapter.

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 at the end of this chapter.

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 at the end of this chapter.

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 7-2 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 7-3. 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.
- 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 recertication anniversary date, the owner may pursue alternative forms of verification, including review of documents provided by the tenant. Third-party verification must continue to be pursued, but the processing of the recertification can be completed using other sources of verification.

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 811 PRAC project, the tenant will pay the greater of operating rent or 30% of income until eviction procedures are completed.

   c. Assistance may only 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.

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 above.

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 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.)

NOTE: In Section 202/8 projects, 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.

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 including, but 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.

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 family income of more than $200 per month;

3. An increase in allowances (e.g., number of dependents, a new disability assistance expense);

4. Most decreases in income except in the circumstance described in subparagraph C 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. 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.

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.

C. Owners may refuse to process an interim recertification when the tenant reports a decrease in income only 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.

D. 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.

E. 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**.

F. 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. Input any changes to the tenant’s income or other characteristics in the owner’s software program and print a 50059 facsimile.

4. Document the resulting changes in the tenant’s rent and assistance payment by obtaining signatures on the 50059 facsimile 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. 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. 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 A.1.4, 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 then 30 days) to move to the new unit.

C. Owners may 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.

D. Owners may be 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 3-22.

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 3-22 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 an accommodation to a household member's disability, then the owner may be obligated to pay the costs associated with the transfer. See Chapter 2 for a thorough discussion of the requirements of Section 504 of the Rehabilitation Act of 1973.

C. Written Policies

It is a good practice for owners to describe the unit transfer policies in a written tenant selection plan for the property, and address the following topics:

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

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 50059 facsimile reflecting all changes in rents, utility allowances, total tenant payment, tenant rent, and assistance payments.

E. Tenants and owner representatives need only sign the 50059 facsimile if the gross rent change includes a change in the TTP and tenant rent.

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 implement approved changes in utility allowances within 75 days of 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.

NOTE: Gross rent changes do not require a tenant recertification and do not affect annual recertification anniversary dates or schedules.

Chapter 7 Exhibits

7-1 Annual Recertification Initial Notice
7-2 Annual Recertification First Reminder Notice
7-3 Annual Recertification Second Reminder Notice
7-4 Annual Recertification Third Reminder Notice/Notice of Termination
7-5 Sample Recertification Interview and Verification Record
7-6 Model Form of Notification of Rent Increase Resulting from Recertification Processing
7-7 Interim Adjustment Initial Notice
7-8 Interim Adjustment Termination of Assistance

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Exhibit 7-1: Annual Recertification 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.

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

Exhibit 7-2: 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. 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, except PRAC projects, add the following sentence.) If you do not respond before (insert recertification anniversary date), paragraph [15, 14, or 12] of your lease gives us the right to terminate your assistance and charge you the (market rent/contract rent/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: Annual Recertification Second Reminder Notice

(Tenant's Name)
(Address)

(Date, 90 days prior to the upcoming 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 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 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. 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, except PRAC projects, add the following sentence.) If you do not respond before (insert recertification anniversary date), paragraph [15, 14, or 12] of your lease gives us the right to terminate your assistance and charge you the (market rent/contract rent/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: 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 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.

If you meet with (Resident Manager, Occupancy Clerk, etc.) and supply all required information, 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.

(**NOTE:** For tenants of all projects, except PRAC projects, add the following sentence.) If you do not respond before (insert recertification anniversary date), paragraph [15, 14, or 12] of your lease gives us the right to terminate your assistance and charge you the (market rent/contract 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.

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	_____
/___/___/___ M D Y	_____
/___/___/___ M D Y	_____

3. Date Recertification Interview Completed _____/_____/____. If interview not completed, give reason. _____

4. Member #1*

	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: 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 50059 facsimile. The 50059 facsimile must be signed by the head, co-head, spouse and all other adult members of the household. The copy of the 50059 facsimile 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: 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, except PRAC projects, 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: 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** describes 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	• Rural Housing Service (RHS)
• Eviction	• Tenant
• Family	• Tenant with a disability
• Fraud	• Termination of assistance
• Increased ability to pay	• Termination of tenancy
• Law enforcement agency	• Unauthorized occupant
• Live-in aide	• 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 family members.

B. A tenant fails to sign/submit required consent and verification forms (form HUD-9887 and form HUD-9887-A).

- 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 (SWICA), current tax information from the Internal Revenue Service (IRS), and wages and unemployment compensation information from the Social Security Administration (SSA).

- 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. If the tenant remains in the same unit, the tenant must pay the market rent, full contract rent, or 110% of the BMIR rent, as required by the HUD lease.

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 rent based on the Section 236 rent formula if his or her assistance were terminated.

E. A tenant has begun receiving assistance, but the owner is unable to establish citizenship or eligible immigration status for any family members 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.

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

F. **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 must 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; and

   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.

4. 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.

5. 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.

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

A. 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.

B. If the tenant fails to give a full 30-day notice, the tenant is liable for rent, up to the earlier date of:

1. The end of the 30-day period for which the notice is required; or

2. The date the unit is rerented, as required by the HUD lease.

8-10 Allowable Use of Security Deposits

If a tenant fails to pay the required rent as outlined in paragraph 8-9 B above 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 5.850-5.852, 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)

2. 24 CFR 247.3, 880.607, 881.601, and 883.701 (Fraud, minor violations, nonpayment of rent, state or local Landlord and Tenant Act)

3. 24 CFR 247.3, 880.607, 881.601, 883.701, and 884.216 (Substantial lease violations)

4. 24 CFR 880.607, 881.601, 883.701, and 247.3 (Other good cause)

5. 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
- 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 paragraph 8-17 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.

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.

   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); and

      (5) Be served on the tenant as described under subparagraph B.3c below.

      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).

   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. 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.

6. Owners must consistently apply their eviction standards.

7. 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

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) for criminal records of an adult member of a household.

2. The PHA must request the criminal conviction records from the appropriate law enforcement agency(ies) as determined by the PHA.

a. The request must include a copy of the consent form, signed by the household member; and

b. If the PHA determination will be used in connection with an eviction, the request must include an owner's standards for evicting drug criminals who engage in the abuse of alcohol or drug-related activities.

3. If the PHA receives criminal conviction 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, as applicable in accordance with HUD regulations and the owner's criteria.

4. The PHA must notify the owner whether it has received criminal conviction records for the household member and its determination as to whether such criminal conviction 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 record or the content of the record 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 Section 8 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 Section 8 tenant, based on the criminal activity by the household member that is described in the criminal conviction records.

5. 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 a lease enforcement or eviction action is taken on the basis of the information.

6. 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. The owner may <u>not</u> pass along the costs of the criminal records check to the tenant.

7. <u>Penalties for improper release of information</u>. 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 Procedures for Addressing Discrepancies, Errors, and Fraud

A. **Overview**

To promote income and rent integrity, owners must investigate and research discrepancies and possible errors. The immediate objective is to determine income and rent correctly. However, the following procedures can be used in a variety of inquiries. 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.

B. **Types of Tenant Violations**

When owners identify an error involving a tenant, they should first determine if the error constitutes a violation and, if so, the type of violation. Tenant violations can be either a program or criminal violation.

1. 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.

2. 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. **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.

2. If an intentional misstatement or withholding of information cannot be substantiated through documentation, the owner must not treat the case as fraud and must treat it 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.

   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.

4. HUD will allow the owner to keep a portion of the repayments collected from tenants who have improperly reported income at the time of certification or recertification. The owner may retain up to a maximum of 20% of the amount of repayments actually collected from the tenant to cover the owner's actual costs. The owner must reimburse the balance of the tenant repayment to HUD. (See Chapter 6 of HUD Handbook 4381.5 REV-2, *The Management Agent Handbook.*) These repayments to HUD are made through offsets to future vouchers submitted to HUD until the total amount has been repaid.

F. 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 50059 facsimiles);

   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).

G. **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.

Example – Fraud

During initial certification, a two-member household reports that the head of the household is employed and the spouse is unemployed. The owner discovers six months later that the spouse is working and asks the household to come in for an interim recertification. When the owner conducts the third-party verification, the employer verifies that the spouse has been working for 18 months. The owner sends a notice to the tenants regarding the discrepancy, requests that they meet with the owner within 10 days, and proceeds to document the case.

8-18 Discrepancies Based on Information from a State Wage Information Collection Agency (SWICA) or Federal Agency

A. Requirements Regarding Wage Information Discrepancies

1. Applicants and tenants receiving housing assistance agree that they will provide the owner with any family income information following receipt of an income discrepancy letter issued by HUD by signing the HUD model lease. If the tenant receives such a letter from HUD, he/she must promptly furnish it to the owner.

2. Tenants may be denied assistance or have their level of assistance adjusted based on earnings information received from SWICAs or federal agencies. HUD or Contract Administrators may obtain this type of verification, but it is not directly provided to the owner. The information is generally obtained through a computer income match, and HUD or the Contract Administrator is notified of any discrepancy.

3. Owners may not deny, suspend, or reduce any benefits of a tenant until HUD or the owner has taken appropriate steps to independently verify information relating to:

   a. The amount of the wages, other earnings or income, or unemployment compensation involved;

   b. Whether such tenant actually has (or had) access to such wages, other earnings or income, 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, other earnings or income, or benefits.

B. Procedures for Responding to Undisclosed Information or Discrepancies

When income verification reveals an employer or other income source that was not disclosed by the tenant, or when the income information differs substantially from the information received from the tenant or from his or her employer, the following must occur:

1. HUD or the Contract Administrator will request the undisclosed employer or other income source to furnish any information necessary to establish a tenant's eligibility for, or level of assistance in, a covered program. This information should be furnished in writing to:

   a. HUD, with respect to programs under 24 CFR, parts 215, 221, 235, 236, or 290;

   b. The responsible entity (as defined in 24 CFR 5.100) in the case of any Section 8 program; and

   c. The owner or mortgagee, as applicable, with respect to the Rent Supplement, Section 221(d)(3) BMIR, Section 235 homeownership assistance, or Section 236 programs.

2. HUD or the Contract Administrator may verify the income information directly with a tenant. Such verification procedures must not include any disclosure of income information obtained from the SSA or IRS.

3. HUD and the Contract Administrator will not be required to pursue these verification procedures when the sums of money at issue are too small to raise an inference of fraud or justify the expense of independent verification and the procedures related to termination, denial, suspension, or reduction of assistance.

4. Based on the income information received from a SWICA or federal agency, HUD or the Contract Administrator, as appropriate, may inform an owner (or mortgagee) that a tenant's eligibility for, or level of, assistance is uncertain and needs to be verified. The owner (or mortgagee) must then confirm the tenant's income information by checking the accuracy of the information with the employer or other income source, or directly with the tenant.

C. Nondisclosure of Income Information

HUD and the Contract Administrator may not disclose income information obtained from a SWICA directly to an owner (unless a Contract Administrator is the owner). Disclosure of income information obtained from the SSA or IRS is restricted under 26 U.S.C. 6103(l)(7) and 42 U.S.C. 3544.

D. Opportunity to Contest

HUD, the Contract Administrator, or the owner (or mortgagee, as applicable) must promptly notify a tenant in writing of any adverse findings made on the basis of the information verified. The applicant 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 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.

8-19 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; and

   c. 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 plan 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 date of admission if the following occurs:

   a. The applicant submits information on income and family composition as the basis for the owner to make a determination that the applicant is eligible;

   b. The applicant is admitted as a tenant; and

   c. It is later determined that the information was incorrect and the tenant was not eligible for assistance.

   NOTE: This holds regardless of whether the tenant's circumstances later resulted in him/her being eligible for the assistance. In such cases, the tenant would have to apply and be placed on the waiting list for assistance.

In turn, the owner reimburses HUD in accordance with the procedures outlined immediately below.

6. The owner makes an adjustment on the monthly HAP voucher to reflect the amount of the tenant's reimbursement of unauthorized 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 plan.

2. 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.

8-20 Reimbursement to Tenant for Overpayment of Rent

In reviewing a tenant's file or recalculating a tenant's income, an owner may discover an error that resulted in the tenant paying a higher tenant rent than the tenant should have been charged. HUD or the Contract Administrator may also discover such an error during a review of the tenant files performed in conjunction with a Management Review or Occupancy Review. When such an error occurs, 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.

CHAPTER 9. REQUIRED 50059 AND SUBSIDY DATA REPORTING

9-1 Introduction

This chapter describes the requirements for transmitting subsidy-related data to the Tenant Rental Assistance Certification System (TRACS). These data include tenant data, and requests for payment of housing assistance, utility reimbursements, and special claims. Requirements for records and reporting, regarding excess income, are also addressed.

Chapter 9 is organized as follows:

- **Section 1: Tenant Rental Assistance Certification System (TRACS)** describes the requirements and procedures for subsidy tracking.
- **Section 2: Payments** presents the key payments that HUD provides to owners and the requirements for these payments.

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

• 50059 Data Requirements • Assistance payment • Gross rent • Housing Assistance Payment (HAP) • PAC (Project Assistance Contract)	• PRAC (Project Rental Assistance Contract) • Project assistance payment • Project rental assistance payment • Service bureaus • Utility reimbursement

NOTE: Form HUD-50059, *Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures*, has been eliminated. It has been replaced by the 50059 data requirements which make up the tenant data that are electronically submitted. Like the former form HUD-50059, the 50059 data requirements identify the data that owners are required to collect from applicants and tenants and the calculations that owners must perform to certify eligibility and tenant rents. For record-keeping purposes, owners must print out and retain a signed copy of the 50059 data requirements (referred to as the 50059 facsimile) for each tenant.

Section 1: Tenant Rental Assistance Certification System (TRACS)

9-3 Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 1: Tenant Rental Assistance Certification System. The citation and its title are listed below.

- 24 CFR, part 208 Electronic Transmission of Required Data for Certification and Recertification and Subsidy Billing Procedures for Multifamily Subsidized Projects

9-4 Introduction to TRACS

The Tenant Rental Assistance Certification System (TRACS) was developed to help improve financial controls over assisted housing programs. TRACS collects certified tenant data and subsidy payment vouchers from owners and management agents of multifamily housing projects – either directly from the owners, from organizations acting as subsidy Contract Administrators for HUD, or from service providers who are paid by the project or Contract Administrator to collect, calculate, complete, and submit the data to TRACS on their behalf. HUD Field Offices maintain data on subsidy contracts and contract funding.

A. Source Data

The bases for electronic submissions and primary data feeds to TRACS are:

1. 50059 Data Requirements;

2. Form HUD-52670, *Housing Owner's Certification & Application for Housing Assistance Payments*;

3. Form HUD-52670-A part 1, *Schedule of Tenant Payments Due*;

4. Form HUD-52670-A part 2, *Schedule of Section 8 Special Claims*;

5. Form HUD-52671-A through D, *Special Claims Worksheets*; and

6. Assistance payments contracts, assistance payments renewal contracts, and contract rent increases, including contract Exhibit A (Identification of Units and Contract Rents).

B. **TRACS Databases**

1. All tenant data collected and stored in TRACS undergo edits for accuracy and compliance with eligibility rules and rent calculation rules before they are stored in the TRACS Tenant Database.

2. TRACS stores payment history on all project-based subsidy contracts for which HUD makes monthly assistance payments.

3. Much of the tenant, contract, funding, and voucher data stored in the TRACS databases is available to authorized users for on-line viewing/updating. Report and data retrieval capabilities are also available.

9-5 Owner Submission Requirements

A. Electronic Data Processing and Transmission

1. Owners of all properties covered by this handbook are responsible for processing tenant certifications, tenant recertifications, and subsidy billings using automated software that conforms to HUD specifications. Owners are responsible for electronically transmitting required data either directly or through a service provider to HUD or their respective Contract Administrator. The Contract Administrator is the entity that issues subsidy payments for the assistance contract.

2. TRACS-compliant software used to produce certifications and subsidy billings must be obtained from a vendor who certifies that the software is compliant with HUD requirements. As HUD requirements are updated to reflect changes or revisions in legislation, regulations, handbooks, notices, or HUD-format electronic data transmission requirements, owners are responsible for ensuring that the software they use to complete, review, and transmit data is updated accordingly.

    a. HUD does not certify TRACS-compliant software products nor endorse individual TRACS vendors.

    b. The software requirements to which software vendors must certify are located on the TRACS website at http://www.hud.gov/offices/hsg/mfh/trx/trxsum.cfm.

3. Owners are responsible for the electronic submission of the following HUD requirements and forms. A separate submission must be prepared and submitted for each of the property assistance contracts.

    a. 50059 Data Requirements. For information on 50059 data requirements, please refer to **Appendices 6, 7, and 8**.

    b. Form HUD-52670, *Housing Owner's Certification & Application for Housing Assistance Payments* (see **Appendix 9**). Data submitted from form HUD-52670 must be properly supported by:

        (1) Form HUD-52670-A part 1, *Schedule of Tenant Assistance Payments Due* (see **Appendix 10**);

        (2) Form HUD-52670-A part 2, *Schedule of Section 8 Special Claims* (see **Appendix 11**); and

        (3) Form HUD-52671-A through D, *Special Claims Worksheets* (see **Appendix 12**).

4. Owners may obtain TRACS-compliant software and process their certifications and subsidy billings directly. Alternatively, owners may make arrangements to submit data to service providers who will use TRACS-compliant software to complete recertifications and billing submissions, and transmit them to HUD or other contract administrator on the owner's behalf.

    a. In cases in which an owner uses a service provider, that company must provide the owner with printed facsimiles of the 50059 data requirements, form HUD-52670, and related forms that were transmitted to HUD.

    b. The owner must sign and obtain the signature of the head, spouse, co-head, and all adult family members on a facsimile of the completed certification (50059 data requirements) that is transmitted to HUD or the Contract Administrator, whether the facsimile printout was produced on site or received from a service provider. The owner must provide the tenant a copy of the signed facsimile and retain a copy in the tenant's file. The owner must also sign and retain a facsimile of the voucher (form HUD-52670*)*.

    c. Owners that contract out or centralize the electronic-submission function must retain the ability to monitor the day-to-day operations of the property at the property site and be able to demonstrate that ability to HUD.

5. Service providers are organizations that provide electronic data transmission functions for owners.

    a. Service providers include but are not limited to the following:

        (1) Service bureaus,

        (2) Local management agents,

        (3) Local management associations, and

        (4) Management agents with centralized facilities.

    b. Service bureaus are organizations that provide a number of different services and are paid a fee to do so. Services provided by service bureaus include:

        (1) Preparation of facsimiles based on the 50059 data requirements. Their users (owners and management agents) are responsible for the verification of information contained in the 50059 data requirements they provide to the service bureau. The bureaus transmit tenant certifications to TRACS or to Contract Administrators. 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 signature by the household and management and for copying and filing in the tenant file.

(2) Preparation of monthly subsidy voucher facsimiles based on the 50059 data requirements.

(3) Preparation of approved special claims and transmission 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.

(4) 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.

6. Refer to Figure 9-2 for a discussion of deadlines for TRACS submissions.

7. Owners that contract out or centralize the electronic-submission function must retain the ability to monitor the day-to-day operations of the property at the property site and be able to demonstrate that ability to the relevant HUD Field Office.

B. Internet Applications

TRACS Internet applications provide authorized users with the capability to access summary and status information on submissions to the TRACS databases. Owners should refer to the Internet queries to confirm their TRACS transmissions and to monitor processing of voucher payments as necessary. Refer to the "Industry User Guide for TRACS Internet Applications" posted to the TRACS website at http://www.hud.gov/offices/hsg/mfh/trx/trxngde.htm for detailed information on using these applications. The following specific Internet applications may be of particular interest to project owners.

1. Voucher query. The Internet Voucher Query returns status data on vouchers submitted for a specified contract or project number for the 24-month period prior to the date of the query submission. The voucher status code indicates whether a subsidy payment was scheduled for payment by the Treasury Department, or was not scheduled for payment for a given reason. The User Guide provides an explanation of each code and any further action required of the owner in order for the payment to be released. Some status levels require that the owner resubmit the payment request as a correction, while others do not require resubmission. Users are also able to view the Voucher Summary Details and Voucher Discrepancies.

Figure 9-2: Deadlines for TRACS Submissions

Section 8, PAC, and PRAC Properties. The deadline for transmission of vouchers (form HUD-52670) and all related TRACS files supporting the voucher is the 10th day of the month directly preceding the voucher payment month. For example, the February voucher TRACS transmission would be due on January 10.

RAP and Rent Supplement Properties. The deadline for transmission of vouchers (form HUD-52670) and all related TRACS files supporting the voucher is the 10th day of the voucher payment month. For example, the February RAP or Rent Supplement voucher TRACS transmission would be due on February 10.

Vouchers submitted after this deadline date may risk late payment.

The voucher requesting payment for assistance or for an approved special claim must be submitted within 60 days of the approval date. Any requests submitted after 60 days will be subject to full voucher review and approval by HUD or the Contract Administrator, and to the availability of funds for the applicable subsidy year, as determined by HUD.

All 50059 data should be submitted during the month as completed. All 50059 data supporting a voucher must be transmitted prior to voucher transmission.

2. Certification query. This application permits the owner to query for a 50059 certification list by contract or project using several different sort options. Certifications displayed are limited to those with effective dates within 15 months prior to the query date. Besides the Certification List, the application also displays Certification Detail, Benefit History reports, and other information directly related to 50059 certifications. Additional queries exist under the tenant section of the Certification Query. These include a Move-In and Move-Out Query, which views project turnover activity; a Multiple Occupancy Query, which offers two views – by units in a project, to look for overcrowded households, and by social security numbers, to look for households living in more than one project; a Project Evaluation Query, which views possible problem areas within the project; and a Verification Query, which lists the items that need to be independently verified. The query provides links to useful information on printing and interpreting data in the query reports, and a download option is available so that queried data can be downloaded into an ASCII file.

3. Manual voucher submission. This application provides the capability to submit form HUD-52670 requests for assistance payments under unusual circumstances directly over the Internet. Before using this application, owners should verify that the need for submitting the voucher manually conforms to the permissible circumstances posted to the HUD website. All manual submissions from project owners require additional time for approval processing.

C. **Funding the Costs of Implementing TRACS**

1. HUD considers the costs of the electronic transmission to be eligible property-operating costs payable from property income. These costs are also considered property-operating costs for the purpose of processing requests for HUD approval of a rent increase. Eligible costs include the purchase and maintenance of hardware and/or software, the cost of contracting for those services, the cost of centralizing the electronic transmission function, and the cost of Internet access. At the owner's option, the cost of computer software may include service contracts to provide maintenance and/or training.

2. Sources of funds that owners may use to purchase hardware and/or software or to contract with an appropriate service provider may include the following:

   a. Current property operating income;

   b. Expense item in processing rent increases (For additional information, refer to HUD Handbook 4350.1, *Multifamily Asset Management and Project Servicing*.);

   c. Loan from the Reserve for Replacement Account. In addition, some purchases are allowable expenses from the Reserve for Replacement Account that can be directly reimbursed and do not have to be structured as a loan. For example, an improvement for hardware or software, in accordance with local, state, and federal regulations, is an allowable Reserve for Replacement expense. (For additional information about a loan from the Reserve for Replacement account, refer to HUD Handbook 4350.1, *Multifamily Asset Management and Project Servicing*.); and

   d. Release from the Residual Receipts Account (For additional information, refer to HUD Handbook 4350.1, *Multifamily Asset Management and Project Servicing*.).

3. A loan from the Reserve for Replacement Account must be repaid within a five-year period from the release date.

4. Owners may determine that the purchase of hardware and/or software is not cost effective. In such cases, they may contract out the electronic data transmission function to organizations that provide those services. See paragraph 9-5 A 6 for a discussion of service providers.

9-6 Contract Administrator Requirements

A. All Contract Administrators must support receipt of electronic transmissions of certification/recertification and voucher data from the projects they administer. The Contract Administrator may develop custom TRACS-compliant software or purchase software from commercial vendors who offer Contract Administrator

versions of TRACS-compliant software packages, or make arrangements to receive transmissions through a service provider.

B. Contract Administrators must review and identify data errors to be corrected by the owner. To accomplish this review and reconciliation, the Contract Administrators may request copies of supporting documentation for TRACS transmissions, such as the signed form HUD-52670-A part 1 and 2 from the projects they administer.

C. After the owners have reviewed and corrected any errors in the data and resubmitted the information to their Contract Administrator, the Contract Administrator must electronically transmit data to HUD in the required format.

D. Contract Administrators are not allowed to require electronic submissions from owners that go beyond TRACS data submission requirements.

E. These requirements apply to Contract Administrators, both Performance-Based Contract Administrators (PBCAs) and Non-Performance Based Contract Administrators.

9-7 Data Collection and Processing Procedures

A. Overview

This paragraph presents an overview of key data collection and processing procedures for the TRACS Monthly Activity Transmission.

B. Monthly Activity Transmission

The Monthly Activity Transmission (MAT) is a front-end subsystem of TRACS. MAT performs formatting and data-type validation on the data. MAT will return a file to the sender containing error messages when errors exist. The sender must correct the errors and resubmit the information. If a Contract Administrator is the sender, the Contract Administrator must promptly forward the error message to the owner. Once the data are validated by the MAT system, the data are sent to TRACS for tenant and voucher processing. All error messages are automatically returned via the sender's TRACSMail account, and users should review the contents of their mailbox daily.

C. Key Procedures

1. Owners and Contract Administrators must collect and send data to HUD in the prescribed MAT format to the MAT subsystem, which is part of TRACS.

2. The transmission of the data is prescribed in two formats: MAT Tenant System Record Format (MAT 10) and MAT Voucher/Payment System Record Format (MAT 30), for data on tenants and vouchers, respectively.

a. The MAT Tenant System Record Format is based on the HUD 50059 Data Requirements, Move-Out, Termination, and Unit Transfer or Gross Rent Change data. The MAT 10 records are subdivided into "sections" to further clarify the data in the 50059 data requirements. Refer to the MAT System specifications at http://www.hud.gov/offices/hsg/mfh/trx/trxdocs.cfm for a complete listing of the MAT Tenant System Record types, along with descriptions of each record type, edits, and additional information on data submissions. Refer to Figure 9-3 for the MAT Tenant System Record Types.

Figure 9-3: MAT Tenant System Record Types

Type	Description	Notes
TENHR	Tenant Header Record (one)	
MAT10*	*Section*	
	1 – (Re) Certification Header Record	There is always a single header record for each (Re) Certification.
	2 – Basic Record (one per MAT 10)	There is always a single basic record for each (Re) Certification.
	3 – Family Record (multiple per MAT 10)	There is a record for each family member recorded on the (Re) Certification.
	4 – Income Record (multiple per MAT 10)	There is a record in this Section for each family member.
	5 – Asset Record (multiple per MAT 10)	There is a record in this section for each asset recorded on the (Re) Certification.
MAT 15	Address Record (multiple)	
MAT 20	Delete (Re) Certification	Further record type.
MAT 40	Move-Out Record (multiple)	
MAT 65	Termination Record (multiple)	
MAT 70	Unit Transfer or Gross Rent Change Record (multiple)	
TENND	Tenant Batch Trailer Record (one per TENHR)	
TENER	Tenant MAT Error Record (multiple)	
TENTR	Error Trailer Record (one per transmission)	

***MAT 10 Note:** MAT 10 records are subdivided into "sections" to further clarify the data on the form previously identified as HUD-50059. An error detected in one of these sections is identified not only by the record (MAT 10), but also by the specific section. Because the MAT 10 record is further subdivided into sections, each MAT 10 has a dedicated header record of its own to summarize its transmitted data. These header records are in addition to the single MAT header record defining the entire transmission.

b. The MAT Voucher/Payment System Format compiles assistance payment and voucher data. Refer to the MAT System specifications at http://www.hud.gov/offices/hsg/mfh/trx/trxdocs.cfm for a complete description of this record type, edits, and additional information on data submissions. Refer to Figure 9-4 for the MAT Voucher/Payment System Record Types.

Figure 9-4: MAT Voucher/Payment System Record Types

Type	Description	Notes
VCHHR	Voucher Header Record (one)	
MAT30	Assistance Payment Header Section 1 – Assistance Payment Header Record 2 – Assistance Payment Summary Record 3 – Voucher Detail Record 4 – Voucher Adjustment Detail Record 5 – Approved Special Claims: (Subsections are as follows) • For Unpaid Rent and Damages • For Rent-Up Vacancy • For Regular Vacancy • For Debt Service • For Debt Service Summary 6 – Miscellaneous Accounting Request	 Future Record from 52670-A Future Record from 52670-A Submit one section 5 for each special claim. Future Record Future Record Future Record Future Record Future Record Submit one Section 6 for each miscellaneous payment request.
MAT 31	Delete Voucher Record	
VCHND	End of Transmission Record (one per transmission)	This record format is shared with the MAT Tenant System.
VCHER	Voucher Error Record	
VCHTR	Voucher Error Trailer Record	
VCHVC	Voucher Transaction Control Record	

3. The MAT system validates the data.

   a. Data that have not been validated by the MAT system are not submitted to TRACS. When data submissions are not validated, then the sender – either the owner or Contract Administrator – will receive an error message via TRACSMail. See Figure 9-5 for some examples of MAT error messages.

   b. Data validated by the MAT system are sent to the TRACS databases. When data submissions are validated, then the sender – either the owner or Contract Administrator – will receive an acceptance message via TRACSMail.

Figure 9-5: Sample MAT Error Messages

Code	Error Message
Transmission Level Errors	
1	**"TRANSMISSION REJECTED: INVALID TENHR DATE/TIME"** Condition: This message is generated only for an invalid date/time in the TENHR. Processing resumes at the next TRACSMail header.
9	**"TRANSACTION RELEASE/VERSION NUMBER IS INVALID"** Condition: The MAT transaction contains a Release/Version Number that TRACS does not recognize as current. The complete transaction is rejected.
MAT Tenant System Errors	
3	**"MISSING BAD RECORD, SECTION 2, FOR MAT 10"** Condition: There must always be a basic record, Section 2, following a MAT 10 Section 1 record. All sections for this 50059 are rejected.
G	**"MAT 10 REJECTED: MISSING HEAD OF HOUSEHOLD IN FAMILY RECORDS"** Condition: One family member must have an "H" coded in Section 3 FIELD #7, Relationship Code, and "01" coded in Section 3 Field #3, Member Number. All sections for this MAT 10 are rejected.
MAT Voucher/Payment System Errors	
V7	**"MAT 30 REJECTED: MAT 30 SECTION RECORDS ARE OUT OF SEQUENCE"** Condition: MAT 30 Sections were not in the following order: 1, 2, 5, 6. All sections for this MAT 30 are rejected.
VO	**"MAT 30 REJECTED: A COUNTER MAT 30 SECTION 1 IS INCORRECT"** Condition: The count of Summary, Approved Special Claims, and Miscellaneous Accounting records in the MAT 30 Section 1 count fields does not equal the MAT calculated count. All sections for this MAT 30 are rejected.

4. The MAT system sends data that have passed the initial MAT edits to the TRACS database. TRACS further reviews the data for validation. Data collected and stored in TRACS undergo further edits to ensure consistency with data already in TRACS and criteria relating to accuracy and compliance with eligibility rules.

5. The sender of data will receive an error message from TRACS via TRACSMail when errors exist. The sender of data must correct the errors and resubmit the data for validation within the appropriate timeframe.

   a. The MAT System identifies three categories of errors: field errors, mandatory errors, and format errors. Field errors denote data that failed data-type or date validation edits. Mandatory errors indicate data that contain inappropriate spaces, zeros, or incorrect values. Format errors represent record counts in the MAT transmission header or MAT 10 header records that did not equal the MAT calculated counts, or instances where the sequence numbering for the file is inconsistent.

   b. The sender of data must attempt to correct all MAT and tenant errors prior to the end of the voucher filing period. Errors requiring retransmission must be corrected before the data are resubmitted to TRACS. Once a transmission is validated through MAT, the transmission is forwarded to TRACS to be checked against appropriate program-eligibility criteria.

   c. TRACS processing compares the tenant and voucher data with the business rules for the associated subsidy program, confirms completeness of submitted information, and reviews calculations for accuracy. TRACS generates three categories of error messages: fatal error messages, discrepancy messages, and informational messages.

   d. Error messages returned to the sender via TRACS Mail contain brief control and status messages and provide guidance on additional actions required. See Figure 9-6 for sample TRACS message transmissions. TRACS Discrepancy Code Tables are detailed in the MAT User's Guide. Additional information on TRACS error messages and appropriate follow-up actions can also be found in the Industry User Guide for TRACS Internet Applications.

6. The sender will receive an acceptance message when TRACS accepts the data via TRACSMail and the submission is complete.

7. The tenant/contract/voucher data stored in the TRACS database is available to authorized users for on-line viewing/updating and retrieval of voucher and certification information. Users should refer to the "Industry User Guide for TRACS Internet Applications" for detailed information to assist them in accessing and using the Voucher Query or a number of tenant queries. For additional information, refer to the Industry User Guide at http://www.hud.gov/offices/hsg/mfh/trx/trxngde.cfm.

Figure 9-6: Sample TRACS Message Transmissions

@*@ TRACM00098TRACM00098

User Defined: 00065
Project Name: PINECREST
Project No.: 24755316
Contract No.: CA30M000001
Unit No.: 106
SSN: 399369712
Name: WASHINGTON, REBECCA
Tenant No.: 106C
Effective Date: 2001-10-01
Fatal Error: F0145
CERT EFFECT DATE MUST BE UNIQUE OR BASELINE "Y" OR ACTION PROCESS CODE "1"

@*@ TRACM00098TRACM00098

User Defined: 00098
Project Name: PINECREST
Project No.: 13644205
Contract No.: CA30M000121
Unit No.: 100
SSN: 565883719
Name: COLE, KENNETH
Tenant No.: 101C
Effective Date: 2001-06-01
Discrepancy: CE004
Action Required: 3
INTERIM EFFECTIVE DATE IS PRIOR TO PREVIOUS EFFECTIVE DATE
REPORTED EFFECTIVE DATE = 000000020010601
REPORTED PRIOR EFFECTIVE DATE = 000000020011101
VERIFY EFFECTIVE DATE OF THIS CERTIFICATION

@*@ TRACM00440TRACS00440

User Defined: 0003678
Project Name: HOLIDAY HEAVEN
Project No.: 059685012
Contract No.:
Unit No.: D9
SSN: 223626782
Name: VAUGHAN, SARAH
Tenant No.:
Effective Date: 2001-06-01
Informational: UA020
MAT10 SUBMITTED FOR AN OCCUPIED UNIT ADDRESS
Reported Head Id: 223604832
Occupying Head Id: 224356673

D. **Record-Keeping Requirements for 50059 Data and Vouchers**

1. Owners must keep the signed 50059 facsimiles for tenants from the time of move-in to move-out and for a minimum of three years thereafter. Owners may move older records off-site when files get large.

2. Owners must keep a signed paper copy of the subsidy vouchers for at least five years after HUD/Contract Administrator action.

9-8 Correcting Discrepancies and Resubmitting Information

A. This paragraph identifies resources for correcting common errors and resubmitting the information to TRACS for final validation.

B. Refer to Figure 9-7 for guidance on understanding and solving payments error messages. The figure provides references to sources of basic information for resolving payments error messages that are a result of MAT Voucher/Payment System Record submissions or LOCCS submissions.

Figure 9-7: Guide to Understanding and Solving Payments Error Messages

How to Obtain a Copy of the MAT Guide
The MAT User's Guide describes the prescribed format MAT record layouts, field characteristics, and HUD-form data locations for all TRACS data transmitted to and from HUD. A copy of the MAT Guide can be obtained by accessing the TRACS website at http://www.hud.gov/offices/hsg/mfh/trx/trxsum.cfm. Click the link to TRACS Documents and follow the instructions provided. Contact the HUD Multifamily Help Desk TRACS Hotline toll-free at 800-767-7588 with questions or problems.
Formatting Resources
If you need help correctly formatting a MAT record, owners should contact their software vendor. The vendor should be able to provide troubleshooting advice and guidance on how to submit a correction, deletion, etc. If a determination is made that there is a problem involving the HUD system or if owners need further advice on when to submit a correction, deletion, etc. after consulting with their software vendor, they should contact the Multifamily Help Desk TRACS Hotline toll-free at 800-767-7588. When the problem is other than a systems issue, such as a late contract renewal or insufficient funding, owners should contact their Contract Administrator or the local HUD Field Office.
Error Message Basics
The reference materials available on the HUD TRACS website provide additional information on error messages and instructions on follow-up actions. If owners cannot resolve a problem on their own, their software vendor should be able to assist in resolving the problem and enable owners to either resubmit their original transaction or submit a correction to the original submission.

C. If TRACS finds errors in the transmission, TRACS will send the sender an error message via TRACSMail.

D. Senders must correct errors before the data can be resubmitted to TRACS.

1. Format errors, such as field format and missing mandatory data, affect the specific record or field in error. Other errors affect the entire transmission to the sender.

2. Depending on the type of errors found, all or part of the transmission is rejected and an error report is made available to the owner for correction and resubmission of data via TRACSMail.

E. Resubmissions with corrected data follow the same procedure as the original submission.

F. Owners must attempt to correct all MAT errors and tenant errors prior to the end of the voucher filing period.

1. The following TRACS Tenant Discrepancy Action Required Codes indicate the submission procedures for corrections.

a. 01 – Owner must submit correction within 45 days; these errors generally affect the assistance payment calculation.

b. 02 – Owner must submit correction on the next submission and/or certification.

c. 03 – Informational message; may or may not require correction.

d. 04 – Follow-up required. (For Field Office use only.)

e. 05 – Discrepancy exists between data submitted to TRACS and Social Security information for the tenant.

2. Discrepancy data are stored in the TRACS database with the certification data as historical data. The record with corrections, the historical data, and the corrected information are loaded into the database. Transactions rejected by the MAT subsystem or rejected as fatal errors by TRACS are not stored in the TRACS database. Fatal errors must be corrected and resubmitted.

9-9 Resources

A. This paragraph summarizes some of the resources available to TRACS users. Owners should visit the TRACS website often, as announcements and documents are posted regularly.

TRACS Information Updates

TRACS frequently posts announcements on the TRACS website. These announcements notify owners and management agents of new procedures being implemented in TRACS.

Link to http://www.hud.gov/offices/hsg/mfh/trx/trxsum.cfm for information on new TRACS error messages, for implementation of industry specifications, for TRACS Industry meetings, and for other important announcements.

B. References are provided in this paragraph to resources for understanding TRACS and interpreting and correcting error messages. All resources can be accessed through the TRACS website located at http://www.hud.gov/offices/hsg/mfh/trx/trxsum.cfm.

C. TRACS produces documents for owners to use in interpreting and correcting error messages. All documents can be accessed via the TRACS Documents website at the following address: http://www.hud.gov/offices/hsg/mfh/trx/trxdocs.cfm. Documents that are current as of publication of this handbook are as follows:

1. TRACS Information Packet is intended to assist in the data collection for TRACS: http://www.hud.gov/offices/hsg/mfh/trx/trx500.cfm

2. Monthly Activity Transmission (MAT) User's Guide provides the information necessary to understand the MAT requirements for preparing and transmitting data. This guide describes the prescribed MAT record layouts, field characteristics, and procedures to respond to error messages returned by TRACS: http://www.hud.gov/offices/hsg/mfh/trx/trxmatg.cfm

3. Industry User Guide for TRACS Internet Applications provides detailed information to assist you in accessing and using the Voucher, Certification, and Tenant Unit Address Queries. The queries are used to facilitate retrieval of voucher and certification information: http://www.hud.gov/offices/hsg/mfh/trx/trxngde.cfm

4. TRACSMail User's Manual walks owners through the process of installing and implementing TRACSMail. The document includes hardware and software standards and e-mail recommendations. It helps owners verify the information and requirements for creating MAT files, and it details the process to set up dial-up networks, e-mail installation and profiles, and connections to TRACSMail: http://www.hud.gov/offices/hsg/mfh/trx/trxdocs.cfm

5. Owners also have the option of contacting the TRACS Hotline or their software vendor with any questions concerning MAT errors. Owners and Contract Administrators should always contact their software vendor first to address issues concerning their software. When the problem cannot

be resolved by the software vendor, owners should then call the toll-free TRACS hotline number, which is 800-767-7588.

a. The TRACS hotline uses the MAT User's Guide to identify the mandatory field and format errors. The TRACS hotline is also authorized to respond to file transfer errors.

b. Except for fatal TRACS errors, the errors reported back to the owner are also available to the Field Office personnel through TRACS screens. With both owners and Field Offices equipped with summarized accounts of system-detected errors, inconsistencies in information can be quickly identified and corrected.

c. When Field Office and TRACS hotline staff interact with an owner to resolve errors or other problems, the TRACS on-line discrepancy screens are used to look up the tenant data and reported errors.

6. TRACS Hotline personnel, Field Office staff, and Contract Administrators cannot update information in TRACS. Owners must always resubmit their own data to correct errors. Field Office staff can correct incorrect project/contract numbers in the Contracts database and update funding amounts in the ARAMS database.

Section 2: Payments

9-10 Key Regulations and Statutes

This paragraph identifies key regulatory and statutory citations pertaining to Section 2: Payments. The citations and their topics are listed below.

A. 24 CFR 880.601, 881.601, 883.701, 884.118, 886.119 (Responsibilities of the owner)

B. 18 U.S.C.1001 (Criminal prohibitions and penalties)

C. 31 U.S.C. 3729 (Civil prohibitions and penalties)

9-11 Assistance Payments, Special Claims, Utility Reimbursements, and Excess Income – General

A. This section describes the various types of payments that involve owners, tenants, and HUD in connection with rent payments and rent subsidy. In some cases, the owner receives assistance from HUD in the form of a rent subsidy. In HUD-subsidized multifamily properties where tenants pay for utilities, the owner receives assistance from HUD, which includes subsidy amounts for both rent and

utilities. Under certain circumstances described in paragraph 9-13, the owner must remit a utility reimbursement to tenants.

B. While paragraph 5-25 describes the methods by which the owner calculates the tenant rent and total tenant payment (TTP) for properties with project-based rental assistance, this section describes the requirements and procedures that owners must follow to receive assistance payments from HUD for the property.

C. This section explains when owners may bill HUD for special claims: tenant damages, unpaid tenant rent, vacancy losses, and debt service. This section also describes the procedures owners must follow to file a special claim.

D. In addition, this section describes the rules and procedures for handling utility reimbursements. Paragraph 5.26 A explains how utility allowances affect the rent the tenant ultimately pays for his or her unit. The owner may receive utility allowances in addition to rental assistance for households in assisted units when the tenants are responsible for paying utility costs. This section explains circumstances under which owners must give tenants utility reimbursements.

E. Finally, this section discusses requirements and procedures that owners of Section 236 properties must follow to report and remit or retain excess income (i.e., amounts the property receives when a tenant's rent payment is in excess of the basic rent for the unit).

9-12 Assistance Payments

A. Applicability

Assistance payments are available to all properties under the programs listed in Figure 1-1 except:

1. Section 236 properties without assistance; and

2. Section 221(d)(3) BMIR properties without assistance.

B. Key Requirements

1. To obtain assistance payments, the owner must submit a monthly subsidy billing to HUD or the property's Contract Administrator. The submission is required even when the owner is not requesting any assistance for the billing month. (See Section 1 of this chapter for information on required electronic transmissions to HUD through the Tenant Rental Assistance Certification System – TRACS.)

   NOTE: When a voucher is submitted that does not request assistance or that pertains to a contract administered by a non-performance based Contract Administrator paid through HUDCAPS, the voucher information is stored in TRACS and is not transmitted to the Line of Credit Control System (LOCCS).

2. A form HUD-52670, *Housing Owner's Certification and Application for Housing Assistance Payments*, or a facsimile of form HUD-52670 bearing an original signature and consistent with the corresponding electronic transmission, must be kept on file by the owner for each monthly subsidy period that the owner receives assistance payments. The file must also include the signed form HUD-52670-A part 1, *Schedule of Tenant Assistance Payments Due* or a facsimile of form HUD-52670-A part 1 and forms HUD-52671-A through D, *Special Claims Worksheets* (if applicable), as supporting documentation.

3. A facsimile of the 50059 data requirements effective in the voucher month, with the original signature of the head, spouse, co-head, and all adult family members and consistent with the forms HUD-52670 and HUD-52670-A must be on file at the project for each tenant listed on the form HUD-52670-A.

4. The owner's application for assistance payments must be limited to the number and type of units under contract as of the given subsidy month according to the identification of contract units and rents in the project-based assistance payments contract. Assistance for any particular unit cannot be claimed under more than one assistance contract for the same voucher period except for partial-month occupancy when a move-in and move-out is processed in the same month.

5. The owner must comply with the assistance contract in order to continue receiving assistance payments from HUD.

C. **Procedures for Obtaining Assistance Payments from HUD**

To obtain monthly assistance payments for all eligible units, the owner must submit a request for payment to HUD or the property's Contractor Administrator.

1. To secure payment, owners must complete forms HUD-52670 and HUD-52670-A part 1 on a monthly basis**.** The owner must submit form HUD-52670-A part 2 as applicable only after special claims have been approved by the HUD Field Office or Contract Administrator. The owner must prepare a separate form HUD-52670 for each of the property's assistance contracts to report the following:

   a. Regular tenant assistance payments and adjustments; and

   b. Approved special claims.

2. The owner must submit all of the information requested on these forms electronically to TRACS, as described in Section 1 of this chapter.

3. The owner must supply the following information from form HUD-52670:

   a. Contract information.

(1) The property name as it appears on the assistance contract;

(2) FHA/EH number. For all Section 202 and Section 811 projects use the 8-digit project number;

(3) Section 8, PAC, or PRAC contract number. For properties with any type of Section 8 assistance, a PAC contract, or a PRAC contract, the owner should include the 11-digit contract number;

(4) Type of subsidy;

(5) Managing agent's name;

(6) Employer Identification Number (EIN); and

(7) Payee's name and address.

b. Occupancy information.

(1) Total units covered under the assistance contract;

(2) Number of units currently receiving tenant-based subsidy;

(3) Number of vacant units; and

(4) Number of units that are occupied by market-rate tenants.

c. Information requirements for pre-1981 universe properties. Owners of properties with Section 8 contracts that became effective before October 1, 1981, must provide the information requested on form HUD-52670-A.

d. Information requirements for post-1981 universe properties. Owners of properties with Section 8 contracts that became effective on or after October 1, 1981, must provide, in addition to the information requested on form HUD-52670-A, the following information:

(1) Project-based exceptions in use;

(2) Project-based exceptions allocated; and

(3) Tenant-based exceptions in use.

e. Other information.

(1) Voucher month for which the owner is requesting the assistance;

(2) The number of units for which each type of payment is requested; and

(3) The total amount the owner is requesting from HUD.

D. **Assistance Payment Calculations**

1. For Section 8, Section 202 PAC, RAP, and Rent Supplement properties, the assistance payment is the gross rent minus the TTP. If applicable, the assistance payment may include a utility reimbursement that the owner must provide to the tenant. For a discussion of utility reimbursements, refer to paragraph 9-13.

2. For Section 811 PRAC and Section 202 PRAC units, the assistance payment is the difference between the unit operating rent and the TTP.

   a. The difference between the unit operating rent and the TTP may be a negative amount. If so, the owner must record this amount on the voucher.

   b. If the difference between the monthly operating rent potential and TTP for all units covered by the assistance payment contract is a negative amount, then the owner must deposit this amount into the property's Residual Receipts account on a monthly basis.

E. **Payments for Partial-Month Occupancies**

Owners are entitled to assistance payment only for the actual number of days during the month that the tenant occupied the unit. If the move-out date is unknown because the tenant failed to notify the owner prior to moving out, the move-out date is the day the vacancy is discovered.

1. Exception for deceased tenants. The owner must prorate the assistance payment for a tenant who died during the month to the earlier of

   a. 14 days after the tenant's death; or

   b. The day the unit was vacated.

2. Calculating assistance for units vacated and re-occupied on the same day. For a unit that is vacated and re-occupied on the same day, the owner is only entitled to request assistance for the former tenant through the last full day of occupancy. The owner will request assistance for the new tenant beginning with the move-in day. The owner must never request assistance for both tenants on the same day.

3. Calculating partial-month occupancies.

   a. The owner must calculate partial-month occupancies by:

(1) Dividing the monthly assistance amount by the actual number of days in the month;

(2) Rounding the result to the nearest $0.01 (i.e., round up at $0.005) (e.g., $1.645 becomes $1.65); and

(3) Multiplying the result by the actual number of days the tenant lived in the unit.

b. The owner must round the result of the multiplication above to the nearest whole dollar. The owner will round up starting at $0.50.

c. When a tenant moves or transfers out of a unit or tenancy is terminated, owners must calculate assistance for these partial-month occupancies using the calculation method shown in Example – Move-Out below.

Example – Move-Out

A tenant moved out on February 17, 2000 (a leap year). The assistance payment is $343 at the time of move-out. This example calculates the amount of money the owner must reimburse HUD for February.

Monthly assistance:	$343.00
Divided by 29 days:	29
Daily assistance payment:	$11.8275 = $11.83 (daily assistance is rounded to the nearest $0.01)
Multiply by the number of days the tenant actually lived in the unit:	17
Assistance earned by the owner:	$201.11
Round to the nearest dollar:	$201.00

This equals the amount of assistance the owner is entitled to keep. Because the assistance was billed for in advance, the owner must reimburse HUD the difference between the monthly assistance and the amount the owner is entitled to keep.

Monthly assistance:	$343.00
Less eligible assistance:	-$201.00
Amount reimbursed to HUD:	$142.00

d. When a tenant moves or transfers into a unit, converts from RAP or Rent Supplement, or undergoes initial certification, owners must calculate assistance for these partial-month occupancies using the calculation method shown in the Example – Move-In below.

Example – Move-In

A new tenant moved in on December 16. The assistance payment is $350. This example calculates the amount of money the owner/agent must bill HUD for December.

Monthly assistance:	$350.00
Divided by 31 days:	31
Daily assistance:	$11.2903 = $11.29
Multiplied by the number of days the tenant actually lived in the unit:	16
Assistance earned:	$180.64
Round:	$181.00

The owner/agent will bill HUD for this amount.

4. Guidelines for adjustments.

   a. A Unit Transfer may involve two adjustment calculations. The end of subsidy in the old unit (Unit Transfer-Out) has an effective date one day earlier than the effective date of the unit transfer. The start of subsidy in the new unit (Unit Transfer-In) is as of the effective date of the unit transfer.

   b. All adjustments are done from the effective date of the certification action forward to the earlier of the following:

      (1) The date of the voucher on which the adjustment is being reported; or

      (2) The effective date of the next certification in the historical chain of certifications.

   c. If the action causing the adjustment affects a subsequent certification or certifications in the chain of certifications, then the owner must correct the subsequent certification(s) and calculate the adjustment(s) related to that certification(s).

   d. On the voucher, report each adjustment calculated. Do not simply report a grand total adjustment related to the action causing the adjustment. Reporting each adjustment calculated will result in a detailed audit trail for Contract Administrators and HUD.

   e. Calculate daily subsidy by dividing by the number of days in a month.

   f. Round the daily subsidy to the nearest $0.01.

   g. If an action generates an adjustment involving two partial months, each partial month adjustment would use the daily subsidy

calculated using the number of days in that month. An adjustment could use two different daily rates.

F. **Certifications Required of the Owner**

In order to receive an assistance payment, the owner must certify each month that:

1. All of the required information was reported to HUD.

2. The information provided by the owner was true.

3. Assistance payments, recertifications, and special claims are computed accurately.

4. The owner has met all of the requirements in the assistance contract.

5. All required unit inspections have been completed (i.e., move-in and move-out).

6. All assisted units are in a decent, safe, and sanitary condition.

7. The owner has not previously billed for or received the assistance payments requested in the current voucher.

8. The facts and data reported to HUD are actual and timely (i.e., the household for which the owner is requesting the assistance payment actually resides in the unit).

9. Payments have not been received from the tenant or other sources beyond that authorized in the assistance contract or the lease, except as permitted by HUD.

G. **Criminal and Civil Penalties for Fraud**

If owners knowingly submit false information on the assistance payment voucher, they may be subject to criminal and/or civil penalties, as well as penalties imposed by HUD.

1. Criminal prohibitions and penalties.

   a. Owners and their agents are prohibited from knowingly and willingly making or using a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States.

   b. The actions described above are punishable by a fine of not more than $10,000, or imprisonment for up to five years, or both.

2. Civil prohibitions and penalties.

   a. The owner is prohibited from knowingly presenting, or causing to be presented, a false or fraudulent claim; or knowingly making, using, or causing to be used, a false record or statement; or conspiring to defraud the government by getting a false or fraudulent claim allowed or paid.

   b. An owner convicted of the actions described above is subject to a civil penalty of not less than $5,000 and not more than $10,000, plus three times the amount of damages.

3. Penalties imposed by HUD. If an owner makes false statements or false certifications on the voucher, this may lead to the imposition of:

   a. Penalties and assessments under the Program Fraud Civil Remedies Act as implemented by HUD's Regulations, 24 CFR, part 30;

   b. Civil money penalties under the HUD Reform Act of 1989, as implemented by HUD's Regulations, 24 CFR, part 28; or

   c. Administrative sanctions by HUD pursuant to CFR Part 24.

9-13 Utility Reimbursements

A. Overview

In properties with individually metered units, tenants pay their own utility bills. However, HUD has established a means to help ensure that tenants can pay their utility bills; as part of the assistance payment, tenants may receive either a utility allowance or utility reimbursement.

B. Key Requirements

1. Funds covering the utility reimbursement will be paid to the owner in trust, solely for the purpose of making utility reimbursements.

2. The owner must provide the utility reimbursement to the tenant or utility provider within 5 business days of receipt of the assistance payment from HUD.

C. Reimbursement Options

Rather than paying the utility reimbursement directly to the household, if the household and utility consent, the owner may:

1. Make the utility reimbursement payable jointly to the household and the utility company; or

2. Pay the reimbursement directly to the utility company.

9-14 Special Claims

A. General Guidelines for Processing Special Claims

HUD or the Contract Administrator will review and process special claims following the guidelines herein.

1. HUD or the Contract Administrator will review and process a submitted claim within 45 business days of receipt of that claim. All required documentation and materials must be submitted with the claim to ensure the timely processing of the claim.

2. Acceptable claims will be approved, and a copy of the appropriate signed and dated claim forms will be sent to the owner.

   NOTE: The owner is not entitled to vacancy payments for the period following occupancy by a police officer or security personnel.

3. Unacceptable claims (e.g., not allowed, or unsupported) will be marked as denied, along with a brief explanation in writing, and returned to the owners. If a claim is denied or reduced, the owner will be notified in writing of the reason(s) for denial, and of the right to appeal the decision. This letter will include the name and address of the person to whom the appeal should be made. The owner may appeal a denied or reduced claim within 30 days of the receipt of the denied or reduced claim. The appeal should include a brief explanation as to why the claim should be paid, along with any new or additional supporting documentation. HUD will process the appeal within 30 days of receipt of the appeal.

4. HUD or the Contract Administrator must assign the HUD-specified special claims ID to the submission and include this ID on documentation returned to the owner.

5. HUD or the Contract Administrator may pay the claim directly upon approval. Otherwise, the owner should follow instructions from HUD or the Contract Administrator for receiving payment of special claims.

6. If HUD is not paying assistance for a household, the owner is not eligible for special claims.

B. Claims for Unpaid Rent and Tenant Damages

1. Who may bill HUD for unpaid rent and tenant damages? Owners may file a claim for unpaid rent and tenant damage claims for Section 8, Section 202 PAC/PRAC, and Section 811 PRAC units.

2. Key requirements.

   a. The owner must have collected from the tenant the maximum allowable security deposit in order to file a claim. If the owner has agreed to accept the security deposit on an installment basis and

the tenant moves out before the entire security deposit is collected, the unit is not eligible for special claims payment.

b. HUD's liability is limited to the contract rent in effect when the tenant vacated the unit minus (1) the security deposit plus accrued interest and (2) any money collected from the tenant to cover the unpaid rent and damages.

c. State and local law must permit claim amounts to be deducted from the tenant's security deposit.

d. Damages must be due to tenant negligence or abuse. The owner may not request a special claim for routine maintenance and normal wear and tear.

e. Owners must provide evidence that the tenant was billed for unpaid rent and/or damages and that reasonable steps were taken to collect the debt.

3. Calculating the claim amount.

a. The owner must use form HUD-52671-A to calculate the claim amount.

b. The total claim for unpaid rent and tenant damages may not exceed the contract rent in effect when the tenant vacated the unit minus the security deposit plus interest earned and amounts collected from the tenant or other sources to cover the unpaid rent and damages.

Example – Calculating the Claim Amount

The owner holds $65.00, which includes the security deposit and interest earned. The tenant left owing $300 in unpaid rent and $200 in damages. The owner is unable to collect payment from the tenant for rent or damages. The contract rent at the time of the move-out is $400.00. HUD will pay up to $335.00 (contract rent minus the security deposit and interest).

NOTE: Although the claim form HUD-52671-A does not appear to accommodate it, amounts claimed for "other charges due under the lease" may be grouped with unpaid rent on this form.

4. Processing claims for unpaid rent and tenant damages.

a. The owner must submit a claim for approval within 180 days from the date the vacated unit is available for occupancy. HUD or the

Contract Administrator must approve the claim prior to payment. Claims should be submitted only after the claim period has ended. Owners may not submit both a request for special claim and a request for reimbursement from the Reserve for Replacement account for the same item.

b. The owner must submit the documentation to HUD or the Contract Administrator. The submission must include:

(1) Form HUD-52671-A, showing the calculation of the claim amount; and

(2) Evidence that reasonable steps were taken to collect the debt from the tenant:

Certified letter to tenant detailing the unpaid rent and other charges, the disposition of the security deposit, a demand for payment, and notice to the tenant that failure to pay the sums due will result in the owner/agent hiring a collection agency to collect the debt.

Documentation that the appropriate security deposit was collected from the tenant. A copy of the original lease will show the amount of the security deposit collected at move-in. To document that the correct amount was collected, the owner must submit a copy of the signed 50059 facsimile completed at move-in.

Documentation that the matter was turned over to a collection agency for collection and that the collection agency has attempted to collect the debt (i.e., a copy of the agency's first demand letter).

c. HUD or the Contract Administrator will:

(1) Confirm that the owner submitted the required documents with the claim;

(2) Confirm that tenant data exists in TRACS;

(3) Review the calculation; and

(4) Confirm that the appropriate security deposit was collected from the tenant.

d. If the review results in a reduction or denial of the claim, HUD or the Contract Administrator will notify the owner and give the owner the opportunity to submit additional documentation to support the claim.

e. If the claim is approved, it will be assigned a processing number and a claim ID number, marked as approved, and returned to the owner. HUD or the Contract Administrator will maintain a copy of the approved form with supporting documentation.

f. HUD or the Contract Administrator may pay the claim directly upon approval. Otherwise, the owner should follow instructions from HUD or the Contract Administrator for receiving payment of special claims.

C. Special Claims for Vacancy Losses During Rent-Up

1. Who may bill HUD for vacancy losses during rent-up? Only owners of Section 8, Section 202 PAC/PRAC, and Section 811 PRAC units may submit a claim for vacancy losses during rent-up.

   ELIGIBILITY EXCEPTION: Loan Management Set-Aside, Part 886, Subpart A – Additional Assistance Program for Projects with HUD-insured and HUD-held mortgages are not eligible for vacancy loss recovery during rent-up.

2. Key requirements.

   a. Units must be in decent, safe, and sanitary condition, and available for occupancy during the vacancy period for which the payments are claimed.

   b. Owners must comply with the assistance payment agreement or assistance contract and implement diligent marketing not fewer than 90 days prior to the anticipated date of initial occupancy. Exceptions are as follows:

      (1) Part 883, State Housing Agencies. In the case of substantial rehabilitation, owners must commence marketing 60 days prior to the anticipated date of initial occupancy.

      (2) Part 884, 515 Rural Housing Projects. The owner must notify HUD of any units that may be vacant on the effective date of the contract 30 days prior to the established completion date and periodically thereafter.

   c. Owners must comply with the requirements of the HUD-approved Affirmative Fair Housing Marketing Plan (AFHMP) and all Fair Housing and Equal Opportunity (FHEO) requirements.

   d. The owner must take all feasible actions to fill the vacancy, including contacting any applicants on the waiting list and advertising the availability of the unit in accordance with FHEO requirements.

e. Applicants may not be rejected, except for good cause acceptable to HUD or the Contract Administrator.

f. The owner must submit a list of units leased and unleased as of the effective date of the assistance payment agreement or assistance contract, with justification for the unleased units.

3. Calculating the claim amount. Owners must use form HUD-52671-B to calculate the claim amount.

a. The claim period begins on the earlier of the effective date of the contract or the date of permission to occupy.

b. The claim period cannot exceed 60 days.

c. Claims for Section 8 and PAC properties may not exceed 80% of the contract rent for up to 60 days for each vacancy.

d. Claims for Section 811 PRAC and Section 202 PRAC may not exceed 50% of operating rent for up to 60 days for each vacancy.

4. Processing claims for vacancy losses during rent-up.

a. The owner must submit a claim for approval within 180 days of the date the unit was available for occupancy (date the property received permission to occupy). Claims should be submitted only after the claim period has ended.

b. The owner must submit the documentation to HUD. The submission must include:

(1) Signed and completed claim form HUD-52671-B;

(2) A list of all units leased, and available for lease as of the effective date of the contract, including justification for the available units;

(3) Evidence that marketing began not less than 90 days prior to initial occupancy including:

Copies of advertisements or invoices for advertising expenses substantiating that date; and

Copy of the waiting list.

(4) Documentation that explains the status of the waiting list and the outcome of applicant contacts (i.e., date applicant was contacted, response of applicant, status of applicant's move-in); and

(5) Copies of letters to rejected applicants demonstrating rejection for good cause.

NOTE: Owners need not submit, but must retain in the project's file, evidence of all feasible outreach methods used to establish and maintain the waiting list, such as newspaper advertisements, and fliers.

c. HUD will:

(1) Confirm that all required documents are submitted with the claim and are signed appropriately;

(2) Review all calculations on form HUD-52671-B for accuracy;

(3) Review the documentation describing the status of the waiting list and the outcome of applicant contacts to determine whether or not the owner is maintaining the waiting list and is processing applicants in a timely fashion, including following up on initial contacts and applicant responses;

(4) Confirm from copies of advertising and invoices that marketing began not less than 90 days prior to the anticipated date of initial occupancy;

(5) Review copies of letters to rejected applicants to confirm that rejection was for good cause;

(6) Review the list of units leased and unleased and the justification for the unleased units to determine the reasonableness of the justification;

(6) Return approved or unapproved claims to owners; and

(7) File a copy of the approved form along with supporting documentation.

D. **Claims for Vacancy Losses After Rent-Up**

1. Who may bill HUD for vacancy losses? Owners may file a vacancy loss claim for Section 8, Section 202 PAC/PRAC, and Section 811 PRAC units.

2. Key requirements. These requirements pertain to vacancy losses that occur after rent-up. Subparagraphs C and E address vacancy loss during rent-up and debt service losses.

a. The maximum vacancy period for each vacancy claimed is 60 days, beginning with the day the unit was ready for occupancy.

b. HUD will only pay claims if the units are in decent, safe, and sanitary condition and available for occupancy during the vacancy period. HUD will not pay for vacancy loss for the days in which unit repairs were being made and the unit was being prepared for occupancy.

c. Claims must be submitted after the move-out/move-in dates have been submitted to TRACS. Viewing this data in TRACS will serve as notification to the Reviewing Office of the vacancy. (The move-in date will not apply if the unit is still vacant when the claim is filed.)

d. The owner must comply with the requirements of the HUD-approved Affirmative Fair Housing Marketing Plan (AFHMP) and all Fair Housing and Equal Opportunity requirements. (See Chapter 2 and paragraphs 4-11 and 4-12.)

e. The owner must take all feasible actions to fill the vacancy, including contacting any applicants on the waiting list and advertising the availability of the unit in accordance with Fair Housing and Equal Opportunity requirements.

f. The owner may not reject applicants, except for good cause acceptable to the Reviewing Office.

g. The owner may not cause the vacancy by violating the lease, the contract, or any applicable law.

h. The owner must comply with all HUD requirements on termination of tenancy listed in paragraph 8-5, if the vacancy was caused by an eviction.

i. Owners must not submit vacancy loss claims for amounts that have been paid by other sources, (e.g., forfeited security deposit or Title I payments for vacancy loss incurred while holding units vacant for relocatee).

3. Calculating the claim amount. Use form HUD-52671-C to calculate the claim amount.

a. The claim period begins the day the unit is available for occupancy by another tenant.

For example, if a unit was vacated May 5 and cleaned May 5 through May 8, the claim period would begin on May 9.

b. The claim period cannot exceed 60 days.

c. Claims for Section 8 and PAC properties may not exceed 80% of the contract rent for up to 60 days for each vacancy.

d. Claims for Section 202 PRAC and Section 811 PRAC properties may not exceed 50% of operating rent for up to 60 days for each vacancy.

e. Claims for Property Disposition Set-Aside units may not exceed the housing assistance payment for the number of days elapsed between the date the tenant vacated the unit and the last day of that month plus 80% of the contract rent for any days the unit remains vacant in the following month.

f. Security deposits are applied only if the tenant failed to give proper notice as required under the lease.

g. Total claims must be reduced by any amounts the owner has collected from other sources.

4. Processing claims for vacancy losses.

a. An owner must submit a vacancy-loss claim within 180 days of the date the unit was available for occupancy. Claims should be submitted only after the claim period has ended.

b. The owner must submit the documentation to HUD or the Contract Administrator. The submission must include:

(1) Forms HUD-52670-A part 2, and HUD-52671-C, showing the calculation of the claim amount;

(2) Documentation of the status of the waiting list and the outcome of applicant contacts (i.e., date applicant was contacted, response of applicant, status of applicant's move-in);

(3) Copy of the reconditioning unit log or other maintenance record showing the move-out date, start and finish of each process, date the unit was ready for occupancy, and date the unit was rerented; and

(4) If either the move-out or move-in is a tenant transferring from another unit, the claim period is limited to 60 days for all units involved in the transfer. The owner must submit the following information relating to the tenant transfer:

Documentation stating the reason for the transfer to another unit; and

Evidence the security deposit was transferred, or a new security deposit was secured.

c. HUD or the Contract Administrator will:

(1) Confirm that all required documents are submitted with the claim and are signed appropriately;

(2) Confirm that tenant and move-in and move-out data exist in TRACS;

(3) Review all calculations on form HUD-52671-C for accuracy;

(4) Review the documentation describing the status of the waiting list and the outcome of applicant contacts to determine whether or not the owner is maintaining the waiting list and is processing applicants in a timely fashion, including following up on initial contacts and applicant responses;

(5) Return approved or unapproved claims to owners; and

(6) File a copy of the approved form along with supporting documentation.

NOTE: If the waiting list is closed, it is not necessary to review the owner marketing and outreach methods.

E. Special Claims for Debt Service Losses

1. Who must approve claims? Performance-Based Contract Administrators (PBCAs) will not review or approve special claims for debt service payments. PBCAs do not have oversight responsibility for the financial integrity of the projects that they monitor and are not in a position to evaluate these claims. Therefore, the appropriate HUD office will have responsibility for the review and approval of any debt service special claims from properties assigned to a PBCA. HUD will, in turn, forward the results of its review to the owner, who will forward the results to the PBCA for information and further processing as necessary.

2. Who may bill HUD for debt service claims? Only owners of Section 8 units (except Section 8 LMSA) and Section 202 PAC units may bill HUD for debt service claims. Section 202 PRAC and Section 811 PRAC properties are not eligible for debt service claims.

3. Key requirements.

a. Units must have been vacant for over 60 days. Owners may not receive both vacancy and debt service payments for a unit at the same time. Therefore, a unit is not eligible for debt service payments until the 60-day vacancy period has passed.

b. Claims are limited to 12 months.

c. Payments may not exceed the amortized principal and interest payments due for that unit on the property's first mortgage, or the net operating loss on an unaudited financial statement.

d. Units must be in decent, safe, and sanitary condition and available for occupancy during the vacancy period for which the payments are claimed.

e. Owners must certify that all appropriate actions are being taken to market and fill the vacant units.

f. Projects must show a net operating loss on an unaudited financial statement.

NOTE: Depreciation and owner expenses cannot be included in this statement.

g. The Reviewing Office must determine if the project can achieve financial soundness within a reasonable period of time.

4. Calculating the claim amount. The owner may request a claim for the lesser of the following:

a. The amount of the amortized principal and interest payments attributable to the vacant unit(s). Form HUD-52671-D must be used to calculate this amount.

NOTE: Daily debt service is found on Exhibit 2 of the HAP Contract.

b. The amount of the operating loss attributable to the unit, exclusive of depreciation and any owner expenses. This amount is calculated on an unaudited financial statement.

5. Processing claims for debt service losses.

a. The owner must submit the claims on a semi-annual calendar basis beginning 6 months after the initial 60-day vacancy period.

b. The owner must submit the documentation to HUD. The submission must include:

(1) Form HUD-52671-D, showing the calculation of the claim amount;

(2) Unaudited financial statement, covering a six-month period for which claims are made; and

(3) Written narratives detailing the items below:

Causes of the vacancies;

Causes of the financial problems;

Actions taken to correct the financial condition and to prevent recurrence; and

Sources of funds and timeframes for paying off delinquent mortgage and excessive accounts.

c. HUD will:

(1) Confirm that all required documents are submitted with the claim and are signed appropriately;

(2) Confirm that tenant and move-in and move-out data exist in TRACS;

(3) Review all calculations on form HUD-52671-D for accuracy;

(4) Confirm that the owner will not receive both vacancy and debt service payments for the same period for the unit(s) in question;

(5) Review the property's audited or unaudited financial statement to confirm that the property has not provided the owner with sufficient revenue to cover expenses less depreciation, (i.e., the property must show a net operating loss);

(6) Review the narratives provided and available financial information to determine whether the property is likely to achieve financial soundness in a reasonable period of time;

(7) Return approved or unapproved claims to owners; and

(8) File a copy of the approved form along with supporting documentation.

F. Special Claims Record-Keeping

Owners must retain copies of all special claims approved or denied by HUD, along with all relevant documentation, for a minimum of three years from the date of HUD's action.

9-15 Excess Income

A. Overview

Excess income in Section 236 properties consists of rent collected from the tenants by the owner, on a unit-by-unit basis, that is in excess of either the HUD-

approved unassisted basic rent or the new authorized rent under the Section 8 Mark-Up-To-Market Program. This paragraph discusses the owner's reporting requirements for excess income.

B. **Key Requirements**

1. All Section 236 property owners must report excess income received on a monthly basis to HUD, even in cases where the property does not receive any excess income.

2. If an owner receives excess rent for a unit, the excess income must be remitted to HUD unless the property meets the criteria established in HUD Handbook 4350.1, *Multifamily Asset Management and Project Servicing*, as described in subparagraph C below.

C. **Preparing and Submitting Monthly Reports of Excess Income**

1. Owners must prepare and submit form HUD-93104, *Monthly Report of Excess Income*, by the 10th of the month following the month covered by this report. All owners of Section 236 projects must submit this report even if the property did not generate excess income during the reporting period. Owners must also prepare and submit form HUD-93104 if HUD has approved the property to retain excess income. See **Appendix 13** for a copy of form HUD-93104.

2. The owner must use form HUD-93104, *Monthly Report of Excess Income and Accrued Unpaid Excess Income, Section 236 Projects*.

   a. On this form, the owner must show total gross rent collections received by the property in excess of the HUD-approved unassisted basic rent or the new authorized rent under the Section 8 Mark-Up-To-Market Program less any amount retained by the property for HUD-approved purposes. The difference is the amount the owner must remit to HUD.

   b. The owner must not include the following in the gross rent amount:

      (1) Late fees;

      (2) Non-sufficient funds check fees;

      (3) Utility surcharges;

      (4) Security deposit damage surcharges;

      (5) Section 8 damage surcharges;

      (6) Section 8 vacancy payments;

      (7) Local tax surcharges;

(8) Separate parking or cable television charges if these amenities are not included in the basic rent; or

(9) Tenant accounts receivable collected during the reporting period.

3. In addition to form HUD-93104, and unless the information may be extracted from the property's rent roll, the owner must create a monthly rent schedule. The schedule must include:

   a. The basic rental charge for each unit and the amount collected in excess of the basic rental charge for each unit; and

   b. For each unit that does not receive Rent Supplement, RAP, or Section 8 Assistance of any type, including units in which the tenants pay market rent, the unit number, tenant name, basic rent, and tenant rental payment.

4. Prohibited reporting. It is not permissible for the owner to prepare an aggregate calculation of the excess income paid for all occupied rent-paying units and subtract from this figure any unpaid rent from occupied or vacant units before remitting excess income to HUD.

5. Refer to HUD Handbooks 4350.1, *Multifamily Asset Management and Project Servicing* and 4350.5, *Subsidy Administration* for further information about excess income.

Glossary

50059 Data Requirements

The 50059 data requirements list and describe the data that owners are required to collect from applicants and tenants, and the calculations owners must perform to certify tenant eligibility and tenant rents. This data is submitted electronically to the Tenant Rental Assistance Certification Systems (TRACS) through Contract Administrators or HUD. The 50059 data requirements replace Form HUD-50059. A *facsimile* is a paper copy printed out of TRACS compliant software.

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 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 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. Unreminbursed 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.

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 work, provide assistance, or perform tasks for the benefit of a person with a disability, or animals that provide emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals – often referred to as "service animals," "assistive animals," "support animals," or "therapy animals" – perform many disability-related functions, including but not limited to 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. Some, but not all, animals that assist persons with disabilities are professionally trained. Other assistance animals are trained by the owners themselves and, in some cases, no special training is required. The question is whether or not the animal performs the assistance or provides the benefit needed as a reasonable accommodation by the person with the disability.

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, notetakers, 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%.

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]*

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.

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 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 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]*

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.

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*l*(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*l*(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]*

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.

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 total of the contract rent plus the utility allowance. If there is no utility allowance, contract rent equals operating rent. It is the total monthly cost of housing an eligible family.

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]*

Person with Disabilities [as defined for Civil Rights Protections]

[**NOTE:** The Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the Americans With Disabilities Act and their implementing regulations, define an individual or person with a disability in virtually the same language. Section 504's definition of disability (handicap) is found at 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 housing program or activities, 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 person 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
   g) 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.)

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.

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.

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 5-9.

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.

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.

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]*

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.