

Final Multifamily Mailbox: 4350.3 REV-1

Summary of Questions

Following is the summary of questions on *Handbook 4350.3 Rev-1* requirements collected from the online Multifamily Housing Programs mailbox. The summary of questions has been categorized by topic.

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CIVIL RIGHTS AND NONDISCRIMINATION

1. Question: Are owners required to post their TTY number on their project sign?

Answer: When an owner lists a telephone number, he/she must also list the TTY number. If the telephone number is on the sign, then the TTY must also be listed (Chapter 2, Paragraph 2-29 C.5.a).

2. Question: Can a management agent override a board of a co-op if the board does not want to make reasonable accommodations for persons with disabilities?

Answer: No. The co-op board represents the ownership entity of the development. However, the co-op board will be putting the project at risk by not providing reasonable accommodations to persons with disabilities. The Fair Housing Act of 1988, as amended, requires housing providers to provide "reasonable accommodations" to persons with disabilities. See Chapter 2, Section 3, Subsection 4 for more information on reasonable accommodation. The management agent and HUD have a responsibility to notify the co-op board in writing of actions that do not meet HUD statutory requirements.

3. Question: For an in-place resident who asks for a reasonable accommodation (transfer to another unit), can the owner ask for verification from a health care professional that the accommodation is necessary (not inquiring about the nature of the disability, but the need to move into an accessible unit)?

Answer: Yes. Chapter 3, Paragraph 3-28 B provides guidance for the owner to verify disability to determine eligibility for a project, preference, or allowance, and identify the need for an accessible unit or reasonable accommodation.

4. Question: We have a subsidized 221(d)(4) project for families that has House Rules limiting the weight of dogs to no more than 15 pounds. One of the residents has a disabled daughter. The daughter's healthcare provider has recommended in writing that she get a dog for emotional therapy to help her condition. Will this resident's dog have to comply with the project's weight restriction?

Answer: No. As stated in Chapter 6, Paragraph 6-10 A.4, an owner must not apply pet rules for common household pets to assistance animals (also referred to as "service animals", "support animals" or "therapy animals") and their owners. However, the animal must meet all standard tenant lease requirements (e.g., noise, nuisance, security of other tenants). The owner can adopt appropriate criteria for assistance animals. See Chapter 2, Paragraph 2-44 for guidance on assistance animals as a reasonable accommodation.

If the owner chooses to allow common household pets at the family project he/she can establish pet rules for these animals in accordance with the requirements in paragraph 6-10. See the Glossary for the definition of Common Household Pet.

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5. Question: The Handbook states in Exhibit 2-3 that "owners must provide the information specified in Chapter 2, Paragraph 2-29 in all written communications with the public. Owners may use this exhibit as guidance in providing this information." Exhibit 2-3 refers to the Section 504 notification of nondiscrimination on the basis of disability status. Does the Section 504 notice also have to be included on a housing provider's website when that provider lists his/her apartment community's features on the Internet (i.e., website)?

Answer: Yes. The Section 504 notice must also be included on a housing provider's website when that provider lists its apartment community's features on its website.

6. Question: What is the difference between a service animal, a pet, and a companion animal?

Answer: An assistance animal (also referred to as a "service animal," "support animal," or "therapy animal") is defined as an animal that works, provides assistance, performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability (Chapter 2, Paragraph 2-44). These animals perform many disability-related functions, as indicated in Chapter 2, Paragraph 2-44. Pets are not assistance animals and do not meet the definition of assistance animal. See the Glossary for the definition for Assistance Animals and for Common Household Pet. While HUD does not have a definition for companion animal, the animal could be treated as an assistance animal if it meets that definition. If the animal does not meet the definition for an assistance animal, it would be considered a common household pet.

MARKETING REQUIREMENTS

****7. Question:** Chapter 4, Paragraph 4-12 F.2 states that the owner must review the Affirmative Fair Housing Marketing Plan (AFHMP) every five years and update the plan whenever there are substantial changes and seek HUD approval. Does the owner have to prepare a new AFHMP every five years or just whenever there are substantial changes?

Answer: The owner has to review the AFHMP every 5 years and update as needed to ensure compliance with HUD's Affirmative Fair Housing Marketing Regulations at 24 CFR 200.620. The plan must be revised whenever a substantial change takes place or the local Consolidated Plan is updated. If an owner makes changes to the plan, he/she must submit a revised plan to HUD for approval. If there are no changes to the plan, then the owner needs to document project records to indicate that the AFHMP was reviewed but no changes were necessary. In addition to the handbook reference Chapter 4, Paragraph 4-12 F.2, see form HUD-935.2A, AFHMP Multifamily Housing, item 8, Review and Update (OMB expiration date of 1/31/2010.)

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ELIGIBILITY

PROJECTS OTHER THAN SECTION 202/811

8. Question: In a 221(d)(4) project where the tenants are required to be 62 years of age and/or a person with physical disabilities, some residents are under the age of 62. Do these residents need to move out or can they stay?

Answer: To be eligible for a 221(d)(4) project, the head, spouse or sole member must be at least 62 years of age or older or disabled. The disability of the disabled person is not limited to a physical disability. (See Chapter 3, Figure 3-6, Definition A, Elderly Family, and Definition D, Disabled Family or E, Person with Disabilities or the definitions in 24 CFR 5.403.) If the owner has adopted the elderly preference in accordance with Section 651 of Title VI, Subtitle D of the Housing and Community Development Act of 1992, he/she must set aside a specified number of units for the disabled, however, the number of units set-aside are not unit specific as nonelderly disabled families may occupy units without accessible design features. (see Chapter 3, Paragraph 3-18 A.5 and A.7). If the owner has admitted persons who are ineligible for the project, they can stay, however, once they move out, the owner must replace them with persons who meet the eligibility requirements of the project.

9. Question: In a 236 project for the elderly, a current resident wants to have a friend move in as a roommate. However, the prospective roommate is only 60 years old. Does the roommate have to also be 62 years old or does this requirement apply only to the head of household? If the roommate does not have to be 62, then what is preventing a tenant from having a 40-year old son/daughter move in, not as a live-in aide or caregiver, but as a tenant?

Answer: For the definition of an elderly family for the Section 236 program, see Chapter 3, Paragraph 3-18 B.2, which states that an elderly person or family is defined as a household where the head or spouse is age 62 or older. There is no restriction on other household members who are not elderly in Section 236 projects.

PROJECT STAFF/POLICE AND SECURITY PERSONNEL

10. Question: In a basic asset management course, it was stated that if the property staff (i.e., maintenance/manager) reside onsite, then the staff must meet all eligibility requirements for the programs at the property. Unlike that provided for police officers and security personnel, the revised Handbook does not address onsite staff and eligibility requirements for the program at the property.

Answer: Onsite staff who receive rental assistance, must meet the program eligibility requirements for the project. Onsite staff who do not receive rental assistance do not have to meet the program eligibility requirements for the project. See Chapter 3, Paragraph 3-8 D for admission requirements for security personnel and police officers.

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11. Question: If an owner of a project wants to admit a police officer, can they offer the unit rent-free/reduced rent level or does the officer have to pay market rent?

Answer: An owner/agent can establish a rent that is attractive to the officer (i.e., reduced rent level), but not less than what the officer would pay as an eligible Section 8 tenant (i.e., not rent-free). Keep in mind that HUD will not increase the assistance payment due to nonpayment of rent by the police officer or security personnel (Chapter 5, Paragraph 5-27).

INCOME LIMITS

12. Question: If a Section 8 contract was signed in 1979, and the contract expired in 1999 (20-year contract), can an owner admit low-income applicants? The property has been receiving one-year contract renewals since the date of expiration. Is this now considered a post-1981 universe contract where the owner can only admit very-low and extremely-low income applicants? Or, does the contract remain a pre-1981 universe contract, which allows for the admission of the low-income families?

Answer: The contract remains a pre-1981 universe contract. Except as specifically modified by the renewal contract, all provisions of the expired/expiring contract are renewed (to the extent such provisions are consistent with statutory requirements in effect at the beginning of the renewal contract term). Projects with HAP contracts signed prior to October 1, 1981 (pre-1981 universe), may admit families up to the low-income limit (Chapter 3, Paragraph 3-6 D.1.)

****13. Question: Regarding the income limit for projects receiving subsidy under the Section 202 program with Section 8 assistance, as listed in Chapter 3, Paragraph 3-6 D.7 and Figure 3-3, can owners admit low-income families into the Section 202 with Section 8 assistance projects when they are post-universe?**

Answer: No. Owners may not admit low-income families into Section 202 with Section 8 assistance projects when they are post-universe. See Chapter 3, Figure 3-3, Income Limits by Program for the Section 202 with Section 8 assistance requirements.

SECTION 202 AND SECTION 811 ELIGIBILITY

14. Question: Does an 811 property, designated to serve only persons with physical disabilities, have to accept persons with developmental disabilities?

Answer: Applicants to the property must meet the eligibility requirements of the property in order to be admitted. However, applicants cannot be excluded if they meet the eligibility definition for the project and also have another disability in addition to the one served by the property. For example, if an applicant to the Section 811 property referenced in the question is an eligible person with physical disabilities and also has developmental disabilities, the person is eligible. (See Chapter 3, Paragraph 3-20 E and F).

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15. Question: Chapter 3, Paragraph 3-20 B states that 202/8 projects serve the elderly, as defined in Definition B, Chapter 3, Figure 3-6, and that 10 percent of accessible units are designated for persons (elderly or non-elderly) who require the accessible features of the unit. If someone with a serious heart condition meets the definition of "disabled," but does not need the accessibility features in the unit, can the owner/agent offer that person a unit? If an owner of a Section 202/8 property has three vacant units, can the owner allow a disabled, 61-year-old applicant, who can manage in a non-accessible unit, to move into one of the available units?

Answer: Neither person is eligible for the Section 202/8 project since neither is elderly or in need of an accessible unit. A 202/8 project for the elderly is required to have 10 percent of their units accessible to persons with physical disabilities. These accessible units could be occupied by either elderly or non-elderly people with physical disabilities who require the accessibility features of the unit. If there is no one on the waiting list with a physical disability (elderly or non-elderly) requiring the accessibility features of the unit, then the unit can be occupied by an elderly person. If an owner is temporarily unable to lease all units to eligible families, he/she may request HUD approval of a waiver of eligibility requirements. See Chapter 3, Paragraph 3-20 G.

****16. Question: An elderly, non-citizen couple that has no income is on the waiting list at a 202 PRAC, but is still under sponsorship for two more years. Is the couple eligible for admission?**

Answer: If the couple meets all of the eligibility criteria for the Section 202 PRAC program and they are next on the waiting list, they should be admitted. Applicants are not denied due to lack of income and there is no minimum rent in Section 202 PRAC properties. The restriction on assistance to non-citizens does not apply to Section 202 PRAC projects. See Chapter 3, Paragraph 3-12 F, and Chapter 5, Paragraph 5-26 D.

****17. Question: Does an elderly parent and his adult son (over the age of 18) qualify for elderly housing? Does that same elderly parent, with a live-in aide, who is his adult son, qualify for elderly housing? Does the elderly parent who applied for housing with a grandchild, under the age of 18, qualify for elderly housing?**

Answer: The answer is, yes, to all three questions. An elderly parent who applies with his adult son, live-in aide, or grandchild may qualify for elderly housing. Owners may not exclude otherwise eligible elderly families with children from elderly properties or elderly/disabled properties covered by the Handbook (Chapter 3, Paragraph 3-23 D.3). For the exception when an adult child may not be admitted to elderly housing see Chapter 7, Paragraph 7-4 D and E.

18. Question: In a Section 202 or Section 811 project are children allowed to live in the unit if the head of household has legal custody of a child?

Answer: Yes. Owners may not exclude families with children from their properties, nor develop policies or procedures that have the purpose or effect of prohibiting children (e.g., policies in tenant selection plan, occupancy standards, house rules). Owners may not

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exclude otherwise eligible elderly families with children from elderly properties or elderly/disabled properties covered by the Handbook. See Chapter 3, Paragraph 3-23 D.

***19. Question: Regarding Section 202/8 projects, Chapter 7, Paragraph 7-4 D states that "Adult children are eligible to move into a unit after initial occupancy only if they are essential for the care or well-being of the elderly tenant(s)." Section 202 PRAC and Section 811 PRAC projects, Chapter 7, Paragraph 7-4 E states that "Adult children are not eligible to move into a unit after initial occupancy unless they are performing the function of a live-in aide and are classified as a live-in aide for eligibility purposes". Do these restrictions also apply to adult grandchildren?**

Answer: Yes, they also apply to adult grandchildren.

20. Question: An 811 PRAC project houses severely mentally ill residents. The project, for the most part, takes referrals from the mental health agencies. One of the criteria for eligibility is that "the applicant must be eligible for a case manager." A case manager is a person who will assist the resident daily/weekly, or for some other determinable period of time. The applicant can refuse to have a case manager, but they must be diagnosed to need a case manager, in order to be housed at this particular property. Can the project refuse to accept applicants who are not determined by the health agency as needing a case manager?

Answer: Chapter 3, Paragraph 3-17 (Figures 3-5 and 3-6) provides relevant definitions to use when determining eligibility for a particular type of project. Chapter 3, Paragraph 3-20 E provides additional information on eligibility for projects developed under specific programs for persons with disabilities. Chapter 3, Paragraph 3-28 B provides information on acceptable methods of verifying a disability. The owner must use the information in the referenced paragraphs to establish eligibility for the project rather than the requirement of a case manager. The requirements for project eligibility are based on the regulations for each program and it is unclear if the requirements for being eligible for a caseworker are the same as the regulatory requirements for the 811 program.

21. Question: Chapter 3, Paragraph 3-20 G allows for leasing units to non-eligible families in 202/8, 202 PAC, and 202/811 PRACs. These waivers are limited to one-year. If necessary, is the waiver request resubmitted for another year for approval? If so, to whom? Can it be extended at the local HUD office if previously approved by the Hub or Headquarters?

Answer: If the owner is still unable to lease the unit to an eligible family after the initial year, another waiver request may be submitted as outlined in Chapter 3, Paragraph 3-20 G. If the project is a Section 202 or 811 PRAC, the waiver is statutory and must be approved by Headquarters. Renewals of the waiver need to be limited.

22. Question: In a 202 PRAC project, a mother is moving in with her daughter (who is elderly and has been living in the building), because they could not afford personal care at home for the mother and the daughter must take care of the mother. However, their combined income will cause them to pay more rent than the operating rent. Can the daughter become the live-in aide for the mother and

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thereby count only the mother's income? Or must the mother apply for her own unit and then the daughter moves into that unit as a live-in aide?

Answer: A family may not designate a family member as head or co-head solely to become eligible for certain benefits. (See NOTE after Chapter 5, Paragraph 5-9 B.2.) The daughter may not be designated as the live-in aide solely to have her income excluded in order for them to pay less rent. To qualify as a live-in aide for her mother, the requirements in Chapter 3, Paragraph 3-6 E.3.a would have to be met.

****23. Question: Is the receipt of Social Security (SS) disability payments adequate verification for an individual's disability status for 202 and 811 projects? Or, are applicants/participants required to have the form in Appendix 6-B of the 4350.3 REV-1 completed by a medical professional?**

Answer: Receipt of SS disability payments is not considered adequate verification of a person's disability status for a Section 202 or a Section 811 project. In order for the individual to meet the definitions for a Section 202 or Section 811 project (see definitions in Chapter 3, Figures 3-5 and 3-6), the owner would use the form in Appendix 6-B to verify the disability with a medical professional.

LIVE-IN AIDES

24. Question: Can a live-in aide have one of his/her family members reside in the unit (such as children, etc.); or, is only the live-in aide allowed to reside in the unit with whom he/she is providing care?

Answer: Only the live-in aide can live in the unit. No other member of the live-in aide's family can live in the unit. As described in the Handbook in Chapter 3, Paragraph 3-6 E.3.a, a live-in aide is "a person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities." Also, refer to the definition for Live-in Aide in the Glossary.

****25. Question: Does an elderly parent and his adult son (over the age of 18) qualify for elderly housing? Does that same elderly parent, with a live-in aide, who is his adult son, qualify for elderly housing? Does the elderly parent who applied for housing with a grandchild, under the age of 18, qualify for elderly housing?**

Answer: The answer is, yes, to all three questions. An elderly parent who applies with his adult son, live-in aide, or grandchild may qualify for elderly housing. The live-in aide must meet the requirements in paragraph 3-6 E. Owners may not exclude otherwise eligible elderly families with children from elderly properties or elderly/disabled properties covered by the Handbook (Chapter 3, Paragraph 3-23 D.3). For the exception when an adult child may not be admitted to elderly housing see Chapter 7, Paragraph 7-4 D and E.

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26. Question: Can a tenant have two live-in aides, if requested, and it can be properly documented by a physician and verified by the owner?

Answer: Yes. The Handbook and the regulation (See Chapter 3, Figure 3-6, Applicable Definitions of Elderly Disability-Determining Eligibility, Definition D) define a disabled family as one or more persons with disabilities living with one or more live-in aides.

27. Question: Does a live-in aide qualify as a remaining family member, if the tenant leaves, for whatever reason, from the unit?

Answer: No. A live-in aide is not a party to the lease and would not be living in the unit except to provide the necessary supportive services (Chapter 3, Paragraph 3-6 E.3.a).

28. Question: In the old Handbook, screening of live-in aides was optional. Based on Chapter 4, Paragraph 4-7 B.5, it appears that screening of live-in aides is now mandatory. Is this correct?

Answer: Yes. Screening of live-in aides is mandatory.

29. Question: Is there a model form for a live-in aide agreement, beyond just the required clause. How long is a live-in aide permitted to stay in the unit after the tenant passes away, goes to a nursing home, or otherwise departs?

Answer: There is no model form for a live-in aide agreement. See the note after Chapter 6, paragraph 6-5 A.4 for requirements for the live-in aide lease addendum. The live-in aide must not be included on the lease and does not qualify as a remaining member. See Chapter 3, paragraph 3-6 E.3.a or the Glossary for a definition of a live-in aide. The live-in aide must vacate the unit when the qualifying person vacates the unit or upon the death of the person for whom they were providing care. HUD will pay subsidy for up to 14 days when the qualifying member dies (Chapter 9, Paragraph 9-12 E.1). No subsidy is available if the qualifying member vacates the unit for any reason other than death.

REMAINING FAMILY MEMBERS

****30. Question: In 1998, a tenant moved into an 811 PRAC property built for persons/families with the human acquired immunodeficiency virus (HIV). The tenant's illness progressed to a point where the tenant could no longer care for herself or her minor children, so the tenant's mother moved into the household to care for the family. The mother moved in, in July of 2003, and her daughter (the tenant), died shortly thereafter. Do the mother and grandchildren qualify as remaining family members, or do they have to move, since the qualifying tenant is now deceased?**

Answer: The remaining family members that are parties to the lease, based on the death of the family member, are eligible to remain in the unit and pay rent based on the household's income. If the mother was not a party to the lease, then the family will be required to vacate the unit. See Chapter 3, Paragraph 3-16 for an extensive discussion on determining eligibility of a remaining family member.

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****31. Question: When an eligible family member in a 202 PRAC property moves into a nursing home, is it the intent of the Department to evict the spouse, who is ineligible (e.g., under the age of 62), from the unit?**

Answer: Under HUD guidelines for determining eligibility of a remaining member of a tenant family in a Section 202 PRAC project, an ineligible person living with an eligible person that leaves the unit for any reason other than death would not be allowed to remain in the unit. See Chapter 3, Paragraph 3-16 B for eligibility of remaining family members in 202 and 811 projects. The regulatory definition of a remaining family member can be found in Chapter 3, Figure 3-6, Definition B. Prior to any eviction proceedings, owners should make every effort to assist the remaining member in finding other affordable housing.

****32. Question: If an elderly person in a 202 PRAC is married to a non-elderly person, and the elderly person dies, can that non-elderly person remain in the unit?**

Answer: Yes. 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. The remaining member must have been a party to the lease prior to the death of the elderly person. An extensive discussion on determining eligibility of a remaining member by project type can be found in Chapter 3, Paragraph 3-16.

INCOME TARGETING

33. Question: Chapter 3, Paragraph 3-7 F.1, under exceptions to Section 8 income targeting requirements that "owners with Section 8 units are required to ensure that during a fiscal year at least 40 percent of the units that become available, together with initial certifications of in-place tenants, serve extremely low income families." Chapter 4, Paragraph 4-5 A Note also states "Compliance with income targeting requires owners to count both move-ins and initial certifications." Does this mean that instead of requiring income targeting for all turnover units assisted with Section 8, a total project census of at least 40 percent of assisted rentals to extremely low-income families will suffice?

Answer: The term "initial certification" used in both references Chapter 3, 3-7 F.1 and Chapter 4, 4-5 A means when someone living in a partially assisted property becomes eligible for Section 8 and is given Section 8 assistance for the first time. Income targeting is only applied when a new tenant moves into the property or an unassisted tenant already living in the property begins to receive assistance. A total project census is not required.

34. Question: Can an owner/agent adopt a preference to admit all extremely low-income people first to meet income-targeting requirements?

Answer: Yes. The owner establishes his/her own policy for meeting the extremely low-income requirements (Chapter 4, Paragraph 4-5 B).

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35. Question: Do income-targeting requirements apply to Section 8 co-ops even when the subscription fee is \$10,000?

Answer: Yes. Income targeting is required for all projects receiving Section 8 assistance.

WAITING LISTS

36. Question: Would allowing an applicant on the waiting list 14 days to provide requested information to the owner/agent be an acceptable timeframe for responding to requests?

Answer: HUD does not prescribe a timeframe for applicants to respond to requests for information. The property owner establishes this policy.

37. Question: Are co-ops with Section 8 units required to use a waiting list?

Answer: Yes. Co-ops with Section 8 are required to use a waiting list.

38. Question: The waiting list at a 202 property is closed; and although occupied, the property has five accessible units. The property has one general waiting list from which applicants who need accessible units are culled. At present, there is no one on the waiting list who requires the features of the accessible units. This is not to say that by the time an applicant reaches the top of the waiting list he or she might not need those unit features. But again, no one on the closed list has specifically asked for an accessible unit. So, in this case, is the waiting list closed to everyone?

Answer: If there are no applicants on the waiting list who need the accessible features of the unit, the owner should open the waiting list to applicants that are eligible for the accessible units and advertise the availability of these units. The owner may establish a separate waiting list for the accessible units. Closing the waiting list when there are no applicants for accessible units may be a discriminatory policy. See Chapter 2, Paragraph 2-27 and 2-30. If an owner establishes two waiting lists and an applicant is eligible for both the elderly units and the accessible units, they may be placed on both waiting lists. See Chapter 4, Paragraph 4-17. The tenant selection plan should detail the procedure for opening and closing the waiting list.

39. Question: If an applicant is not elderly (62 years of age) by the time he or she comes in to fill out an application for a project designated as elderly housing, can he or she be placed on the waiting list?

Answer: No. The applicant must be 62 years of age before he/she can be placed on the waiting list. An applicant that is not 62 years of age is not eligible. (Chapter 4, Paragraph 4-16 C.)

40. Question: A unit will be vacant on 3/31. The property manager calls the next person on the waiting list on 3/1 and prepares for the applicant's move in on 4/1. On 3/31, the applicant decides not to move in. The manager immediately calls the

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next person on the waiting list who says he/she must give a 30-day notice to his/her current landlord. Are owners/agents to hold the unit for the applicant, allowing him/her the opportunity to give 30-days notice to his/her landlord? This, of course, will result in a vacancy loss to the property. Or, do we contact the next person on the waiting list who is ready to move-in?

Answer: The owner sets the procedure to follow in the example provided. Refer to Chapter 4, Paragraph 4-4 C.3, which states the tenant selection plan must include how tenants are selected from the waiting list. The procedure should be established in the tenant selection plan to ensure that the policy is used consistently for all applicants. You may want to review Section 3 of Chapter 4, which discusses waiting list management to assist in developing procedures for the Tenant Selection Plan.

SELECTION OF TENANTS

APPLICANT INTERVIEWS

41. Question: Regarding applicant interviews for out-of-state applicants, it appears that the applicant must come in person for the interview, based on Chapter 4, Paragraph 4-24. Is this mandatory? Can such an interview be conducted over the phone, if the required information has been mailed and returned to the owner in advance of the interview? Is an onsite interview a requirement the owner can specify in their tenant selection plan?

Answer: The Handbook only states that the owner must interview the applicant; it does not require a face-to-face interview. Further, there are no regulations that require a face-to-face interview.

TENANT SELECTION PLANS

***42. Question: Can an owner/agent adopt a policy in his/her tenant selection plan that gives preference to tenants occupying non-Section 8 units to be placed on Section 8, over Section 8 applicants on the waiting list, if the non-Section 8 tenant has a loss of income, which prevents that person from being able to pay rent and consequently evicted? Can an owner/agent adopt a policy stating that children and other family members who are current residents requesting a unit of their own must go on the waiting list as a new move-in? This policy will be in the owner's/agent's screening criteria.**

Answer: HUD does not have a requirement regarding selecting between applicants on the waiting list and current tenants. Owners are required to establish a policy in their Tenant Selection Plan for providing Section 8 to in-place residents (Chapter 4, Figure 4-2). The policy that children of current residents who request a unit of their own must apply and be placed on the waiting list would also be established by the owner and made a part of the Tenant Selection Plan. HUD or Contract Administrator does not approve the tenant selection plan. However, if HUD or Contract Administrator staff determines that the plan does not comply with applicable requirements, the owner must modify the plan accordingly.

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***43. Question: A supportive housing group wants to make as a rule: applicants and/or tenants are alcohol and drug free. The housing group is serving homeless (or previously homeless) individuals. Can they legally make this a requirement?**

Answer: Owners may prohibit the admission of persons who have engaged in alcohol abuse, drug abuse, or other criminal behavior. The owner must establish these screening criteria in the tenant selection plan. For more information, review the guidance in Chapter 4, Paragraph 4-7 C. The owner must determine that drug or alcohol abuse or pattern of abuse or other criminal behavior interferes with the health, safety or right to peaceful enjoyment of the premises by other residents to deny admission. See Handbook 4350.3 REV-1 for further guidance as the guidance from Notice H 02-22, Screening and Eviction for Drug Abuse and Other Criminal Activity, has been incorporated into the Handbook.

SOCIAL SECURITY NUMBERS

44. Question: Please clarify statements in the Privacy Act regarding the disclosure of social security numbers (SSNs). Chapter 3, Paragraph 3-9 A.2, states, "if no SSN has been assigned to a particular family member, the applicant must sign a certification stating that no SSN has been assigned," which seems to conflict with Privacy Act requirements.

Answer: The Privacy Act Notice only addresses the requirement to disclose social security numbers if a social security number has been assigned. If a social security number has been assigned, it must be disclosed. If a family member has not had a social security number assigned then the applicant must sign a certification stating no SSN has been assigned (Chapter 3 , Paragraph 3-9 A and C).

45. Question: Chapter 3, Paragraph 3-9 A.2 states, "If no SSN has been assigned, the applicant must sign a certification stating that no SSN has been assigned." Does this include children under age six?

Answer: Disclosure of SSNs are only required for family members age six or older (Chapter 5, Paragraph 5-12 A.3).

RESIDENT RIGHTS BROCHURE

46. Question: The Handbook does not mention anything about the Resident's Rights and Responsibilities brochure. Prior to the issuance of the revised Handbook, the resident's rights brochure was given annually. Does this mean that the fact sheet "How Your Rent is Determined," which is required to be given annually, now takes the place of the other brochure?

Answer: The fact sheet does not take the place of the Resident's Rights and Responsibilities brochure. According to Chapter 5, Paragraph 5-15 C.2, the Resident's Rights and Responsibilities brochure is to be given at the time of the original move-in and annually at recertification.

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47. Question: Do tenants have to sign an acknowledgement of receipt of the Resident's Rights and Responsibilities brochure each time they receive one (at move-in and annual recertification)? Does it state in the Handbook that tenants have to sign an acknowledgement?

Answer: Chapter 5, Paragraph 5-15 C.2 states "...owners must provide applicants and tenants with a copy of the Resident's Rights & Responsibilities brochure at move-in and annually at recertification." The Handbook does not require tenants to sign a certification of receipt of the brochure, however, the owner will have to show that the requirement is being met.

OCCUPANCY STANDARDS

48. Question: Can an unmarried couple be placed in a two-bedroom unit, if the owner/agent establishes in its tenant selection plan that a minimum of two-persons may occupy a two-bedroom unit?

Answer: Yes. Owners have the discretion to develop occupancy policies that meet the needs of their property. HUD does not prescribe specific policies owners must implement, but provides guidelines owners must follow when developing written occupancy standards. Generally a two-persons-per-bedroom standard is acceptable (Chapter 3, Paragraph 3-23 E.1 and 2).

49. Question: Can a single person occupy a two-bedroom unit, if there are no one-bedroom units at the project; and, there are no other families on the waiting list for the two-bedroom apartment? Is it possible to receive a special waiver to allow eligible single applicants to occupy a two-bedroom unit if the directive comes directly from HUD Headquarters?

Answer: Chapter 3, Paragraph 3-23 G.2 states that a single person who is not an elderly or displaced person, a person with disabilities, or the remaining family member of a family may NOT be provided a housing unit with two or more bedrooms. This provision may not be waived. Both the regulations at 24 CFR Part 5.655 (5) and the statute at Section 3(b) (3) (A) of the US Housing Act of 1937, 42 U.S.C. 1437a, support this rule. Also see Chapter 4, Paragraph 4-15 F for matching single persons to units.

50. Question: A family requests a transfer to a larger unit after newly admitted. The family qualifies for a larger unit, but the family's composition has not changed since their move-in. Can the owner allow the family to transfer to a larger unit without a change in family composition? Is this a management decision or does HUD have any requirements?

Answer: Owners must develop a written tenant selection plan. Unit transfer policies are a required part of the selection plan. It is the owner's decision of whether or not to transfer a newly admitted family to a larger unit without a change in family composition. HUD's responsibility is to ensure that the owner has a written policy in place that meets HUD requirements and that it is applied equitably. See Chapter 4, Paragraph 4-4.

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51. Question: Regarding sex and age considerations for unit size, Chapter 3, Paragraph 3-22 E.4 states that the owner must consider the age and sex of family members in developing occupancy standards. The same language is used in the model lease. Does this conflict with previous guidance, which prohibits the consideration of sex, age, and relationship in determining occupancy standards? Chapter 3, Paragraph 3-22 E.3 states that the owner must avoid making social judgments on a family's sleeping arrangement.

Answer: Since HUD does not prescribe occupancy standards, the statements are merely suggestions for owners to consider when developing occupancy standards for their properties. The two statements are advisories to owners to be careful when developing occupancy standards that the standards have enough flexibility to meet the needs of all families that qualify for a particular unit size or more than one unit size. Chapter 3, Paragraph 3-23 E.3 indicates that an owner may not have a standard that requires a parent and child or an unmarried couple to have separate bedrooms if they want to accept a one-bedroom unit. In Chapter 3, Paragraph 3-23 E.4.b the suggestion is that a two-person per bedroom rule must not be the only choice for a couple that has two adolescent children of opposite sexes that do not wish to share a bedroom.

52. Question: An owner established occupancy standards allowing for one person in a studio apartment and one to two people in a one bedroom. Can the owner require that the single person household occupying a one-bedroom unit transfer to a studio in order to accommodate a person currently in a studio who requires a live-in aide? If a person in the studio wants/needs a live-in aide, does the project have to allow them to have a live-in aide in their studio apartment in violation of their occupancy standards?

Answer: The owner's occupancy standards allow for one person to occupy a one-bedroom unit. Therefore, the person occupying the one-bedroom unit should not be required to move into the studio to accommodate another. However, if the owner has verified the need for a live-in aide, the owner would give the next available one bedroom unit to the person requiring the live-in aide and allow the live-in aide to live in the studio unit with the person as a reasonable accommodation until a larger unit becomes available.

53. Question: Does a four-person family household qualify for a three-bedroom unit, if the owner's occupancy standards state two persons per bedroom (+one)? Occupancy standards are: (1) No more than two persons required to share a bedroom; (2) Parent not required to share a bedroom with a child, unless the parent wishes; (3) Unrelated adults/persons are not required to share a bedroom; and (4) Children of the same sex may be required to share a bedroom. The family consists of a mother, her two sons and a boyfriend.

Answer: Based on the owner's established occupancy standards, the family consisting of a mother, her two sons, and boyfriend would qualify for a three-bedroom unit. Since the owner's policy says that unrelated adults/parents are not required to share a bedroom, and no more than two people are required to share a bedroom, they are eligible for the three-bedroom.

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54. Question: Can shareholders be required to move to the appropriate sized unit in a 100 percent co-op project? For example, one person resides in a three-bedroom unit.

Answer: When there is no rental assistance, co-ops may establish their own policy when making a determination regarding the appropriate sized unit. When there is rental assistance, the person must transfer to an appropriate sized unit when one becomes available or remain in the same unit and pay a higher carrying charge. See Chapter 3, Paragraph 3-23 H.1.b.

CITIZENSHIP

****55. Question: A family applying for a unit consists of a mother, who is an ineligible non-citizen, and three children who are U.S. citizens. Is the family eligible for prorated assistance, even though the only adult is ineligible?**

Answer: Yes. Only one member of the family must be eligible, regardless of age. The head of household (e.g., the mother) or co-head does not have to be a U.S. citizen or eligible immigrant in order for the family to receive housing assistance. However, Section 214 prohibits assistance to ineligible non-citizens; therefore, housing assistance must be prorated, so only eligible family members are subsidized. See Chapter 3, Paragraph 3-12 K.

56. Question: Are 811 projects exempt from completing the citizenship declaration form?

Answer: 811 projects are not subject to non-citizen requirements (Chapter 3, Paragraph 3-12 F). A citizenship declaration is not required.

***57. Question: Chapter 3, Paragraph 3-12 K.1.a states, "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." Appendix 7, Household Assistance Codes, verification of eligibility is pending. A family in this status is awaiting verification of eligibility and receives full assistance. Should the family receive prorated or full assistance when at least one family member has submitted the required documentation in a timely manner?**

Answer: Based on a review of the regulations, the information in Chapter 3, paragraph 3-12.K.1.a was not correct in the Handbook issued June 12, 2003. The family would receive full assistance for the eligible family member and for those family members who provided their information in a timely manner. The information was corrected in Change 1 to Handbook 4350.3 REV-1 issued August 26, 2004 and further clarification was provided in Change 2 to the Handbook effective June 29, 2007.

58. Question: Chapter 3, Paragraph 3-12 L.1.c provides a list of seven possible responses from the Alien Status Verification Index (ASVI) database. Can any of the seven responses be used as proof of eligibility?

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Answer: Yes. Any one of the seven responses can be used as proof of eligibility, unless the screen displays the message "institute secondary verification." In which case, the owner must perform secondary verification — a manual verification of the applicant's eligibility.

***59. Question: Are owners required to verify the immigration status of non-citizens over the age of 62?**

Answer: Non-citizens over the age of 62 must have eligible immigration status, however, status need not to be verified through the Homeland Security verification system. Both the Handbook at Chapter 3, 3-12 I and the regulations at 24 CFR 5.508(b)(2) provide the appropriate guidance. Those persons 62 years and older must sign a declaration of their eligible non-citizen status and provide proof of age. Section 202 projects with no assistance, Section 202 projects with PAC or PRAC, Section 811 projects with PRAC and 221 (d)(3) BMIR projects are not covered by the restriction on assistance to non-citizens and no declaration is required for applicants and tenants residing in these properties. See Chapter 3, Paragraph 3-12 F for Applicability.

60. Question: Chapter 3, Paragraph 3-12 E.4 states, "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 into the unit." Does the head of household have to also update the Family Summary Sheet with the new member? Would the owner have to complete a new Owner's Summary of Family Sheet? Also, if a family member moves out of the unit, would the owner have to execute a new Family Summary Sheet and Owner's Summary of Family?

Answer: A Family Summary Sheet must be completed for tenants from whom the owner has not previously collected citizenship/immigration status documentation, or whose documentation suggests that their status is likely to change. The owner will have to complete an Owner's Summary of Family, under the circumstances described in the first question (Chapter 3, Paragraph 3-12 E). The answer to the second question is as follows: If a family member moves out of the unit, the owner should place a note on the Family Summary Sheet stating that the family member no longer lives in the unit as of a specified date.

61. Question: According to an Immigration and Naturalization Service (INS) representative, an owner/agent may copy an applicant's/tenant's Certificate of Naturalization, even though at the bottom of the certificate it states the document is not to be copied, because the owner/agent is acting as an agent/representative of HUD. The certificate is merely advising the recipient not to copy the document and cautions individuals in private industry against copying the certificate. Please verify that as part of the verification process we are allowed to make a copy of the certificate.

Answer: Owners/managers are not required to copy the document. If an owner/agent does not copy the document, the owner/agent should follow the instructions in Chapter 5, paragraph 5-19 D and in the second note on each page of Appendix 3 for recording inspection of original documents. If an owner/agent does copy the document, then the owner/agent must follow the procedures that the owner/agent has established to ensure confidentiality.

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SCREENING AND EVICTION

***62. Question: The revised Handbook has replaced HUD Notice 2002-22 Screening and Eviction. In reviewing the revised Handbook, it does not include all the information that was provided in the Notice. Are owners to go by Handbook 4350.3 REV-1, even if different from the Notice?**

Answer: With the issuance of Change 2 to Handbook 4350.3 REV-1, the requirements in HUD Notice 2002-22 have been incorporated into the Handbook.

63. Question: In a group home for the disabled, serving only persons who meet the definition of developmentally disabled and narrowed down to mentally retarded persons, who have been institutionalized or in group homes their entire lives, is it still necessary to do drug and criminal screening, as provided in Chapter 4, Paragraph 4-7 C?

Answer: Yes. The applicant must be screened for drug and criminal activity in accordance with the established criteria in their Tenant Selection Plan.

****64. Question: Can an owner screen a tenant for criminal activity every year at the time of recertification?**

Answer: Although HUD does not require owners to screen tenants every year at the time of recertification, owners may choose to do so at recertification. See Chapter 7, Paragraph 7-4 A.5. The regulations (24 CFR 5.859 and 24 CFR 5.860 state that owners must incorporate into their lease agreements provisions that provide for termination of tenancy for persons involved in drug-related criminal or other criminal activity. See also Chapter 4, Paragraph 4-7 C for screening for drug abuse and other criminal activity.

***65. Question: A woman whose husband is in jail for a felony is applying to an 811 property. He is occasionally allowed a 24-48 hour visiting pass. Can the property owner admit the wife, considering her husband is a felon and may be on the premises?**

Answer: Yes. The wife (i.e. applicant) may be admitted to the project if she meets all qualifications and is the sole person on the lease. The husband may visit her, however, he cannot engage in any criminal activities on or near the premises. If it is determined that the husband has engaged in any such activity on or near the premises, the wife's tenancy may be terminated pursuant to 24 CFR 5.861. See Chapter 8, Paragraph 8-14.

****66. Question: Does the Screening and Eviction for Drug Abuse and Other Criminal Activity FINAL Rule (May 24, 2001) apply to current tenants? If an owner/agent requires all current residents at re-certification to sign a criminal release form, and some residents refuse to sign, can the property start eviction proceedings? Is this consistent with HUD's rules?**

Answer: Owners/agents are not required by HUD to conduct criminal background checks of current tenants, but owners/agents have the authority to write in their policies the

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requirement of a background check at re-certification. A court may determine if failure to sign a release form for the background check is cause for eviction. See Chapter 7, Paragraph 7-4.A.5.

INCOME

67. Question: An uninsured, 100 percent Section 8 property was recently subject to a tax credit review. Management does not include funds from SSI earmarked for food allowance as income. The tax credit authority does not agree with this and issued a finding. The Handbook (Exhibit 5-1, Income Exclusions, 16(a)), provides a list of excluded income, including the value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 USC 2017(b)). Is this the correct reference to use in which to advocate the removal of an SSI meal allowance from annual income? What is HUD's policy?

Answer: The food allowance provided under SSI is not covered under the Food Stamp Act of 1977; and therefore, it is considered income for purposes of the rent calculation. Paragraph 5-4 defines income as all amounts that are not specifically excluded by regulations (24 CFR 5.609(c)), which does not exclude meal allowances.

68. Question: Regarding income from adoption assistance, how is this treated in the calculation of a family's annual income? The "How Your Rent is Determined" fact sheet, under "Exclusions from Annual Income" states "Adoption assistance payments in excess of \$480 per adopted child is excluded from annual income." Are owners/agents to interpret this to mean that if the tenant gets \$5,000 annually for adoption assistance, only \$480 of that would be included as annual income?

Answer: Yes. This interpretation is correct (Chapter 5, Paragraph 5-6 A.3.h).

***69. Question:** If a full-time student is the head of household or spouse, should the school grants the tenant receives be counted as income?

Answer: It depends on whether or not the student is receiving Section 8 assistance. See Chapter 5, Paragraph 5-6 D.

For students who are not receiving Section 8 assistance, the school grants received by the student are not counted as income, regardless of whether the student is head of household or spouse.

For students enrolled at an institution of higher education who are receiving Section 8 assistance, regardless of whether or not they are head of household or spouse, the school grants received by either a part-time or full-time student would be considered as financial assistance in excess of tuition and, therefore must be counted as income unless the student is over the age of 23 with dependent children or is a student living with his/her parents who are receiving section 8 assistance. Also see Chapter 3, Paragraphs 3-13 and 3-16.

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70. Question: Is borrowed money considered income? The old Handbook indicated the borrowed money received by residents was excluded from income calculations, but the new Handbook is silent on this matter.

Answer: No. Borrowed money is not considered income.

71. Question: When calculating SS income, owners/agents should use the gross amount. But, do owners/agents include the cents on SS payment amounts, although not received? For example, if the gross amount is \$570.20, but the net is \$570, do owners/agents calculate as \$570.20 x 12?

Answer: When calculating Social Security income, use the gross amount shown on the third-party verification, including cents. Acceptable forms of third-party verification can be found in Appendix 3, "Acceptable Forms of Verification".

****72. Question: If a person sells his/her term life insurance to a tenant who is receiving the insurance benefit on a monthly basis, how is this treated in the determination of annual income? What if it is paid to the tenant in a lump sum?**

Answer: If the benefit is being received on a monthly basis, the annual amount of the income would be included in annual income (Chapter 5, Paragraph 5-6 K.1). If the benefit is paid in a lump sum, it would be counted as an asset. (Chapter 5, Paragraph 5-7 G.3).

73. Question: A divorced Section 8 resident has a vehicle that her ex-husband is allowing her to use for the purpose of transporting their sick son to and from doctors appointments. The car is in the ex-husband's name, and he makes the car payments and is responsible for the vehicle. The owner is treating the car as a non-cash contribution to the resident provided on a regular basis. How should this be treated?

Answer: The owner should not treat the vehicle as a regular non-cash contribution being provided to the resident unless the resident has exclusive use of the vehicle.

74. Question: It seems that if a tenant receives child support then it is included in the tenant's calculation of annual income and the determination of rent, which is reasonable considering that it is income. Conversely, if a tenant pays child support, the amount the tenant pays is not excluded when calculating annual income and determining rent. Consequently, your rent is based on income you do not receive. Is this not a form of discrimination? Could HUD please explain and provide a point of reference?

Answer: Eligibility for assistance in the Department's multifamily housing assistance programs is based upon Federal Law and HUD regulations. Regulations state that owner/agents must use the full amount (gross income) before any payroll deductions, unless there is a regulation that specifically excludes the deduction (i.e., child support payments). The regulations do not exclude child support payments. The regulations governing annual income can be found in 24 CFR 5.609 and 24 CFR 5.611. More guidance can be found on determining annual income in Chapter 5. To further answer your questions, the fair housing laws provide protection from discrimination based on sex, age, race,

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national original, religion and disability. People that pay child support are not a protected class.

***75. Question: On an annual re-certification, the tenant states that his parents pay his school tuition and car insurance. Would either of these be counted as income on the annual re-certification?**

Answer: Yes. Per Chapter 5, paragraph 5-6 F, owners/agents must count as income regular contributions and gifts from persons not living in the unit. The owner/agent should require the parents to provide written certification of the total amount of support provided to the tenant.

See Chapter 3, Paragraphs 3-13 and 3-33 for determining income for students enrolled at an institution of higher education who are receiving Section 8 assistance.

76. Question: A family member has been deployed by the armed services for the next four years, and will be absent from the unit for 4-5 months at a time, returning for up to 10 days at a time. If the family chooses to keep this member on the lease, do owners/agents count this family member's income?

Answer: Chapter 5, Paragraph 5-6 B.3 states, "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." Owners/agents should also review Chapter 5, Paragraph 5-6 B 3.a & 3.b, along with the example.

77. Question: A management company has been consistently using the prior year's social security income and Medicare premiums, for all residents with January and February recertification dates. The company maintains that since it sends out the recertification information and third-party verification forms 120 days in advance that the prior year's income and Medicare amounts should be used for these recertifications. Should an owner be required to use the increase in social security that is published in November every year or can an owner make his or her own decision and do it either way, as long as the practice is applied consistently for all residents?

Answer: The owner may either calculate the increase in income based on the percentage of increase or accept the verified amount as long as the same method is applied consistently for all residents.

ASSETS

****78. Question: A tenant who lives in a Section 8 subsidized complex purchased a home, and he is renting it out, while living in the complex. Is the home counted as an asset, income, or both? The Handbook refers to "business income", but how can this be classified as a business? Would the manager need to obtain and review the tenant's tax returns?**

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Answer: *The home would be counted as an asset. Owners/agents would determine the cash value of the asset by deducting from the current fair market value: (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.). The rent received would be considered income from the asset. See Chapter 5, Paragraph 5-7 C and the associated example, Determining the Cash Value of an Asset, and Chapter 5, Paragraph 5-7 F for determining the income from the asset. An owner can count this as income from a business, if the tenant can provide some form of documentation such as a business license, a tax ID or a tax return. If the tenant cannot provide required information, the money earned will be treated as income derived from an asset (Chapter 5, Exhibit 5-2 A.3 and Appendix 6 C).*

****79. Question:** Chapter 5, Paragraph 5-6 P.2 states that deferred periodic payment of SS benefits is to be treated as an asset, not as income. If a resident has already spent the asset before the next annual recertification, should the asset still be counted? Would the resident still be required to report the delayed payment of SS benefits at their annual recertification, although it has already been spent?

Answer: *Delayed payment of SS benefits is treated as an asset, not as income. Since only income on the asset is counted, there is no need to report the asset if the asset no longer exists.*

80. Question: Assume a tenant received a lump sum inheritance payment of \$12,000 and puts the money into a savings account. The tenant then decides to withdraw \$1,000 per month from the account and uses this \$1,000 on items generally not considered an asset. Should the \$1,000 per month that the resident withdraws from that savings account be counted as income?

Answer: *The \$12,000 lump sum inheritance payment that the tenant received and put into a savings account is considered an asset. Monthly withdrawals would not be counted as income. Income on the asset will be considered at the next annual recertification. See Chapter 5, paragraph 5-7 G.3.*

****81. Question:** If a person sells his/her term life insurance to a tenant who is receiving the insurance benefit on a monthly basis, how is this treated in the determination of annual income? What if it is paid to the tenant in a lump sum?

Answer: *If the benefit is being received on a monthly basis, the annual amount of the income would be included in annual income (Chapter 5, Paragraph 5-6 K.1). If the benefit is paid in a lump sum, it would be counted as an asset. (Chapter 5, Paragraph 5-7 G.3).*

***82. Question:** The S. King example of an IRA account before Chapter 5, Paragraph 5-7 G.5 uses the end of the year balance. If a resident recertification was to be conducted on 1/1/04, would the owner/agent use the balance accessible on 12/31/03? If so, doesn't that conflict with Exhibit 5-2 A.5 that suggests using the average balance for the previous six months?

Answer: *The S. King example was removed with the issuance of Change 2 to the Handbook as it is no longer applicable.*

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DEDUCTIONS/ALLOWANCES

83. Question: Can you be a single adult and also a dependent? Can you be a head of household and also a dependent?

Answer: No. A dependent is a family member who is under 18 years of age, is disabled, or a full-time student. The head of the family, spouse, co-head, foster child, or live-in aide are NEVER dependents (Chapter 5, Paragraph 5-6 A.3.).

***84. Question: Are children who go away to school considered to be "temporarily absent" from their household, when they return for the summer, or are they claimed as dependents on their parents' tax returns?**

Answer: The children may or may not be considered to be "temporarily absent."

Children who go away to school, but who live with the family during recesses or are claimed as dependents on their parents' tax return are considered a "temporarily absent" family member with the following exception:

Owners should not count children who are away at school who have established residency at another address or location as evidenced by a lease agreement that is enforceable under state law. The new address or location is considered the student's principle place of residence. Students living in dormitories would be considered temporarily absent.

See Chapter 3, Paragraph 3-6 E.4 Note. See Chapter 3, Paragraph 3-6 E.4 for determining family size for income limits, Chapter 3, Paragraph 3-23 E.6.c for determining unit size and Chapter 5, Paragraph 5-6 A.3.e for how income is counted if the child meets the qualifications of "temporarily absent".

85. Question: Would someone who is hearing impaired, yet gainfully employed, qualify for the "elderly/disabled" allowance?

Answer: An applicant who is hearing impaired is entitled to the \$400 deduction if the person meets the definition of disability used to determine eligibility for a project or an allowance. See Chapter 3, Paragraph 3-28, Figures 3-5 and 3-6 and Chapter 5, Section 3 of the Handbook.

***86. Question: Chapter 5, Paragraph 5-10 D states, "Past one-time nonrecurring medical expenses that have been paid in full may be included in the medical expense deduction." How is "one time nonrecurring medical expense" defined? Does this mean once in a lifetime or nonrecurring in the recertification year? Can you provide any examples?**

Answer: The guidance provided in Chapter 5, Paragraph 5-10 D.6 was intended to simplify the recertification process by reducing the number of interim recertifications. Past "one-time nonrecurring expense" is not defined because the circumstance of each occurrence must be evaluated on a case-by-case basis. A tenant may require a dental procedure, such as a root canal, or cataract surgery, which would qualify under this category, although these

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procedures may not be a once in a lifetime occurrence. Owners must use good judgment based on the circumstances of each case. The tenant will determine whether to request an interim or to report the expense at the annual recertification. An example of a recurring expense is the addition of a new medication that will require continued use. The owner would estimate the cost of the medication forward at the annual recertification and not include the cost of the medication for the prior year unless an interim was requested for the prior year. This provision does not apply when calculating anticipated medical expenses at the time of move-in.

87. Question: A tenant has provided a list of medications that he/she is prescribed to take. If the tenant has been buying some of the medications, but cannot afford to buy all of them, should the owner/agent allow the expense deductions for all of the medications on the list, if the cost can be verified by the pharmacy? Is this a situation where only the medications for which the tenant has receipts can be counted?

Answer: The owner/agent must include all medical expenses the family anticipates to incur during the 12 months following certification/recertification that are not reimbursed by an outside source, such as insurance (Chapter 5, Paragraph 5-10 D.3). If the tenant indicates that he/she will begin to purchase the medications during the next 12 months and the cost will not be covered by an outside source, the cost of the medications may be included in the calculation of the deduction. If the tenant does not plan to purchase the medications for the next 12 months, the tenant may request an interim recertification when he/she begins purchasing the prescriptions.

88. Question: Can the cost of Life Line or a cell phone recommended by a physician for a frail, elderly person to use in case of a medical emergency be counted as a medical expense?

Answer: The cost of Life Line or a cell phone should not be considered as a medical expense. An allowable medical expense is an item that treats or alleviates a medical condition. Life Line or a cell phone do not qualify as a medical expense since neither have an impact on the actual medical condition.

89. Question: Can the various options for calculating medical expenses be combined on one certification? When calculating medical expenses, can owners/agents choose which method to use or should the owner/agent use the past twelve months, if anticipating a tenant's medical expenses is not possible? Must the same method be used consistently or on a case-by-case basis? If using the previous twelve months and an ongoing expense stops or a new one starts, should an interim be conducted?

Answer: The owner/agent determines the procedure to be used to determine anticipated medical expenses based on the guidance in Chapter 5, Paragraph 5-10 D. Since this amount is an estimate, the owner should use a methodology that will provide the most accurate estimate. Whatever procedure is selected should be used consistently for all tenants. It is possible that all options would be included in the owner's procedure for determining medical expenses.

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90. Question: Can a resident include the cost of the medical insurance portion of his car insurance (assuming that the cost can be broken down) as a medical deduction? The Handbook allows for premiums paid to an HMO, but does not address medical insurance premiums paid to a different source such as car insurance.

Answer: There are no portions of automobile insurance eligible for a medical expense deduction. An HMO is clearly a medical expense.

***91. Question:** Chapter 5, Exhibit 5-3 states that a physician must prescribe nutritional supplements and non-prescription medicines. Can this only be done by a physician? Can a nurse practitioner, chiropractor, physician's assistant, licensed herbalist, or other health care professional prescribe nutritional supplements, herbal medicines or non-prescription medicines? Are nutritional supplements and herbal medicines allowable medical expenses even if they are available over the counter?

Answer: If a medical practitioner is licensed to prescribe medicines and recommends in writing a nutritional supplement, herbal medicine or nonprescription drug as a treatment for a specific medical condition diagnosed by a physician or other health care provider who is licensed to make a diagnosis in the locality where practicing, the cost of the medicine can be included as a medical expense even if it is available over the counter. Herbal medicines, nutritional supplements and nonprescription drugs are not counted if the medicine is recommended to maintain ordinary good health. An example of a nonprescription drug that may or may not be a medical expense is: A doctor provides a recommendation to an elderly tenant that she take calcium medication (non-prescription) and milk with calcium daily, which is very essential for the tenant's bones. The calcium medication may be allowable if the physician has diagnosed a medical condition such as osteoporosis and recommends calcium medication as part of the treatment. If the doctor has recommended the calcium medication to maintain the health of the tenant's bones, it is for ordinary good health and is not allowable.

92. Question: If a tenant in a wheelchair pays \$20 every two weeks to enable him/her to run errands, can the amount spent be considered a medical expense?

Answer: Household help is not a medical expense. As stated in the examples in Chapter 5, Exhibit 5-3 concerning "Household help" - it is counted as a medical expense only if it is a nursing-type service or certain maintenance, or personal care service provided for qualified long-term care.

93. Question: Chapter 5, Paragraph 5-10 D.8.h refers to the upkeep of a service animal as a medical expense. What are some of the things that HUD considers "upkeep" of the service animal?

Answer: Items considered a part of the "upkeep" of a service animal include dog food, veterinary bills, required shots, license fee, and the ID tattoo on the ear. Owners must use their discretion when discerning what is considered "upkeep" items.

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MINIMUM RENT

94. Question: Where in the revised Handbook does it discuss minimum rent exemptions for 811/202 projects? Are owners/agents to follow the same minimum rent rule of \$25.00, per the old Handbook?

Answer: The \$25 minimum rent is required only for those projects receiving Section 8 assistance, under the US Housing Act of 1937 (Chapter 5, Paragraph 5-26 D). A Section 202 or 811 with a PRAC is not Section 8.

95. Question: Under Chapter 5, 5-26 D.3.b(4) for short-term exemptions, the tenant has to repay minimum rent. Is repayment required on long-term exemptions?

Answer: Chapter 5, Paragraph 5-26 D.3.b.(3) of the Handbook states that a temporary hardship is for 90 days after the date of the suspension. Since 90 days is considered a temporary hardship, any period over 90 days is considered long term. If the hardship is long term, the tenant is not required to repay the minimum rent.

96. Question: Can a hardship exemption be applied in a PRAC project when it is a hardship for a tenant to pay minimum rent?

Answer: No. Minimum rent does not apply to PRACS. As stated in Chapter 5, Paragraph 5-26 D, minimum rent only applies to properties with Section 8.

UTILITY REIMBURSEMENTS

****97. Question:** What should owners/agents do with the utility reimbursement check when a tenant moves-out and owners cannot locate the former resident? Should the check be voided and the funds returned to HUD, as an adjustment on the next voucher or should the owner deposit these funds in some type of account?

Answer: The check should be voided and the funds returned to HUD as an adjustment on the next voucher. See Chapter 9, Paragraph 9-13 B.

***98. Question:** Regarding utility reimbursements, if an owner/agent issues nominal utility reimbursement checks (i.e., \$5, \$10) to current residents still living onsite, and some residents failed to cash them within the timeframe the bank allows for checks to be cashed (for example, 120 days), can the owner/agent recover the funds as property income or must the owner/agent return the funds to HUD? For instance, at the time a resident has moved-out, the property has outstanding UR checks for the resident that have not been cashed. What is the correct follow up procedure for resolution? How many attempts does the owner/agent need to make to locate the former resident? Do these funds need to be returned to HUD?

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Answer: *The funds for un-cashed utility reimbursement checks would be returned to HUD. The owner needs to ensure before returning the funds that the tenant has been given sufficient opportunity to cash the checks and that all attempts have been exhausted in reaching former tenants, including any requirements under state or local law. See Chapter 9, Paragraph 9-13 B.*

VERIFICATION

99. Question: Chapter 5, Paragraph 5-6 E states that the tenant must certify that alimony and child support payments are being made, and if not, the tenant is taking or has taken all reasonable legal means to collect, including filing with the courts or enforcement agency. Does this need to be notarized?

Answer: *Yes. See Chapter 5, Paragraph 5-13 D for the requirements when Family Certification is accepted as a third-party verification. Also see Appendix 3 under "Alimony or child support" for other acceptable forms of verification the owner may use.*

100. Question: During a Management and Occupancy Review (MOR), a contract administrator (CA) compliance officer stated that a driver's license is not acceptable as proof of age because a driver's license is not listed in the Handbook. Consider the following: a tenant who is 65 years old does not receive social security nor has a birth certificate. In this case, would HUD consider making a revision to the Handbook to allow driver's licenses as proof of age where the date of birth is indicated on the license?

Answer: *If an owner/agent determines that the driver's license is a dependable form of verification, the license may be used as an alternative form of verification of age. The examples provided in the Handbook (Appendix 3, Acceptable Forms of Verification) are only suggested items to be used for verification, and, in some instances, alternative forms of verification must be used. If the applicant/tenant has a social security number, the owner/agent should request, review, and consider the documentation that was used to verify age when the SSN was issued.*

101. Question: The new handbook states, "information obtained under this consent is limited to information that is no older than 12 months." If it is an owner's/agent's policy to check a family's rental history for the last five years, does the owner/agent need to obtain a waiver to allow this reference check?

Answer: *Chapter 4, Paragraph 4-7 E discusses establishing screening criteria. It is up to the owner to determine the type of screening to be conducted. The 12 months referenced in paragraph 5-17 A.2.a is for verification forms that are used when requesting information for use in determining income and other eligibility.*

***102. Question:** Please provide clarification regarding the time limitation on information obtained through verifications. Chapter 5, Paragraph 5-17 A.2.a states, "Information requested by individual verification forms is restricted to data that is no more than 12 months old." However, 5-17 B.1 states Verifications are valid for 120 days from the date of receipt by the owner. Are Social Security (SS),

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State, and Federal pension award letters (issued annually) acceptable to HUD, if older than 120 days?

Answer: These are two different issues. Regarding the first, Chapter 5, Paragraph 5-17A.2.a is stating that the information that is being requested by the owner from the third party is restricted to data that is no more than 12-months old. For example, if an owner sends out an employment verification form, the owner/agent cannot request the employment income records for more than the past 12 months (See exception to this rule in Chapter 5, 5-17 A.2.b).

The second issue is that once the owner receives the information requested from the third party, they cannot use this information after 120 days. For example, if they receive the information on July 3 then they can use this information for re-certification purposes for 120 days from July 3, but after the 120 days it is no longer a valid form of verification for re-certification purposes.

103. Question: A property manager receives an application that states the head of household is working, but the other adult family member has zero income. The manager verifies the income of the head of household, but does not verify the zero income of the other adult in the household. Would zero income be considered a type of income? Should the property manager be verifying this information?

Answer: A tenant or applicant with no income self-certifies to zero income. See Appendix 3 "Zero Income" for additional guidance on verifying tenants who claim zero income.

104. Question: Chapter 3, Paragraph 3-6 F.5 states that a household does not need to have income to be eligible for assisted housing programs that provide rental assistance through an assistance contract (i.e., Section 8, Rent Supplement, RAP, Section 202 PAC, Section 202 PRAC, or Section 811 PRAC). Can owners require monthly or quarterly recertification of the family to confirm the family still has no form of income?

Answer: Yes. As provided in Appendix 3: Acceptable Forms of Verification Zero Income, "owners may require the tenant to re-certify zero income status at least every 90 days."

105. Question: Chapter 5, Paragraph 5-6 E states "...he or she has taken all reasonable legal actions to collect amount due, including filing with the appropriate courts or agencies responsible for enforcing payments..." Agent interprets this to mean that if the resident has a child, HUD requires the resident to file for child support. Is this an accurate interpretation?

Answer: No. An agent cannot require a resident to file for child support, but the resident must be able to establish that child support payments are not being made. This evidence may come in the form of written documentation from the courts or agencies that enforce child support payments. The owner's responsibility is to verify the amount of payment provided by the tenant. See Appendix 3: Acceptable Forms of Verification for acceptable forms of verification for alimony and child support.

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106. Question: Some banks and pharmacies charge tenants a \$25 fee for verifications and will only verify amounts using their form, and not HUD's. Can the project absorb the charges or should the tenant pay the cost? If the tenant is allowed to pick up the form(s) at the bank or pharmacy, there is no cost. Under these circumstances, can the tenant bring the verification(s) to the owner/agent? Please advise.

Answer: Owners/agents are permitted to accept verification documentation from tenants under certain circumstances. See Appendix 3 under the column "Documents Provided by Applicant"; pages 5 and 7 for bank information; and page 12 for medical expenses. Exhibit 3 provides several examples of exceptions to the rule. If the owner/agent is certain that the information provided on the verification form is from the third party source, the verification can be accepted from the tenant. The owner/agent, however, must document in the family file why third party verification was not obtained from that source. Charges for the cost of obtaining verifications are a project expense.

ANNUAL AND INTERIM RECERTIFICATIONS

****107. Question:** Chapter 7, Paragraph 7-6 B states that "owners and tenants must complete the applicable steps listed in Chapter 7, Figure 7-3 for an annual recertification to be timely." Would a tenant cause a recertification to be late if he/she failed to provide required signatures on the HUD-50059 (step 8) by the recertification anniversary date?

Answer: Yes. A tenant would have caused a certification to be late if he/she failed to provide required signatures on the HUD-50059 by the recertification anniversary date.

108. Question: Could you please clarify whether the revised Handbook changed the "cutoff date" that must be inserted in the initial and reminder recertification notices?

Answer: The cutoff date that is being used is now the tenth day of the eleventh month after the last annual recertification (Chapter 7, Paragraph 7-7 B.1.a.(2)).

109. Question: If a tenant submitted the required information to the owner on time and the owner failed to complete the recertification process by the tenant's anniversary recertification date and later determined that the tenant's rent should have increased, can the owner retroactively collect from the tenant rent increases back to the date of original recertification?

Answer: No. An owner is not entitled to collect the new rent increase retroactively, to the anniversary date, if the recertification was not conducted on time due to the owner's negligence. If the owner fails 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 (Chapter 7, Paragraph 7-8 C.2).

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****110. Question: If a tenant submitted the required verification information to the owner on time and the owner failed to complete the recertification process by the tenant's anniversary recertification date and later determined that the tenant's rent should have decreased, is the tenant entitled to be reimbursed, retroactively, for the difference that the tenant overpaid?**

Answer: Yes. If the owner failed to complete the verification and recertification process by the tenant's recertification date and, as a result, the tenant's rent decreased, the owner must retroactively reimburse the tenant for the difference that the tenant overpaid. (Chapter 8, Paragraph 8-21).

111. Question: What action should owners/agents take when they complete recertifications in accordance with HUD requirements, and residents do not come in to sign the HUD-50059 until after the anniversary date? Do owners/agents charge the tenant market rent/contract rent and then reinstate the subsidy, if no extenuating circumstances were present?

Answer: Yes. If a tenant waits until after the recertification date to submit requested information, he/she is in noncompliance. The owner must charge the tenant market rent until all of the proper documents are submitted and signed. Assistance can be reinstated if assistance is available after requested information is submitted and signed and it is determined that the tenant still qualifies for assistance (Chapter 7, Paragraph 7-8 D.3).

112. Question: Is there any way an owner can change a tenant's annual recertification date? Does being late and paying market rent for a month or two change the annual recertification date?

Answer: An owner may establish an alternative recertification anniversary date with the approval of the HUD field office or contract administrator. Some examples of acceptable reasons for requesting alternative dates can be found in Chapter 7, Paragraph 7-5 C. When a tenant is late and pays market rent for a few months, the tenant's recertification date changes to the first day of the month the property begins again receiving assistance for the tenant. The tenant's recertification is processed as an initial certification pursuant to Chapter 7, Paragraph 7-8 D.3.g.

113. Question: Is it true that tenants who refuse to re-certify cannot be asked to pay market rent? If this is true, what other methods can an agent use to ensure timely recertification?

Answer: In properties where there is a market rent (or contract rent), and tenants refuse to re-certify, they will be required to pay market rent or contract rent. In Section 202/811 PRAC properties, where there is no "market" rent because the tenant pays 30 percent of income and the rent is not capped at operating rent tenants are subject to eviction (Chapter 8, Paragraph 8-5).

****114. Question: An owner/agent found an error in a tenant's rent calculation resulting in an increase in the tenant's rent. The error was not caused by the tenant or documentation provided by the tenant. The tenant has been living in the unit less than a year. The owner has provided the tenant with a 30-day notice of increase in rent. Would this be processed as an interim recertification?**

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Answer: *This should be processed as a correction to the certification processed at move-in. Since the error was caused by the owner, the tenant must be given a 30- day notice of the increase in rent and the owner must reimburse HUD for the overpayment of subsidy. See Chapter 8, paragraph 8-20 B.*

115. Question: When should an owner conduct an interim recertification?

Answer: *See Chapter 7, Paragraphs 7-10 and 7-11 for requirements for interim recertification.*

116. Question: Regarding interims, the Handbook does not specify a timeframe for reporting changes in tenant income (i.e. increases). Is there a specified timeframe (i.e. days, weeks, months) in which tenants must report changes in income?

Answer: *HUD does not specify a timeframe for reporting changes in income. Owners should establish a reasonable policy and apply the policy consistently.*

117. Question: Chapter 7, Paragraph 7-10 A.3 and 4 states that all tenants must notify the owner when a previously unemployed family member becomes employed and when the family's income cumulatively increases by more than \$200 per month. Do owners have to do an interim recertification, if the unemployed adult resident gets a part-time job and the monthly income is less than \$200?

Answer: *The tenant must report income changes and let the owner determine if the higher amount of income will result in a change in rent. Rent should not be increased if the increase in income is less than \$200. Owners are not required to do an interim recertification, if a family's income does not increase by at least \$200. A family may request an interim recertification as a result of any change since the last recertification that may affect the TTP (or tenant rent) and assistance payment for the family (Chapter 7, Paragraph 7-10 B.).*

118. Question: Does a tenant who previously reported zero income have to report the \$145 in Temporary Assistance for Needy Families (TANF) benefits he/she now receives every month?

Answer: *Yes. A tenant should report any increases or decreases in their income that occurs after their last recertification. That said, if a tenant reports an increase in income that is less than \$200, the owner is not required to perform an interim recertification (Chapter 7, Paragraph 7-10 A.1 through 4).*

119. Question: Regarding a Section 8 New Construction contract, the Handbook instructions in Chapter 6 indicate that the initial lease term is a minimum of one year. This being the case, if a property has permission to have a blanket recertification date, when is the earliest a tenant could be put on that schedule? For example: Tenant moves in on 10/21/03. HUD-approved blanket recertification date is May each year. Can the property put the tenant on the May recertification timetable in May 2004 or must they do an annual recertification for 10/01/04,

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based on the required term length of the initial lease, then put the tenant on the May annual recertification timetable on 05/01/05?

Answer: The regulations provide that recertification has to be done at least annually but does not prohibit more frequent recertifications. The owner may put the family on the common recertification date at the first opportunity. In your example of a move-in date of 10/21/03 and a common recertification date of May, the tenant can be put on the common recertification schedule in 5/04.

***120. Question: With regard to Chapter 7, Exhibit 7-2: Annual Recertification First Reminder Notice (and subsequent exhibits for second and third reminders), where is the referenced paragraph in the 202/8 lease that provides for the recommended statement contained in part, in the fourth paragraph of the Notice—"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."**

Answer: There is no provision in the lease that specifically states that you can raise the rent to market rent without the 30-day notice, as is stated in paragraph 15 of the family lease. However, the 3rd reminder notice (Chapter 7, Exhibit 7-4) notifies the tenant that if they do not comply, the tenant's rent will be raised without the 30-day notice. This, in effect, is the 30-day notice, since it is sent out more than 30 days before the recertification anniversary date. The paragraph in the Notice should be adjusted according to the type of project and lease used.

LEASE AND LEASE ATTACHMENTS

LEASES

***121. Question: Does the 202/8 lease reference the incorrect paragraph in Item 25?**

Answer: Yes, this was an error. However, Item 25, Removal of Subsidy, Paragraph (a)(1) has been corrected with the release of Change 2 to the Handbook. The paragraph references have been corrected to refer the reader to paragraphs 10 or 24.

***122. Question: The Handbook states 202/8 and 202 PRAC leases can only be modified for documented State or local law. How are owners/agents to modify the leases to include provisions to: (1) Amend the lease or add an addendum for buildings that have been approved to be nonsmoking, so it is enforceable in federal court? (2) Amend the lease to have a paragraph that shows the prorated rent amount for tenants who do not move in on the first day of the month? Are the use of these particular leases formally required by statute or regulation for their respective programs and, if so, where?**

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Answer: Regulations do not provide for modification of 202 leases except as noted in Chapter 6, Paragraphs 6-5 D and E. The local HUD office or Contract Administrator must approve the lease modification (Chapter 6, Paragraph 6-12 C).

123. Question: The model lease for Section 202/8 has an initial lease term of one year. Paragraph 9(a) states "the tenant may terminate at the end of the initial term or any successive term by giving 30 days written notice..." Paragraph 7 of the lease states "...upon termination of this lease, the deposit is to be refunded to the tenant or to be applied to any such damage or any rent delinquency..." According to these two paragraphs a tenant would not receive a security deposit refund, unless the initial one-year lease has been completed. Is this interpretation correct?

Answer: Yes. Your interpretation of the 202/8 lease is correct. According to Paragraph 9(a) and Paragraph 7 of the lease, a tenant would not receive a security deposit refund, unless the initial one year lease has been completed. An owner is not required to refund the security deposit to a tenant of a Section 202/8 property unless the initial one year lease term is complete and the tenant has provided 30 days notice. Owners/agents must also apply state law to any action in their state.

124. Question: Considering that the initial term of the lease is one year, if a tenant moves within that year, giving the required 30-day notice, can the tenant receive the full security deposit back, if there are no other reasons for retaining the deposit or portion thereof?

Answer: Yes, in a property that uses the family model lease, the tenant is entitled to a full refund of their security deposit plus accrued interest, where applicable, if the tenant does not owe any amount under the lease. The owner must also comply with any State and local laws. Chapter 6, Paragraph 6-18 addresses the requirements for refunding the security deposit.

125. Question: Is there a HUD requirement that states co-ops must use a HUD model lease instead of an occupancy agreement? Please clarify.

Answer: The HUD model lease is not used by residents in a cooperative. These residents use an occupancy agreement. Those occupancy agreements executed for assisted tenants after 2/15/84 must contain the co-ops policies on unit transfers and the recertification, termination and fraud penalties found in paragraphs 15, 16, 23 and 25 in the model lease for subsidized properties. This guidance is found in the Handbook in Chapter 6, Paragraphs 6-4 B.2 and 6-5 A.3.

***126. Question: Does HUD require Rural Housing Services (RHS) Section 515 projects with Section 8 Assistance to use the HUD model lease?**

Answer: Yes. The HUD Model Lease for Subsidized Programs must be used at Section 515 projects with Section 8. See Chapter 6, Paragraph 6-5 F.2).

127. Question: Should all residents in a Section 202 project, subsidized or non-subsidized, use the Section 202/8 lease?

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Answer: Residents in a 202/8 project must use the HUD model lease. Residents in a 202 project with no rental assistance are not required to use the HUD model lease. There is no HUD-prescribed model lease for residents at a 202 project with no rental assistance (Chapter 6, Paragraph 6-5 A).

128. Question: Please clarify Paragraph 23 of the lease guidance that says this paragraph may not be changed. Washington State law states a tenant may give a 20-day notice to vacate. Can this change to the model lease be enacted in Washington State?

Answer: Chapter 6, Paragraph 6-5 C.3 lists paragraphs in the model lease that cannot be modified. This list includes Termination of Tenancy, Paragraph 23 of the Model Lease for Subsidized Programs (Family Model Lease). Refer to local counsel to determine if the 30-day requirement may be changed to 20 days to agree with state law.

***129. Question:** There are certain places in the Handbook that state the model lease can be revised or owners/agents can do an addendum for a specific issue. Must HUD approve all changes to the lease or any lease addendum. Does this also apply to those issues already approved in the revised Handbook?

Answer: HUD has already approved the model leases included in the revised Handbook. Lease provisions that are authorized by the Handbook would not require further approval by HUD or Contract Administrator. HUD field office or Contract Administrator approval is necessary only for making any other changes to the model leases. (See Chapter 6, Paragraph 6-5)

***130. Question:** The Handbook states, "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. Are contract administrators (CAs) currently authorized to approve lease modifications?"

Answer: Contract Administrators only perform those tasks required under the provisions of their Annual Contributions Contract (ACC). The ACC will have to be reviewed to determine if the CA is authorized to approve lease modifications. If the Contract Administrator does not have the authority to approve lease modifications, the HUD field office will continue to have this responsibility. See Chapter 1, Paragraph 1-1 D.

HOUSE RULES

131. Question: What is HUD's position regarding smoking in units? Can an owner have a no smoking building as long as he grandfathers in all of the existing smokers, and complies with State and local laws on smoking?

Answer: There are no statutory or regulatory provisions governing smoking in HUD-assisted properties. Properties must comply with State and local ordinances, as they relate to smoking. Refer to the Note under Chapter 6, Figure 6-5.

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132. Question: Regarding extended absence from the unit, is this a rule? When this first came out several years ago, it read "cannot be absent for more than 60 days from the unit." How many times in a calendar year can a tenant be away from the unit for 60 continuous days before the unit ceases to be the primary place of residence.

Answer: Pursuant to the Handbook, owners have the discretion to establish rules specifying when tenants give up their right to occupancy because of their extended absence. Chapter 6, Paragraph 6-9 B.2 provides guidelines the owner may use when establishing rules on extended absence from the unit.

133. Question: PIH regulations state that a resident cannot be gone longer than six months for any reason; if they are, assistance is terminated. Why can Housing not have the same policy?

Answer: There is no regulation governing multifamily programs that states a resident cannot be absent from the unit longer than six months. However, an owner is free to adopt similar requirements in its tenant selection plan to establishing such policies (Chapter 6, Paragraph 6-9).

134. Question: Chapter 6, Paragraph 6-9 B.3 states that house rules are listed in the lease as an attachment and must be attached to the lease. The new tenant file worksheets from the RHIIP guide asks if these and the pet rules are in the file as attachments to the lease. If the most current house rules and pet rules are not in the tenant files as attachments to the lease, but there is a signed acknowledgement that the tenant has received them and it is dated, is this acceptable?

Answer: Copies of house rules and pet rules must be in the file as well as the signed acknowledgement. (See Chapter 6, Paragraph 6-9 B.3 for requirement for House Rules and Paragraph 16 of the Section 202/8 lease and Paragraph 14 of the Section 202 and 811 PRAC leases for pet rules.)

OTHER ATTACHMENTS

135. Question: Chapter 6, Paragraph 6-8 D.1 states the lead based paint disclosure form is required to be kept for three years. Why is this form required to be kept for three years, unlike the documents in Chapter 5, Paragraph 5-23?

Answer: The regulations require that lead based paint disclosure forms be kept for three years (25 CFR 35.92(c)).

136. Question: 1) Can an owner/agent establish a house rule indicating pets are not allowed at the property except for service animals (assuming there are no State and/or local requirements indicating otherwise)? 2) Is an owner required to establish pet rules for the property when an elderly and/or disabled person lives at the property?

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Answer: 1) If the property is not a property for the elderly or disabled, then the owner may establish a policy for not allowing pets. 2) No. The owner of the family housing is required only to establish pet rules, if the property was built/developed as a property for the elderly or disabled (Chapter 6, Paragraph 6-10 A).

137. Question: The model lease for subsidized programs states that the landlord will refund the security deposit less any amount needed to pay the cost of damages that are not due to normal wear and tear and are not listed on the unit inspection report. Is this correct? If the damages are not listed on the unit inspection report can the landlord still charge them?

Answer: The move-in inspection report gives the tenant the opportunity to list any repairs that are needed when the tenant moves into the unit. When the tenant vacates the unit, any damages that were not noted on the move-in inspection report and are not due to normal wear and tear are assumed to be caused by the tenant's action and can be deducted from the security deposit.

***138. Question:** The move-in inspection forms do not have the statement that the old Handbook stated must be on the form: "the unit is decent, safe and sanitary." The revised Handbook does not state that this caveat must be on the form. Are owners still required to have a place on the move-in inspection form that will allow residents to certify that their unit is "decent, safe and sanitary"?

Answer: Yes. With the release of Change 2 to the Handbook, the statement "The unit is in decent, safe and sanitary condition" is required to be on the move-in inspection form. See Chapter 6, Paragraph 6-29 C and Appendix 5.

GROSS RENT CHANGES

***139. Question:** Chapter 5, Paragraph 5-28 E talks about owners in the Section 202/8 GH program being able to move the rent up and down. When there are two residents sharing a room and one moves out, owners can move the rent to the full amount for the remaining members with the TTP remaining the same and the HAP picking up the remainder? Will owners be allowed to move the contract rent back to the full amount and only have one to a room versus having two to a room? What will the options be?

Answer: Calculating rent for double occupancy in Section 202/8 or Section 811 PRAC group homes must be done in accordance with Chapter 5, Paragraph 5-28 E.2. This does not allow for owners to move the contract rent back to the full amount when there is only one occupant.

140. Question: An elderly family, consisting of a husband over the age of 62 and a wife under the age of 62, has a Section 236 one-bedroom unit and is paying between basic and market rent. The husband dies, leaving the wife as the remaining family member. If the wife's income drops as a result of her spouse's death, and she therefore becomes eligible for Section 8, should the owner take her to basic and then put her on the Section 8 waiting list?

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Answer: Yes. The surviving family member should first start paying basic rent and then be placed on the Section 8 waiting list.

141. Question: In a situation where an owner conducts an annual review of a non-Section 8 tenant's income in a 236 project, and the owner finds that the tenant's monetary situation has changed, which will result in an increase in rent, can owners impose a pre-approved gross rent increase effective 1/1/04 and also annual recertification rent increase effective 3/1/04 all in one year?

Answer: The project is permitted to impose both rent increases in one year.

TERMINATION OF ASSISTANCE AND FRAUD

142. Question: Is it true that the termination of assistance is not applicable to Section 202/811 PRACs?

Answer: Termination of assistance is not applicable to 202/811 PRAC properties (Chapter 8, paragraph 8-4 A). This provision is not found in either the Section 202 PRAC or Section 811 PRAC leases.

143. Question: If an owner terminates a tenant's lease due to material non-compliance, is the resident entitled to receive rental assistance until he/she is finally evicted or can the owner terminate the subsidy too? Area counsel provided an opinion on this issue in 1979: "It is our opinion that the HAP contract continues in effect during the period of holdover tenancy. This makes it possible for the continuance of subsidy payments in cases where tenants are given notice to vacate and holdover when eviction procedures are in process. Therefore, you have the right to claim such payment."

Answer: So that the owner is not penalized, the owner may continue to collect the subsidy on behalf of the tenant until the tenant is actually evicted (Chapter 8, Section 3).

***144. Question: When the CA terminates assistance payments at 15 months, should the CA just stop or credit back to the HUD HAP for the three month period? Will HUD terminate an owner's HAP payment forever, if he/she does not submit the required recertification data within 15 months of the previous year's recertification anniversary date?**

Answer: If a new recertification is not submitted within 15 months of the previous year's recertification date, the HAP payment will stop. When submitting a new certification, or reinstating the tenant, the guidance in Chapter 7, paragraph 7-8 must be followed for determining the effective date for the total tenant payment, tenant rent and assistance payments when there is a delay in processing recertifications .

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***145. Question: If assistance is terminated after 15 months because recertification has not been completed, can the owner collect the assistance retroactive to the effective date of the recertification once it is completed?**

Answer: See the response to Question 144.

LATE FEES AND OTHER CHARGES

146. Question: How long should owners/agents allow a resident to repeatedly make late rental payments without having to pay late fees at the time of payment?

Answer: HUD does not have a requirement on the number of times a person may make a late rent payment (Chapter 6, Paragraph 6-23).

****147. Question: Assume a resident in a Section 8 property owes \$20 in late fees/damages at the end of this month and his/her next month's rent (TTP) is \$200. The resident comes in and pays \$200. Can \$20 of the \$200 be first applied to the previous month's late fee/damages and the balance towards this month's rent?**

Answer: No. The entire \$200 is applied towards this month's rent. An owner may deduct any 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 pursuant to Chapter 6, Paragraph 6-23 E. Owners cannot evict a tenant for failure to pay late charges. (Chapter 6, Paragraph 6-23 F).

148. Question: Can an owner charge a tenant a late fee if he/she is paying the rent but not paying a payback amount owed? Can an owner evict a tenant under the same conditions?

Answer: No late fee is permissible on repayment agreements. However, the owner may evict if the tenant refused to pay the new monthly rent or refuses to repay according to the repayment agreement (Chapter 8, Section 3, Termination of Tenancy by Owners).

***149. Question: Can a 202/8, 202 PAC, 202 PRAC or an 811 PRAC property charge late fees as part of their rent collection policy? Can these properties charge a fee for a check that is not honored for payment?**

Answer: No. The Section 202/8 and PAC lease (Appendix 4-B), the Section 202 PRAC lease (Appendix 4-C) and the Section 811 PRAC lease (Appendix 4-D) do not contain a provision allowing late fees or return check fees. Fees were intentionally omitted from the lease and the fees may not be added to a lease addendum or house rules. See Chapter 6, Paragraphs 6-23 B and 6-25 B.

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SECURITY DEPOSITS

150. Question: According to Chapter 6, Paragraphs 6-15 C and 6-16 A, the amount of the security deposit never changes from the initial HUD-50059 TTP or tenant rent. Is the "initial lease" the lease that was signed with the initial HUD-50059 or might the new lease on a unit transfer be considered an "initial lease" for that unit?

Answer: The new lease on a unit transfer is considered the "initial lease" for that unit.

151. Question: The Handbook, Chapter 6, paragraph 6-15 C states: "The owner must collect a security deposit at the time of the initial lease execution for the Section 202/8, 202/PAC and 202 PRAC programs." Does this mean owners who have not previously collected security deposits are now required to go back to all existing residents to collect a deposit?

Answer: Owners are required by regulation to collect a security deposit. However, if an owner has not previously collected a security deposit, they are not required to go back to existing residents to collect a deposit. A security deposit must be collected for all residents going forward. (Chapter 6, Paragraph 6-15 C)

152. Question: The old Handbook recommended that security deposits should be collected, while the new Handbook requires them to be collected. If one owner wants to waive 202/8-group home security deposits because of undue burdens to residents and another owner wants to waive security deposits because it is in conflict with State Medicaid laws, can this be done?

Answer: Owners/agents/tenants must comply with HUD requirements. If HUD requirements conflict with State laws, have your legal counsel review the State document and provide you with the appropriate response (Chapter 6, Paragraph 6-15).

153. Question: Is a 202 PRAC required to pay interest on a security deposit upon move-out? Our State law does not require that interest be paid; however, the Handbook suggests owners/agents would be required to pay interest (Chapter 6, Paragraph 6-17).

Answer: Owners of 202 and 811 PRACS are required to place security deposits in an interest-bearing account and to follow applicable state and local law concerning interest payments on security deposits. The regulations do not address requirements for distribution of the interest when state and local laws are silent on this issue. (Chapter 6, Paragraph 6-17 B).

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TENANT RENTAL ASSISTANCE CERTIFICATION SYSTEM (TRACS)

154. Question: May an owner/agent scan the tenant's original HUD-50059 with original signatures and save it electronically, then shred the original HUD-50059 (saving on file cabinet space) or is the original hard copy tenants' signatures required to be kept and filed?

Answer: The original hard copy of the HUD-50059, with the tenant's signature, is required to be kept in the tenant's file (Chapter 9, Paragraph 9-5 A.4.b).

155. Question: Can Service Bureaus tell their customers that they can continue to send the signed, handwritten HUD-50059s to them and, when they send the computer generated HUD-50059s they can file them with their copy of the signed ones? Do they need to have the tenant come back in again and sign those as well?

Answer: The signed copy of the handwritten HUD-50059 in the file must agree with the information that is on the computer generated HUD-50059 information that is input in TRACS and is the basis for the payment to the owner. If the information on the handwritten HUD-50059 is identical to the computer-generated HUD-50059 data requirements, then it may be attached to the handwritten HUD-50059 and the tenant will not be required to sign again. If any information on the computer-generated HUD-50059 is different, the tenant must sign the revised computer-generated HUD-50059. Properties where calculations are done manually and sent to a central office must follow this guidance also.

156. Question: If an owner verifies that a tenant's out-of-pocket medical expenses do not exceed three percent of his gross income, must the owner still enter that medical expense into the HUD-50059 rent calculation?

Answer: Since the HUD-50059 is a group of data requirements, owners should enter all verified data into the automated system and allow the system to determine if medical expenses should be included in the rent calculation. This provides an audit trail and helps to reduce errors.

****157. Question: The old Handbook at Chapter 6, paragraph 6-6 A states "owners/agents are not eligible for assistance payments, until the HUD-50059 of the data requirements is signed by both owner/agent and the tenant, on or before the recertification effective date." Where can we find this in the new Handbook?**

Answer: The requirement can be found in Chapter 7, Figure 7-3, number 8 and Chapter 9, Paragraph 9-12 B 3.

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****158. Question: If a BMIR property has no project-based Section-8 units, does the owner still need to enter data in the Tenant Rental Assistance Certification System (TRACS)?**

Answer: Yes. Tenants residing in Section 236 and Section 221 (d)(3) BMIR projects, including those not receiving rental assistance, must be supported in TRACS with a submission of the required HUD-50059 data (Chapter 7, Paragraph 7-4 A.6).

***159. Question: A household moves in on 5/15. The certification is not signed until 7/4 and does not show up on the voucher until August. The subsidy was paid retroactive to 5/15. If a subsidy can go retroactive to the certification date, what incentive does the agent have to process the move-in timely? Another Scenario: annual recertification is 9/1. The certification was not signed until 11/15. The subsidy would have been terminated due to late certification, but when the certification was submitted on the December voucher the adjustment was retroactive to 9/1. Should the subsidy be paid retroactive to 9/1?**

Answer: The signature date does not establish the effective date of the recertification. The recertification process is not complete until the recertification steps in Chapter 7, Figure 7-2 are complete. The owner should not request assistance based on the new information until the recertification process is complete. See Chapter 7, Paragraph 7-8.

According to a HUD legal opinion, if the assistance is withheld for late recertifications, once the certification is submitted, the owner is entitled to collect the assistance back to the effective date. When the delay is the owner's fault or the tenant is not given the required 30-day notice, the owner is penalized by the amount the tenant's rent is increased. The effective date for initial certification for a new tenant is the date the tenant moved into the unit. Once the certification process is complete, the owner can start collecting rent.

Action must be taken to replace management at projects where it is not adhering to requirements. For example, most certifications are submitted late as opposed to an occasionally late certification. Owners who do not comply with the requirements should be informed in writing to correct his/her procedures.

160. Question: During an industry group meeting, an Instructor gave participants guidance regarding the move-out date, when the move-out date is unknown because the tenant failed to notify the owner prior to moving out. The Handbook states the move-out date is the day the vacancy is discovered. However, the Instructor told participants that the move-out date should be 14 days from the day the vacancy was discovered. Please clarify.

Answer: Chapter 9, Paragraph 9-12 E states "...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." This has not changed. Chapter 9, Paragraph 9-12 E.1 provides the exception for a deceased tenant; and that is the move-out date is the earlier of 14 days after the tenant's death or the day the unit was vacated.

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FILE RETENTION

161. Question: Should an applicant's/tenant's picture ID be kept in the file or should it be placed in a separate file? Should owners even make a copy of the ID at time of the application processing?

Answer: HUD does not require owners/agents to obtain picture IDs from applicants/tenants. However, if an owner/agent decides to establish such a policy, picture IDs must be maintained in a secure area.

162. Question: Chapter 3, Paragraph 3-17 c of the old Handbook stated that owners must maintain documentation of all verification efforts for at least three years after the effective date of the certification or recertification. Chapter 5, Paragraph 5-23 A.1 & 2 states "Owners must keep the following documents in the tenant file at the project site: original 9887/9887A, individual consent forms, third-party verification. Is the policy in the old Handbook still valid?

Answer: Information in Chapter 3, Paragraph 3-17 of the old Handbook is still valid. This information is found in Chapter 5, Paragraph 5-23 of the revised Handbook.

163. Question: Chapter 9, Paragraph 9-14 E.5.c (8) says "File a copy of the approved form along with supporting documentation." Chapter 9, Paragraph 9-14 F says, "Owner must retain copies of all special...." How long does HUD have to keep the forms and documentation in the files?

Answer: Special claims must be retained for at least three years, along with supporting documentation (Chapter 9, Paragraph 9-14 F)

164. Question: Chapter 4, Paragraph 4-22 B states, "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 3 years." Does this mean that owners/agents are to keep the documentation onsite for the 3-year period following the removal from the waiting list before the documentation can be destroyed?

Answer: Yes. Owners/agents are to keep the documentation onsite for a 3-year period following the removal of an applicant from the waiting list. Once this time period has elapsed, an owner/agent may destroy the documentation.

165. Question: Chapter 4, Paragraph 4-22 C states, "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." Does this mean that owners/agents are to keep the move-out documentation onsite for the 3-year period following the move-out before the move-out file can be destroyed?

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Answer: Yes. Owners/agents are to keep the move-out file for a 3-year period following the move-out and then the owner/agent may destroy the move-out file. If the office has limited space, the documents can be transferred offsite, but the owner/agent must be able to obtain the documents in a reasonable timeframe upon request.

****166. Question: Chapter 4, Paragraph 9-7 E states, "Owners must keep the signed HUD-50059s 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." Does this mean owners/agents are to keep the HUD-50059 for the entire duration the tenant lives at the site, plus an additional three years after move-out?**

Answer: Yes. Owners may move older records off-site when files get large. However, owners must be able to obtain the documents in a reasonable timeframe upon request. An owner must keep the HUD-50059s for the entire duration the tenant lives at the site plus an additional 3 years after move-out and must also keep the supporting third-party verifications.

GENERAL INFORMATION/MISCELLANEOUS

167. Question: Chapter 1, Paragraph 1-2 and Figure 1-1 of the Handbook do not refer to properties where mortgages were refinanced from Sections 221, 236, or 231 to A7, or 223f properties. Are these properties covered under the revised Handbook, even though they are not listed in Chapter 1, Figure 1-1?

Answer: Yes. Although not listed in Chapter 1, Figure 1-1, these properties are subject to Handbook requirements if there is a continuing rental assistance contract or financing subsidy as explained by Chapter 1, Paragraph 1-3.

****168. Question: Chapter 3, Paragraph 3-7 E.1.b states that when HUD is not the contract administrator (CA), the CA must gather and submit all documentation with its recommendation to the HUD field office. Are performance-based contract administrators (PBCAs) subject to this requirement, even though it is not listed as part of their incentive based performance standards (IBPS)?**

Answer: HUD handbook guidance does not require a PBCA to perform tasks not covered in their ACC contract. See Chapter 1, Paragraph 1-1 D.

169. Question: An owner/agent has a tenant whose son is being deployed abroad on a military assignment. The son must be removed from the lease, and will have no home address. To avoid raising questions about his income and the rent, can the manager place a note in the tenant's file stating the son will be using his mother's address for mail while he is away? Is this acceptable to HUD? The Handbook does not address this situation.

Answer: Due to extenuating circumstances, it is acceptable. The tenant should provide a written notification to management stating that the son has been deployed, the son will be

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using the unit as a mailing address and that if the son returns to the unit, management will be notified. This notice must be placed in the file.

****170. Question: Does the 20 percent in repayments an owner can collect apply to all repayments or only fraud? Handbook 4381.5 only allows this in cases of fraud.**

Answer: The 20 percent only applies to fraud (Chapter 8, Paragraph 8-18 D 4).

171. Question: Based on Notice H 00-18, Admission and Occupancy Provision of the Quality Housing and Work Responsibility Act (QHWRA) of 1998, an owner/agent has written up a "resident income verification" form for all residents at the property to sign and date. This form allows the owner to obtain information about the family's income derived from the Internal Revenue Services (IRS), Supplemental Security Income (SSI), and HUD. Is this form requirement incorporated in the new lease or does this form (or something similar) still need to be completed?

Answer: Yes. It has been incorporated into the new lease at paragraph 29 in the family lease and in paragraph 22 in the other leases. When the residents have signed the lease, this requirement has been met.

172. Question: The "How Your Rent is Determined" fact sheet is given to a resident at the time of move-in and at the initial and annual certifications. Must it also be given to the resident at each interim and for any correction to the annual?

Answer: No. Owners are not required to provide tenants with "How Your Rent is Determined" fact sheets during an interim recertification or after corrections have been made to an annual recertification. Owners are to give tenants a fact sheet at move-in, per Chapter 4, Paragraph 4-24 B.12, and during annual recertifications, per Chapter 7, Paragraph 7-4 A.4.

173. Question: If a tenant/applicant refuses to declare his/her ethnicity, should owners guess to meet HUD-required data and record keeping requirements?

Answer: No. Refer to Chapter 2, Paragraphs 2-11 A.2 and Chapter 4, 4-14 A.3. Race and ethnicity of applicants/tenants are determined by self-certification, rather than observation of the owner. If the applicant/tenant refuses to provide the requested information, notate his/her file stating, "the applicant/tenant refuses to declare his/her race and/or ethnicity."

174. Question: Can performance-based contract administrators (PBCAs) accept a facsimile signature and still be in compliance with the Handbook?

Answer: Yes. The PBCA can accept a facsimile signature. However, the facsimile signature should be followed up with an original signature for the file.

175. Question: Can owners/agents use a computer-generated HUD 9887/9887A form or must they use the paper copy provided by HUD? If they use a computer-generated form, how can CAs be sure it is current and accurate without checking word for word, e.g. certification?

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Answer: *The owner/agent may use a computer-generated consent HUD-9887/9887A form. It is the responsibility of the owner/agent to make sure the computer-generated document is consistent with the HUD printed copy.*

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