
CHAPTER 7. LEASE AND LEASE-OPTION PROGRAMS

SECTION I - POLICY

- 7-1 General. Rentals are to be used only as appropriate to comply with other HUD programs, or when it is determined that it is in the best interest of HUD. Leases must be executed and reflect fair market rents based upon comparable properties unless exempted by specific regulation. Leases may include an option to purchase where appropriate. All rental units must meet habitability requirements. Occupied properties must not be held off the market and should be sold subject to occupancy if necessary.
- 7-2 Lease Term. Occupancy of acquired properties is temporary in all cases and is subject to termination as necessary to facilitate preparing the property for sale and completing the sale, or assignment of the property by HUD to another use or program.
- 7-3 HUD Will Not Discriminate. Tenants for any lease program will be selected without regard to their race, color, religion, sex, national origin, familial status or disability.

SECTION II - INTERNAL CONTROL OBJECTIVES

- 7-4 Authorization. Rentals must be authorized and the approval documented as part of the approved disposition program.
- 7-5 Lease Agreements. Tenants must execute lease agreements in compliance with HUD program policies.
- 7-6 Rent Amount. Rents amounts are based upon fair market rent for comparable properties. Upon receipt, rental collections are deposited on a timely basis and appropriate documentation is maintained.
- 7-7 Compliance with Lease Terms. Lessors comply with lease terms, and appropriate collection procedures are followed to collect delinquent rents.
- 7-8 Maintenance Expenditure Payments. Maintenance expenditure payments are valid, reasonable, appropriately documented and authorized, and comply with procurement and program guidelines. Only authorized vendors are used.
- 7-9 Prompt Payment of Disbursements. Upon authorization, disbursements are promptly processed.
- 7-10 Segregation of Duties. An appropriate segregation of duties is maintained between staff authorizing and processing disbursements.

SECTION III - GENERAL PROCEDURES

- 7-11 Lease Program: The Department will lease its properties to comply with special HUD programs or when it determines that it is in the best interest of HUD. Leases may include an option to purchase in appropriate circumstances. Situations where HUD will lease property include, but are not limited, to those programs shown under the Lease and Lease Option Programs in Section IV.
- 7-12 Approval Authority. The Director of Housing Management or the CPO is authorized to sign the lease. This authority may not be delegated below the level of the CPO. REAMS are not authorized to execute leases. The Field Office, not the REAM, must approve the rental rate and notify the occupants of that rate.
- 7-13 Disposition Program/Case File. See SAMS User Handbook for SAMS processing of the Disposition Program. The case file must include:
- A. Justification of the decision to rent. This decision must be reviewed at regular intervals to assure that rental remains the appropriate option.
 - B. Documentation supporting the rent level and services as stated in lease.
 - C. Repairs approved incidental to renting.
 - D. The original, executed lease and subsequent renewals. The original, executed lease must be in the PD case file, even if the property is leased under the homeless or another HUD program.
- 7-14 Lead-Based Paint. Tenants of properties constructed before 1978 must be provided with the Notice: Watch Out for Lead-Based Paint Poisoning! (Appendix 10). Tenants with children under the age of seven who exercise their purchase option under the lease-option agreement, must comply with testing requirements of the Sales Contract.
- 7-15 Lease Forms. One of the following types of leases must be executed by all lessees. Any and all modifications or alterations to the lease except as provided in this handbook must be approved by the Director, Single Family Property Disposition Division, Headquarters, before a lease is executed:
- A. Standard Lease (Appendix 29)
 - B. Governmental Entity for Defense or Law Enforcement (Appendix 30)
 - C. Governmental Entity or Private Nonprofit (except Homeless) - Lease Form HUD-9534 (Appendix 31). See Chapter 8 for leases used in the homeless program.
 - D. Lease with Option to Purchase (Broker Participation) (Appendix 35).
- 7-16 Terms and Conditions of Occupancy. The conditions of occupancy

shown in this paragraph are applicable to all lease and lease-option programs unless specified otherwise in the specific program, as described in Lease and Lease-Option Programs, Section IV.

- A. Lease Term and Rent. The lease term and amount of rent is dependent upon the specific program under which the property is leased. Specific programs are described in Section IV of this chapter.
- B. Continued Occupancy. Occupancy of acquired property is temporary in all cases and is subject to termination when necessary to facilitate preparing the property for sale and completing the sale, if assigned by HUD to a different use or program, or for cause as discussed in Eviction, Section VI. Unless there are overriding reasons, if occupancy is detrimental to the sales effort, steps are to be taken to evict the tenant.

- C. Other Terms and Conditions:
 - 1. Leases are to be executed for all occupied properties.
 - 2. The rental rate is fair market rent for rent charged for comparable properties. Rent is due and payable on or before the first of the month.
 - 3. Leases are to be effective the first of the month except, leases under occupied conveyance are effective on the date title is taken in the Secretary's name. If tenancy is permitted by the Field Office prior to the first of the month, the days prior to the first of the month are to be prorated and are due with the first month's rent. No rent may be collected or deposited, however, unless title is in the Secretary's name.
 - 4. Leases expire automatically at the end of the initial lease term. If HUD does not give the proper notice to quit and vacate the premises prior to the end of the initial lease term, and the tenant remains in the property, tenancy will continue on a month-to-month basis. HUD's notice to quit and vacate will coincide and expire with the expiration of a monthly rental period. The tenant is responsible for rent payment during the 30-day notice period.
 - 5. A tenant must have the financial ability to pay the monthly fair market rent specified by HUD and contained in the lease agreement.

6. A tenant must pay rent in advance not later than the first day of each month.
7. A 10-day grace period is permissible for the payment of rent. On the eleventh day, rent becomes delinquent and penalty charges assessed. (See paragraph 7-33.) Except, tenants approved under occupied conveyance (excluding those approved under the illness or injury criteria), are not entitled to the 10-day grace period for the first-month's rent.
8. With two days' notice, tenant must agree to allow access to the property during normal business hours by HUD representatives for inspection of the property or HUD contractors doing repairs, and must allow access for real estate brokers and their clients.
9. Other terms and conditions as contained in the lease agreement are incorporated herein by reference and are made a part of the conditions for occupancy.
10. Should there be any inconsistency between the policy as stated herein and the terms of the lease, the terms of the lease prevail.

E. Equipment, Furnishings, Services and Repairs. Determinations of HUD's obligations for appliances, maintenance, repair and utilities are made on a case-by-case basis. In all cases, the agreed upon services or furnishings will be as defined by the terms and conditions of the lease.

7-17 Property Management. Daily management of leased properties is the responsibility of the REAM, except, properties leased to homeless providers are not managed by the REAM.

7-18 Rent.

A. Rate. Unless specified by another HUD program, the rent will be the fair market rate based on rents charged for comparable rented properties. Although the REAM may be used to survey fair market rents, the Field Office is responsible for approving the fair market rent, notifying the tenant of the rental rate at the time the occupant is approved

for occupancy, and executing the lease. These functions must not be delegated to the REAM or other individual. Documentation supporting the rent rate must be filed in the case file. No rent may be collected until occupancy is approved and title is taken in the Secretary's name. The

resulting lease will be dated effective as of the date of acquisition of the properties for tenants approved under occupied conveyance.

- B. Rent Due Date. Rent is due on the first of the month. A grace period of 10 days is permissible unless the tenant account becomes delinquent. See paragraph 7-33 for rent delinquency.
- C. Adjustments to Tenant Accounts. At the discretion of the Field Office Manager and the recommendation of the CPO, the REAM may adjust a tenant account. In any case involving a refund of unused rent, this adjustment may not exceed one-month's rent.
 - 1. Form HUD-9623, Authorization for Tenant Account Adjustments (Appendix 34) is used by the Field Office to instruct and authorize the REAM to adjust or eliminate rental accounts.
 - 2. When adjustment is made by crediting the tenant account, the REAM must issue a credit memorandum in triplicate, to include the tenant's name and address; the reason for and the amount of the credit. This memorandum must be signed and dated by both the tenant and REAM. The original memorandum is sent to the Field Office. The REAM retains a copy and gives a copy to the tenant.

7-19 Tenant Selection.

- A. Fair Housing. The Field Office must ensure that there is no discrimination by race, color, religion, sex, disability, familial status, or national origin.
- B. Eligibility of HUD Employees and Relatives. See paragraph 10-29 C.

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SECTION IV - LEASE AND LEASE-OPTION PROGRAMS

- 7-20 Occupied Conveyance. See Chapter 2.
- 7-21 Leases under Homeless Program. See Chapter 8.
- 7-22 Lease with Option to Purchase. This program allows lease of selected properties for up to one year with an option to purchase in soft market areas. The program is described at paragraph 6-22 C.5.
- 7-23 Occupancy for Caretaker Services. A caretaker lease is allowed, at low or nominal rent, when occupancy is necessary to protect a property from vandalism or rapid deterioration. The Field Office must make determinations of whether a property is likely to be

vandalized based upon information pertaining to past acts of vandalism in the immediate area of the property. To support determinations, Field Offices may use information from all sources including personal observations of the area, property inspection reports, REAM reports and information reported by area residents. Where caretaker's ease is allowed, the case file must be documented to show the basis of the determination to lease. Field Offices may use the standard lease (Appendix 29), or the Lease with Option to Purchase (Appendix 35).

- 7-24 Occupancy to Improve Marketability of Two-to-Four Unit Properties. If necessary to enhance marketability, assume that qualified, rent-paying tenants will improve the marketability of such properties.
- 7-25 Occupancy Prior to Closing or Where Sales Closing is Delayed At Length. Occupancy of a property by the purchaser before sales closing is prohibited except where authorized on a case-by-case basis under the following circumstances:
- A. When the sales closing is delayed for a lengthy period of time.
 - B. When failure to permit occupancy would create an extreme hardship on the purchaser.
 - C. Where permission to occupy is necessary to meet competition; or
 - D. Where occupancy would protect the property against vandalism and theft.

See paragraph 10-27 for details of this program.

- 7-26 Occupancy Where Inventory Exceeds Sales Market Absorption Capability For An Extended Period. Properties located in areas of high concentrations of HUD-owned properties may be listed and advertised for lease. Prior to being eligible for lease, properties must first be offered to the public for sale. Leases may be executed for periods up to one year. Use the standard lease (Appendix 29) or Lease with Option to Purchase (Appendix 35).
- 7-27 Temporary Housing for Disaster Victims/Housing Relief Programs. Acquired properties must be phased into disaster housing relief programs pursuant to legislative and administrative requirements.
- A. Major Disaster. Under a Memorandum of Understanding between the Department and the Federal Emergency Management Administration (FEMA), acquired properties must be made available to temporarily house victims in areas declared by the President to be major disaster areas. The President determines, at request of the State Governor, when a declaration is warranted, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, PL 93-288 as amended by PL 100-707, administered by FEMA.

Pursuant to the terms of the MOU, following the declaration of a disaster, FEMA must request that the Regional Administrator-Regional Housing Commissioner in the Region of

the disaster area, implement the MOU, as follows:

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1. FEMA Request for a List of Available Properties. FEMA will request a list of available properties. Following notification from the Regional Office, the CPO will prepare a list of available properties. Eligible properties are habitable, not under lease or sales contract nor committed to another use or program, and ready for immediate occupancy.
2. Distribution of List.
 - (a) FEMA will provide lists from their resource bank of available housing, including the HUD-owned properties provided by the CPO, to disaster victims who are having difficulty finding rental housing that meets their needs. The disaster victims must locate their own housing.
 - (b) Do not hold the eligible properties off the market. As necessary, FEMA may request updated lists of available properties.
3. Leasing to Disaster Victims. The Field Office will rent directly to the disaster victim, as follows:
 - (a) Lease. Occupants must execute a lease, Form HUD-9532 (Appendix 29).
 - (b) Term. The term of the lease is month-to-month only, with assistance not to exceed one year and subject to termination when the Field Office Manager determines the emergency is over.
 - (c) Maintenance and Operating Costs. HUD is responsible for payment of property taxes and maintenance costs normally required of a landlord pursuant to local law.
 - (d) Rent. The rental rate will be set by the Field Office Manager at the amount deemed appropriate under the circumstances and in the best interest of HUD. In determining the rental rate, it is important to consider that FEMA will provide disaster victims with a rent check in an amount based on the fair market rent in the affected area for a predetermined number of months.

The REAM may be used to assist the Field Office in

determining a appropriate rental rate, but the Field Office must approve the rental rate and advise the disaster victim of the rental rate prior to occupancy. If less than fair market rent is charged, amend the lease to state: "Rent abatement must terminate when the landlord determines the state of emergency is over, or within 12 months of this lease, whichever comes first."

- B. Other Disasters. Field Offices will provide temporary housing, if available, for homeless victims of a civil disturbance or a disaster not declared major. At the direction of the Regional Administrator-Regional Housing Commissioner, or the Field Office Manager, acquired properties are to be made available in response to a request from local government.

The Field Office and local government may determine the best method by which to make eligible properties available, i.e., whether the properties are to be assigned to an agency of local government, or rented directly to disaster victims. Rent may be a nominal amount, but not less than \$1.00, for the duration of the emergency. If rented directly to disaster victims, the rent should be determined only after consideration of whether FEMA or the local government is providing

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a rent subsidy. If other than fair market rent for comparable properties is charged, amend the lease as shown in paragraph 7-27 A.3.(d).

- C. Documentation for File. Case files for each property leased under this program must include a summary report of the disaster; the original, signed lease; a narrative report concerning the tenant; the condition of the property before and after occupancy; prevailing market rent; and, if a nominal rent is charged, the justification for charging less than fair market rent.

7-28 Lease by Government Agencies for Defense, Law Enforcement or Other Purposes.

- A. Field Offices must furnish all possible assistance to government agencies, such as the Department of Defense, Department of Treasury, Federal Bureau of Investigation, Drug Enforcement Administration and U.S. Marshall, in leasing acquired home properties for defense, law enforcement or other purposes, provided sales programs are not impaired. Sales considerations, however, are not to preclude special consideration for rental at fair market rate to dependents of military personnel currently assigned to combat areas. It is

generally advantageous to lease directly to the DOD rather than to rent to persons on active military duty.

1. Notice of Available Inventory. Base commanders and housing officers are to be notified of acquired properties for rent as they become available. Liaison will be maintained as appropriate by Regional or Field Office staff.
 2. Joint Inspection. Each unit to be rented by the military will be inspected by a representative of the local command and of the HUD Field Office to reach agreement on necessary repairs, furnishings and lease terms. No appliances may be installed, nor repair made beyond that which is necessary to ensure habitability, before execution of lease.
 3. HUD-Supplied Services and Equipment. This may include: Range and refrigerator; utilities; maintenance; and such grounds care as normally expected of a landlord. The tenant is expected to cut and water the lawn.
 4. Rent. The Field Office must consult Area or Regional Counsel for current rates, guidelines for which are provided by Title 10 USC Section 2828. Within those limits, rent must be based on comparables rented to the military or Coast Guard, not private sector rentals. Rent must include cost for utilities, and maintenance.
 5. Lease. The lease Governmental Entity for Defense or Law Enforcement (Appendix 30) will be executed for each unit by the Field Office and an authorized representative of the military command. The lease will be distributed pursuant to fiscal procedures.
 6. Term. The lease becomes effective on the date properties are made available for military use, regardless of whether they remain vacant, and runs to the end of each fiscal year and. Extensions pursuant to provisions in the lease must be by written request and Field Office confirmation, with copies distributed according to fiscal procedures.
- B. Field Offices should cooperate with the rental requirements of other government agencies as necessary to meet their needs for defense, law enforcement or other purposes.

7-29 Lease by A Governmental Entity or Qualifying Nonprofit Organization. Properties may be leased by state and local governments, public agencies including Public Housing Authorities, and private nonprofit organizations for use in HUD or local housing programs. The lease may include an option to purchase in appropriate circumstances. Field Offices must determine whether properties

are habitable for lease to eligible occupants. See paragraph 10-20 for sale to governmental entities and private nonprofits.

- A. Prerequisites. A lease may be offered to qualified organizations provided the property meets the intent of the minimum essential requirements of Handbook 4905.1, Requirements for Existing Housing - One to Four Family Living Units, as shown in paragraph 6-19 A and 10-7.
- B. Rent. The rental rate shall be at local market rate for similar properties.
- C. Term. The lease term is one year, renewable for two successive periods of one-year each, unless written notice of intent not to renew is given by either party at least 90 days before expiration of any one-year period.
- D. Lease. The Governmental Entity or Private Nonprofit Lease (Appendix 31) is to be executed by HUD and the governmental entity or nonprofit organization.
- E. Responsibility for Services. The governmental entity or nonprofit organization (Lessee) is responsible for landlord services, including routine maintenance and service calls.
- F. REAM. The REAM continues to carry the property in its inventory and collect monthly rent.
- G. Structure and Systems. HUD is responsible for major structural or systems failure not attributable to tenant misuse or abuse, and for taxes and assessments as due.
- H. Lease Expiration or Termination. Upon lease expiration or termination, the lessee must return the property vacant and undamaged except for normal wear and tear.

7-30 Tenant's Right of First Refusal: Tenants in occupancy, (except former mortgagors or tenants of governmental entities or homeless providers), and tenants where State or local law requires that tenants be offered the right of first refusal (see paragraph 2-14), have the right of first refusal to purchase the property non-competitively prior to its being listed for sale, provided the tenant is a HUD tenant, has a recognized ability to acquire financing and a good rent-paying history, has made a written request to HUD to be offered the right of first refusal.

Upon execution of the standard lease (Appendix 29), Field Offices must give eligible tenants the Letter to Tenant - Right of First Refusal (Appendix 69). Follow procedures shown in Sales to Tenants/Right of First Refusal at paragraph 10-29 B.

SECTION V - RENT MONITORING AND COLLECTION

- 7-31 Collection by REAM. Leased properties for which the REAM has responsibility for rent collection are to be carried in the REAM's inventory. REAMs are entitled to a fee for rent collection, at a rate to be provided by the terms of the contract. Rent must be collected and deposited as shown in Chapter 15. REAMs must submit an invoice for the rent collection fee; they may not deduct it from the amount of any rent collected.
- 7-32 Monitoring of Rent Collections.
- A. Field Offices must monitor monthly rent collections and delinquencies and verify the accuracy of REAM rent collection reports. Field Offices must also annually sample 10 percent of all leases through direct mail. See Monitoring Duties of the CPO, paragraph 12-17 D. for sampling requirements.
 - B. The Field Office must review the SAMS Aged Delinquency Report (TM RP AG) monthly between the 15th and 30th. This report identifies the total dollar amount of past due rent by case number. This review acts as an early warning and will allow the Field Office to take appropriate action, including Workout Agreements, to collect and/or evict as expeditiously as possible. See paragraph 7-58 for additional SAMS reports used to monitor rent collections.
- 7-33 Delinquency.
- A. Rent Is Due on the First of the Month. A grace period of 10 days is permissible. A five percent delinquency penalty will be charged to cover the cost of processing and handling rent not paid by the tenth of the month. The penalty charge is assessed one time against each month's rent or portion of a month's rent which is not paid by the tenth of the month.

Should a tenant become delinquent, the tenant is not entitled to the 10-day grace period and may not be granted the 10-day grace period unless and until the account becomes current.
 - B. Partial Payments. The Department will not normally not accept partial payments on delinquent accounts when HUD has filed for eviction since the acceptance of partial payment may jeopardize eviction action. Exceptions will be based on the Field Office Manager's determination that the delinquency will be cured in a reasonable period. Payment will be applied to the oldest outstanding accounts.
- 7-34 Workout Agreement for Delinquent Rent. Unless HUD needs to sell the property, gradual payment of delinquent rent is preferable to eviction. Therefore, the occupant may be allowed to pay off the

delinquency at a rate of not less than one-half the delinquent months' rent, plus the one-month rent for the next 30-day period. This rate will substitute for the regular monthly rent until the delinquency has been brought current. When the delinquency has been brought current the regular monthly rental payment will resume. (See Agreement for Payment of Delinquent Rents, Form HUD-9530, Appendix 33.)

- A. Requirement for a Workout Agreement. A determination must be made by the Field Office that it is advantageous to HUD to keep the property occupied. This must be documented in the case file.
- B. Payment Due Dates. After the agreement is executed, the first payment is due by the first day of the following month. The workout payment will continue to be due by the first of each month.

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- C. Extensions. If the occupant fails to meet this schedule, the Field Office Manager may sue to evict or may grant extensions which must be justified in writing in the case file.
 - E. Workout Payments Applied to Delinquent Rent. Workout payments must be used solely to reduce the delinquency, as per the Workout Agreement.
 - F. If Workout Fails. If all efforts by the Field Office or REAM result in a failure to collect the funds due HUD, eviction procedures should begin. See eviction procedures beginning at paragraph 7-40. Collection efforts should continue to be actively pursued.
- 7-35 Lease Termination. After a decision by HUD to terminate a lease, the occupants will be notified to vacate the property. HUD will take appropriate eviction action under the laws of the state in which the property is located, in any of the following situations: (See Eviction, beginning at paragraph 7-40.)
- A. Failure of the tenant to execute a lease, or to comply with the lease;
 - B. Failure of the tenant to allow reasonable access to the property upon proper notice.
 - C. Necessity to prepare the property for sale; or
 - D. Assignment of the property by HUD to a different use or program.

- 7-36 Delinquent Rent Collection - Former Tenant Accounts. The CPO must aggressively pursue and fully document efforts to collect delinquent rent. Efforts are to have included Workout Agreements where appropriate, and eviction. Collection efforts for former tenants must continue, however, until the delinquency is cured, and appropriate action taken to compromise, suspend, close-out or terminate/write-off the debt. After all available collection efforts have been exhausted, delinquent former tenant accounts may be transferred for further collection activities to the Debt Management Center, as shown below. In all cases, delinquent debt collection efforts by HUD, the REAM, and others must adhere to regulations in 24 CFR Part 17, Subpart C, Procedures for the Collection of Claims by the Government; 31 USC 3701, Federal Claims Collection Act of 1966; 31 USC 3701, and the Debt Collection Act of 1982.
- 7-37 REAM Procedures. If permitted by the contract, the REAM may be authorized to hire collection attorneys, but the REAM in such cases collects no fee. REAM contracts must state that no such fees will be collected. Legal expenses specifically associated with these collection actions are reimbursable by HUD, but no expenses are to be incurred without specific authorization of the Contracting Officer or Government Technical Representative (GTR). The REAM must also submit a monthly status report of collection efforts for each account until the delinquency is cured or the REAM no longer has responsibility for collection.
- 7-38 Referral of Delinquent Former Tenants to Debt Management Centers. Under present procedures, Field Offices may transfer delinquent debt of former tenants to the Debt Management Center (DMC) serving the Field Office. Prior to transfer, the Field Office must have exhausted all available collection efforts. When a decision is made to transfer the debt, SAMS must be reconciled and transfer approval obtained from the Office of Mortgage Insurance Accounting and Servicing, Real Property Branch (RPB). The RPB will then liquidate the account in SAMS and the debt will be established for further collection in the Debt Management Center. For assistance in reconciling SAMS and correcting discrepancies in the amount billed or the amount collected, contact the RPB Desk Officer.
- 7-39 Compromise, Suspension, or Close-Out/Termination/Write-Off. After all available action to collect a delinquent rent account of a tenant or former tenant, including Work-Out Agreements and eviction, or transfer of former tenant accounts to the Debt Management Center, CPOs should not hesitate to recommend compromise, suspension, close-out, or termination/write-off of the account

to the Field Office Manager. Only in this way can an accounting action be taken to transfer a receivable from an asset account to an

expense or allowance-for-loss account. The Field Office Manager or Deputy Field Office Manager has the authority to collect, compromise, suspend, close out/terminate, or transfer claims up to \$100,000 for tenants or former tenants of HUD-owned properties. 24 CFR 17.65(b)(3).

Summarized below are circumstances in which the CPO may recommend compromise (collection of part of the debt and forgiveness of the uncollected portion). For detailed procedures, refer to 4 CFR Part 103.

A. Compromise.

1. There is real doubt concerning the Department's ability to prove its case in court for the full amount claimed;
2. The cost of collecting delinquent rent of less than \$400 does not justify the enforced collection of the full amount;
3. If in connection with statutory penalties or forfeitures established as an aid to enforcement and to compel payment, the Department's collection policy will be adequately served by acceptance of the sum agreed upon; or
4. Other reasons recommended by the CPO and deemed valid by the Field Office Manager or Deputy Field Office Manager and made a part of the record.

B. Close-out/Termination/Write-Off. CPOs may recommend closeout, termination, or write-off for one or more of the following reasons:

1. No substantial amount can be collected;
2. The debtor cannot be located;
3. The cost of collection will exceed recovery;
4. The debt is legally without merit; or
5. The debt cannot be substantiated by evidence.

Note: Compromise, suspension, close-out, or termination/write-off of claims over \$100,000 for tenants or former tenants of HUD-owned properties must be forwarded to the Departmental Claims Officer (DCO). The DCO will forward the claim to the Department of Justice to seek approval and, when a claim is terminated, the Departmental Claims Officer, Claims Collection Officer or Regional Claims Collection Officer must notify the appropriate accounting office to write-off the claim. When a claim under \$100,000 is terminated, the appropriate accounting office must be notified.

C. Claims involving fraud or misrepresentation are ineligible for compromise, suspension or termination. Suspicion or evidence of fraud or misrepresentation must be referred to the Office of

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SECTION VI - EVICTION

7-40 Eviction Policy. Eviction proceedings are filed to obtain possession of the premises and/or to collect back rent or convince delinquent occupants that HUD is earnest about collection. Under certain circumstances, obtaining possession should be the primary goal; under other circumstances, rent collection will be the primary goal. REAMS may be used to pursue evictions as provided in their contract. Where appropriate, HUD counsel, rather than private fee counsel, should handle an eviction proceeding.

- A. Rent collection, rather than possession, is the primary goal when an occupant fails to meet payment in a Workout Agreement. As long as the occupant meets mutually acceptable terms to pay off the rent owed, eviction must be suspended.
- B. Possession is the primary goal where:
 - 1. The property is marketable and a Workout Agreement is not justifiable.
 - 2. Efforts to cure delinquencies have failed or appear fruitless.
 - 3. The property is uninsured or abused by the tenant.
 - 4. Delinquency is due to an irreconcilable dispute. In this case, the Field Office must have attempted resolution. In such cases:
 - a. Partial payment of delinquent rent must not be accepted.
 - b. In jurisdictions where arrearage may be sought concurrently with possession, a claim is to be made for arrears while possession is obtained. If this is not allowed, the Field Office must promptly implement collection procedures after possession is obtained.

7-41 Causes for Eviction Other Than Nonpayment of Rent. Causes for eviction other than the nonpayment of rent include: Failure to honor a Workout Agreement for payment of delinquent rent; failure to execute a lease or comply with lease terms; failure to allow reasonable access upon proper notice for inspections, repair work or other purpose; necessity to prepare the property for sale, or assignment of the property by HUD to a different use or program.

- 7-42 Review of Delinquent Accounts. The Field Office Manager or Director of Housing Management shall review PD staff attempts to bring the delinquency current. Review shall continue throughout the eviction process to ensure timely completion, suspension or termination as warranted.
- A. Eviction may be delayed for a short period, not to exceed three months, to avoid temporary but severe hardships, such as temporary severe illness or unemployment.
 - B. Eviction may be suspended or terminated by the Field Office Manager pursuant to HUD's best interest. Such action, which may also be delegated to the Director of Housing Management, must be supported by documentation in the case file.
- 7-43 When to Evict. If no Workout Agreement has been executed, eviction procedures must begin the day after the second month's rent becomes delinquent.
- 7-44 Use of REAM. A REAM may be used to initiate and administer eviction actions if permitted in its contract. Although legal expenses specifically associated with these actions are reimbursable by HUD, no expenses shall be incurred without specific authorization by the Contracting Officer or Government Technical Representative (GTR).

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- 7-45 Filing for Eviction.
- A. Naming the Plaintiff. Area Counsel should be consulted to determine each State's requirements. However, where eviction actions by agents are permitted, action should as a rule be brought in the name of the REAM. Where a state requires that action be brought in the name of the property owner, it should be brought in the State Court in the name of the Secretary of HUD. Evictions against homeless providers are the responsibility of CPD.
 - B. Where to File.
 - 1. Eviction actions must be brought in appropriate state or municipal courts (or in the District of Columbia, the Superior Court) when:
 - a. The claim amount does not exceed \$5,000;
 - b. No question of title is involved; and
 - c. No novel or important question is presented. Questions of law should be established through

consultation with Area or Regional Counsel or private fee counsel, as appropriate.

2. Cases that do not meet the above criteria must be brought to the attention of Area or Regional Counsel as appropriate.
3. When the defendant's answer or counterclaim raises questions of title or presents a novel or important question, or claims monetary damages, the case must be brought to the attention of Area or Regional Counsel, who will notify the Associate General Counsel for Litigation.

SECTION VII - REPORTING DELINQUENT TENANTS TO CREDIT BUREAUS

- 7-46 Credit Reporting Policy. Field Offices are responsible for ensuring that delinquent tenants and former tenants are reported to credit reporting agencies (credit bureaus). Regulations governing the reporting of delinquent consumer debt are prescribed in 24 CFR 17.76. However, because of the complexity of federal and state credit reporting requirements and implementing instructions promulgated by the U.S. Treasury, OMB and the Department, Field Office staff may not directly provide the required disclosure (60-Day Notice) nor file credit reports directly with credit bureaus. The required notice(s) and credit reporting is to be performed by a HUD contractor or by the Debt Management Center (DMC) for those delinquent former tenant accounts transferred for collection to the DMC as discussed in paragraph 7-38. The information provided in this section is intended only to advise Field Office staff of due process requirements and reporting criteria to ensure that accurate, thorough and complete documentation is provided to a contractor or the DMC.
- 7-47 Contracting for Credit Reporting. If authorized by the Contracting Officer and included as a reimbursable service item in the REAM contract, REAMS may be authorized to provide the required disclosure (60-Day Notice) and credit reporting. REAMS must comply with the requirements of GSA Schedule 732 I A 7321 when filing consumer credit reports.
- 7-48 Definition of Delinquent Tenant. For purposes of credit reporting, a delinquent tenant is one who has signed a valid lease with HUD to occupy an acquired property and owed or still owes more than \$100 in payments delinquent more than 30 days, even if the debt was written off.
- 7-49 Criteria for Determining Whether to Report. Claims for delinquent rent must meet all the following criteria to be reported to credit agencies:

- A. The delinquency must be at least 180 days past due but less than seven years from the original date of default to the date of reporting.
- B. The outstanding delinquency must be in excess of \$100.
- C. The tenant must have been sent a 60-day notice that HUD intends to disclose the delinquent debt to a credit bureau (See paragraph 7-50 and Appendix 73.)
- D. Case files must contain the following information for each consumer to be reported:
 - 1. An original or legible copy of a valid, fully-executed lease signed by the tenant(s).
 - 2. Mailing address (either property address, forwarding address or current mailing address, if known).
 - 3. FHA Case Number (the number used on the lease).
 - 4. Statement of account indicating amount of total debt.
 - 5. Affidavit of debt signed by responsible Field Office official (See Appendix 75 for a sample Affidavit.) The affidavit is a statement signed by a responsible HUD official stating that the debt is actually owed to the government (HUD). Either the CPO or the designee may sign the statement. This will be necessary in the event the tenant appeals the nature of his debt after receiving the 60-day notice.
 - 6. Date of last payment made by tenant.
 - 7. Status of case.
 - 8. Social Security Number. Note: The Social Security Number (SSN) may be taken from form HUD-9539, Request for Occupied Conveyance. Generally, credit

bureaus will not accept a report without an SSN and the Department must have the SSN if the account will subsequently to be recommended for close-out, termination/write-off, or collection by Internal Revenue Service offset.

- A. If any of the items in paragraph 7-49 are not in the debtor's file or are unavailable, the case may not be reported to credit bureaus. Field Offices must have sufficient documentation to prove the existence of the valid and overdue debt before forwarding accounts to be reported to credit agencies.
 - B. Accounts which have been or may be transferred for collection by a Debt Management Center (paragraph 7-38) may not be reported. Any notices required and credit reporting necessary will be done by the DMC.
- 7-51 Accounts Closed-Out, or Terminated/Written-Off. Even where a delinquent debt has been terminated/written off, delinquent tenants must be reported to the credit agencies. However, Field Offices are not expected to retrieve records from the Federal Records Center for reporting such tenants. Where Field Offices still have records on tenants whose debt has been written off, the tenants should be referred to the contractor for reporting to credit bureaus.
- 7-52 Due Process - 60 Day Written Notice.
- A delinquent tenant debt may not be reported until all requirements of due process have been met. The regulation at 24 CFR 17.78 requires that a written notice of disclosure be sent to the individual to be reported informing them that the debt is overdue and that the department intends to disclose the debt to a credit bureau not less than 60 days after sending the notice. Notice requirements are summarized below. Disclosure notices are to be sent by the HUD contractor or the DMC and not by the staff of Property Disposition.
- A. Sixty (60) Day Notice. The Notice must disclose that HUD intends to report the outstanding debt to a consumer reporting agency and must allow the tenant 60 days for an appeal. The Notice of Disclosure of Debt to Consumer Reporting Agency (Appendix 73), is provided as an acceptable model of a Notice of Disclosure. The Notice of Disclosure of Debt must also include a Privacy Act Statement (Appendix 74). Slight alterations to the notice may be made depending upon local circumstances, but essential information must be retained in the event the debtor wishes to appeal or discuss the case.
 - B. Privacy Act Statement (Appendix 74). The Privacy Act Statement must be included with the 60-day notice and must not be altered.
- 7-53 Tenant Agreement to Repay. The tenant may avoid being reported to a consumer reporting agency by entering into an agreement to repay the debt. The tenant also has the right to review the Department's records regarding the claim and the right to request reconsideration.
- 7-54 Appealing the 60-day Notice. If tenants appeal the 60-day notice, the appeal will be handled by the CPO or the designee. The highest level of appeal in any case resides with the Field Office Manager. There are no formal appeal procedures, but a case under appeal cannot be reported to the credit agencies until resolved. Please

note that, consistent with the requirements of the Fair Credit Reporting Act, when a tenant appeals the accuracy or validity of the information HUD intends to report to the credit bureau, the Field Office must accept debtor correction of information.

7-55 Mailing the 60-day Notice.

- A. Former Tenants. The 60-day notice shall be sent to the former property address and/or to any other known forwarding address. Mailing the notice to the last known address

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satisfies the regulatory requirement that HUD take reasonable action to locate an individual whose current address is unknown. A dated copy of this letter must be kept in the debtor's file as proof of mailing. The letter must be sent by "Certified Mail-Return Receipt Requested." If the notice is undeliverable, the individual can still be reported to the credit bureau.

- B. Present Tenants. Tenants may be sent the 60-day notice only if their delinquency is more than 30 days in arrears. Follow mailing instructions shown in paragraph 7-55 A.

7-56 Return of the 60-day Notice.

- A. Former Tenants. For former tenants, the notices will probably be sent to the former property address. The Postal Service likely will return the letter with a notation such as "addressee unknown" or "undeliverable." In such cases the original, mailed letter, along with its envelope, must be retained in the debtor's file. If the Postal Service provides a forwarding address, the Field Office must mail the notice to the new address and begin the 60-day period from the date of the new mailing.
- B. Present Tenants. With present tenants, the 60-day notice will probably be sent to the property address. If the Postal Service returns the letter with no forwarding address, the Field Office must immediately make provision to have the property inspected to see if it is abandoned and if so, to follow procedures for preparing the property for sale. The 60-day notice is retained in the debtor's file in preparation of reporting to the credit agencies. No further action is required.

7-57 Time Requirement for Reporting. After the 60-day waiting period has expired, or if an appeal case has been resolved in HUD's favor and the tenant does not pay on the delinquency, the CPO must forward debtor information to the appropriate party for credit reporting.

SECTION VIII - PROCESSING REQUIREMENTS FOR SAMS

7-58 General. SAMS reports used to monitor rent collections include: TM RP AG Aged Delinquency; TM RP HI List Lease History, and CL RP CE Lockbox Cash by Entity.