

CHAPTER XII – TRANSFER POLICY

Introduction

Under certain circumstances the PRPHA may require the tenant to move from the unit. There are also emergency circumstances under which alternate accommodations for the tenant, must be provided that may or may not require a transfer. The tenant may also request a transfer to the PRPHA.

Chapter XII consists of four (4) parts:

- Part 1: Emergency Transfers
- Part 2: PRPHA's Required Transfers
- Part 3: Transfer Requested by Tenants
- Part 4: Transfer Processing

Part 1: Emergency Transfer

12.1.1 Overview

The emergency transfers differ from a typical transfer in that it requires immediate action by the PRPHA.

In the case of an emergency, PRPHA will transfer a tenant. Due to the immediate need to vacate the unit, placing the tenant on a transfer waiting list would not be appropriate. Under such circumstances, if an appropriate unit is not immediately available, the PRPHA will find alternate accommodations for the tenant until the emergency passes, or a permanent solution is reached (i.e., return to the unit or transfer to another unit).

12.1.2 Emergency transfers

The following is considered an emergency circumstance warranting an immediate transfer of the tenant or family; Maintenance conditions in the resident's unit, building or site that pose an immediate, verifiable threat to the life, health or safety of the resident or family members that cannot be repaired or abated within 24 hours after the circumstance or PRPHA known about that. Examples of such unit or building conditions would include: a gas leak; no water; toxic contamination; and serious water leaks.

12.1.3 Emergency transfers procedures

If the transfer is necessary due to maintenance conditions, and an appropriate unit is not immediately available, the PRPHA will provide temporary accommodations to the tenant by arranging for temporary lodging at similar location inside or outside the project. If the conditions

that required the transfer cannot be repaired, or the condition cannot be repaired in a reasonable amount of time, the PRPHA will transfer the tenant to the first available and appropriate unit after the temporary relocation. Emergency transfers are mandatory for the tenant.

12.1.4 Costs of transfer

The PRPHA will bear the reasonable costs of temporarily accommodating the tenant and of long term transfers, if any, due to emergency conditions. The reasonable cost of transfers includes the cost of packing, moving, and unloading.

Part 2: PRPHA's Required transfer

12.2.2 TYPES OF PRPHA REQUIRED TRANSFERS

The types of transfers that may be required by the PRPHA include, but are not limited to, transfers to make an accessible unit available for a disabled family, transfers to comply with occupancy standards, transfers for demolition, disposition, revitalization, or rehabilitation, and emergency transfers as discussed in Part I of this chapter.

Transfers required by the PRPHA are mandatory for the tenant.

1. Transfers to Make an Accessible Unit Available

When a non-accessible unit becomes available, the PRPHA will transfer a family that does not require accessible features, but that is living in an accessible unit, to a unit that does not have accessible features. The PRPHA may wait until a disabled resident requires the accessible unit before transferring the family out of the accessible unit.

2. Occupancy Standards Transfers

The PRPHA will transfer a family when the family size has changed and the family has become too large (overcrowded) or too small (over-housed) for the occupied unit.

For purposes of the transfer policy, overcrowded and over-housed are defined as follows:

- *Overcrowded*: the number of household members exceeds the maximum number of persons allowed for the unit size in which the family resides.
- *Over-housed*: the family no longer qualifies for the bedroom size in which they are living based on the PRPHA's occupancy standards.

The PRPHA may elect not to transfer an over-housed family in order to prevent vacancies.

A family that is required to move because of family size will be advised by the PRPHA that a transfer is necessary and that the family has been placed on the transfer list.

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Families that request and are granted an exception to the occupancy standards (for either a larger or smaller size unit) in accordance with the policies; will only be required to transfer if it is necessary to comply with the approved exception.

3. Demolition, Disposition, Revitalizations, or Rehabilitation Transfers

The PRPHA will relocate a family when the unit or site in which the family lives is undergoing major rehabilitation that requires the unit to be vacant, or the unit is being disposed of or demolished. The PRPHA's relocation plan may or may not require transferring affected families to other available public housing units.

If the relocation plan calls for transferring public housing families to other public housing units, the affected families will be placed on the transfer list.

In cases of revitalization or rehabilitation, the family may be offered a temporary relocation if allowed under Relocation Act provisions, and may be allowed to return to their unit, depending on contractual and legal obligations, once revitalization or rehabilitation is complete.

12.2.3 ADVERSE ACTION

A PRPHA required transfer is an adverse action. As an adverse action, the transfer is subject to the requirements regarding notices of adverse actions. If the family requests a grievance hearing within the required timeframe, the PRPHA may not take action on the transfer until the conclusion of the grievance process.

12.2.4 COST OF TRANSFER

The PRPHA will bear the reasonable costs of PHA required transfers, with the exception that residents will be required to bear the cost of occupancy standards transfers. The reasonable costs of transfers include the cost of packing, moving, and unloading. The PRPHA will establish a moving allowance based on the typical costs in the community of packing, moving, and unloading. To establish typical costs, the PRPHA will collect information from companies in the community that provide these services. The PRPHA will reimburse the family for eligible out-of-pocket moving expenses up to the PRPHA's established moving allowance.

PART 3: TRANSFERS REQUESTED BY TENANTS**12.3.1 TYPES OF RESIDENT REQUESTED TRANSFERS**

The types of requests for transfers that will be considered by the PRPHA are limited to alleviate verified medical problems of a serious or life-threatening nature, when there has been a verified threat of physical harm or criminal activity, transfer as a reasonable accommodation, transfer to a larger bedroom size unit even if the family does not meet the PRPHA's definition of overcrowded, but meets the PRPHA's occupancy standards and transfer to a location nearest to the place of employment.

The PRPHA consider the following **High Priority** Transfer Request:

- a. When a transfer is needed to alleviate verified medical problems of a serious or life-threatening nature.
- b. When there has been a verified threat of physical harm or criminal activity. Such circumstances may, at the PRPHA's discretion, include an assessment by law enforcement indicating that a family member is the actual or potential victim of a criminal attack, retaliation for testimony, a hate crime, or domestic violence, dating violence, sexual assault, or stalking.
- c. When a family requests a transfer as a reasonable accommodation. Examples of a reasonable accommodation transfer include, but are not limited to, a transfer to a first floor unit for a person with mobility impairment, or a transfer to a unit with accessible features.

The PRPHA consider the following **Regular Priority** Transfer Request:

- a. When a family requests a larger bedroom size unit even if the family does not meet the PRPHA's definition of overcrowded, but meets the PRPHA's occupancy standards for the requested size unit.
- b. When the head of household or spouse works 25 miles (40,2 km) or more away from the public housing unit and has no reliable transportation, and public transportation available.

All transfers requests by the tenant are considered optional.

12.3.2 ELIGIBILITY FOR TRANSFER

Except where reasonable accommodation is being requested, the PRPHA will only consider transfer requests from residents that meet the following requirements:

1. Have not engaged in criminal activity that threatens the health and safety or residents and staff;
2. Owe no back rent or other charges, or have a pattern of late payment;
3. Have no housekeeping lease violations or history of damaging property;
4. Can get utilities turned on in the name of the head of household.

A resident with housekeeping standards violations will not be transferred until the resident passes a follow-up housekeeping inspection. Exceptions to the good record requirement may be made when it is advantageous to the PRPHA to make the transfer.

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If a family requested to be placed on the waiting list for a unit size smaller than designated by the occupancy guidelines, the family will not be eligible to transfer to a larger size unit for a period of two (2) years from the date of admission, unless they have a change in family size or composition, or as needed as a reasonable accommodation.

12.3.4 COST OF TRANSFER

The resident will bear all of the costs of transfers requested by the resident.

12.3.5 HANDLING OF REQUESTS

Residents requesting a transfer to another unit or development will be required to submit a written request for transfer. The PRPHA will respond by approving the transfer and putting the family on the transfer list, by denying the transfer, or by requiring more information or documentation from the family.

The PRPHA will respond within ten (10) business days of the family's request. If the PRPHA denies the request for transfer, the family will be informed of its grievance rights.

PART 4: TRANSFER PROCESSING**12.4.1 TRANSFER LIST**

The PRPHA will maintain the transfer list on the project to ensure that transfers are processed in the correct order and that procedures are uniform across all properties.

Emergency transfers will not automatically go on the transfer list. They will be handled immediately, on a case by case basis. If the emergency is not going to be resolved by a temporary accommodation, and the resident requires a permanent transfer, that transfer will be placed at the top of the transfer list.

Transfers will be processed in the following order:

1. Emergency transfers (hazardous maintenance conditions)
2. High-priority transfers (verified medical condition, threat of harm or criminal activity, and reasonable accommodation)
3. Transfers to make accessible units available
4. Demolition, renovation, etc.
5. Occupancy standards
6. Other PRPHA-required transfers

7. Other tenant-requested transfers

Within each category, transfers will be processed in order of the date a family was placed on the transfer list, starting with the earliest date.

With the approval of the executive director the PRPHA may, on a case-by-case basis, transfer a family without regard to its placement on the transfer list in order to address the immediate need of a family in crisis.

Demolition and renovation transfers will gain the highest priority as necessary to allow the PRPHA to meet the demolition or renovation schedule.

Transfers will take precedence over waiting list admissions.

12.4.2 TRANSFER OFFER POLICY

Residents will receive one transfer offer. When the transfer is required by the PRPHA, refusal of that offer without good cause will result in lease termination.

When the transfer has been requested by the resident, refusal of that offer without good cause will result in the family to be placed at the end of the transfer list.

12.4.3 GOOD CAUSE FOR UNIT REFUSAL

Examples of good cause for refusal of a unit offer include, but are not limited to, the following:

1. Inaccessibility to source of employment, education, or job training, children's day care, or an educational program for children with disabilities, so that accepting the unit offer would require the adult household member to quit a job, drop out of an educational institution or job training program, or take a child out of day care or an educational program for children with disabilities.
2. The family demonstrates to the PRPHA's satisfaction that accepting the offer will place a family member's life, health or safety in jeopardy. The family should offer specific and compelling documentation such as restraining orders, other court orders, or risk assessments related to witness protection from a law enforcement agency. Reasons offered must be specific to the family. Refusals due to location alone do not qualify for this good cause exemption.
3. A health professional verifies temporary hospitalization or recovery from illness of the principal household member, other household members (as listed on final application) or live-in aide necessary for the care of the principal household member.
4. The unit is not appropriate for the applicant's disabilities, or the family does not need the accessible features in the unit offered and does not want to be subject to a thirty (30) day notice to move.

5. The unit has lead-based paint and the family includes children under the age of six (6).

The PRPHA will require documentation of good cause for unit refusals.

12.4.4 DECONCENTRATION

If subject to deconcentration requirements, the PRPHA will consider its deconcentration goals when transfer units are offered. When feasible, families above the Established Income Range will be offered a unit in a development that is below the Established Income Range, and vice versa, in order to achieve the PRPHA's deconcentration goals. A deconcentration offer will be considered a "bonus" offer; that is, if a resident refuses a deconcentration offer, the resident will receive one additional transfer offer.

12.4.5 REEXAMINATION POLICIES FOR TRANSFERS

The recertification date will remain the first (1st) day of the admission month date.

ADMISSION AND CONTINUED OCCUPANCY POLICY**CHAPTER XIII – LEASE TERMINATION**

This chapter defines the PRPHA's policies to terminate the lease for failure to comply with the provisions of the lease and the regulations applicable to public housing program.

Chapter XIII consists of four (4) parts:

Part 1: Termination by Tenant

Part 2: Termination by PRPHA – Obligation

Part 3: Termination by PRPHA – Other Authorized Reasons

Part 4: Notification Requirements, Eviction Procedures and Record Keeping

Part 1: Termination by Tenant**13.1.1 Tenant Choose to Terminate the Lease**

If a family wants to move and terminate their tenancy with the PRPHA, they must give written notice to the PRPHA at least thirty (30) calendar days in advance of their intent to vacate.

The notice of lease termination must be signed by the head of household, spouse, or other responsible person.

Part II: Termination by PRPHA – Mandatory**13.2.1 Failure to provide consent**

The PRPHA must terminate the lease if any family member fails to sign and submit any consent form that is required to sign for any reexamination.

13.2.2 Failure to document citizenship

The PRPHA must terminate the lease if:

1. A family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status;
2. A family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family, resulting in no eligible family members; or

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3. A family member, as determined by the PRPHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit.
4. Such termination must be for a period of at least twenty four (24) months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated.

13.2.3 Failure to provide social security number

The PRPHA must terminate the lease if a resident family fails to provide the documentation or certification required for any family member who obtains a social security number, regardless of age.

13.2.4 Failure to accept the PRPHA lease revision

The PRPHA must terminate the lease if the family fails to accept the lease revision to an existing lease, provided the PRPHA has done the following:

1. The revision is on a form adopted by the PRPHA in accordance with 24 CFR 966.3 pertaining to requirements for notice to tenants and resident organizations and their opportunity to present comments.
2. The PRPHA has posted a Notice of Revision at least thirty (30) calendar days before the lease revision is scheduled to take effect.
3. The PRPHA has specified in the offer a reasonable time limit within that period for acceptance by the family.

13.2.5 Methamphetamine conviction

The PRPHA must immediately terminate the lease if the PRPHA determines that any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.

13.2.6 Noncompliance with community service requirements

The PRPHA is prohibited from renewing the lease at the end of the twelve (12) month lease term if the family fails to comply with the community service requirements, as described in Chapter XI.

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PART III: Termination by PRPHA – Other authorized reasons

13.3.1 Mandatory Lease provisions

1. Definitions

- a. **Covered person** - means a tenant, any member of the tenant's household, a guest, or another person under the tenant's control.
- b. **Dating violence** - is defined in Chapter III.
- c. **Domestic violence** - is defined in Chapter III.
- d. **Drug** - means a controlled substance as defined in section 102 of the Controlled Substances Act].
- e. **Drug-related criminal activity** - means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with the intent to manufacture, sell, distribute, or use the drug.
- f. **Guest** - means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.
- g. **Household** - means the family and PRPHA-approved live-in aide. The term household also includes foster children and/or foster adults that have been approved to reside in the unit.
- h. **Immediate family member** - is defined in Chapter III.
- i. **Other person under the tenant's control** - means that the person, although not staying as a guest in the unit, is, or was at the time of the activity in question, on the premises because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not *under the tenant's control*.
- j. **Premises** - means the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.
- k. **Stalking** - is defined in Chapter III

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1. ***Violent criminal activity*** - means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

2. Drug Crime On or Off the Premises

The PRPHA will terminate the lease for drug-related criminal activity engaged in on or off the premises by any tenant, member of the tenant's household or guest, and any such activity engaged in on the premises by any other person under the tenant's control.

The PRPHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the drug-related criminal activity.

3. Illegal Use of a Drug

The PRPHA will terminate the lease when the PRPHA determines that a household member is illegally using a drug or the PRPHA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

A pattern of illegal drug use means more than one incident of any use of illegal drugs during the previous six (6) months.

The PRPHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs.

4. Threat to Other Residents

The PRPHA will terminate the lease when a covered person engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including PRPHA management staff residing on the premises) or by persons residing in the immediate vicinity of the premises.

Immediate vicinity means within a three-block radius of the premises.

The PRPHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the criminal activity.

5. Alcohol Abuse

The PRPHA will terminate the lease if the PRPHA determines that a household member has engaged in abuse or has a pattern of alcohol abuse that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

A pattern of such alcohol abuse means more than one incident of any such abuse during the previous six (6) months.

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The PRPHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to alcohol abuse.

6. Furnishing False or Misleading Information Concerning Illegal Drug Use or Alcohol Abuse or Rehabilitation

The PRPHA will terminate the lease if the PRPHA determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

The PRPHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs or the abuse of alcohol, and any records or other documentation (or lack of records or documentation) supporting claims of rehabilitation of illegal drug users or alcohol abusers.

7. Other Serious or Repeated Violations of Material Terms of the Lease – Mandatory Lease Provisions

The PRPHA will terminate the lease for the following violations of tenant obligations under the lease:

- a. Failure to make payments due under the lease, including nonpayment of rent.
- b. Not to assign the lease or to sublease the dwelling unit. Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.
- c. Not to provide accommodations for boarders or lodgers.
- d. To use the dwelling unit solely as a private housing dwelling for the tenant and the tenant's household as identified in the lease, and not to use or permit its use for any other purpose.
- e. To abide by necessary and reasonable regulations promulgated by the PRPHA for the benefit and well-being of the housing project and the tenants.
- f. To comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting the health and safety of the housing community.
- g. To keep the dwelling unit and such other areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition.
- h. To dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner.

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- i. To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appurtenances, including elevators.
- j. To refrain from, and to cause the household and guests to refrain from destroying, defacing, damaging, or removing any part of the dwelling unit or project.
- k. To pay reasonable charges (other than for normal wear and tear) for the repair of damages to the dwelling unit, or to the project (including damages to project buildings, facilities or common areas) caused by the tenant, a member of the household or a guest.
- l. To act, and cause household members or guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe and sanitary condition.

13.3.2 Other authorized reasons for termination

The PRPHA will terminate the lease for the following reasons:

1. ***Fugitive Felon or Parole Violator*** - If a tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or violating a condition of probation or parole imposed under federal or state law.
2. ***Persons subject to sex offender registration requirement*** - If any member of the household has, during their current public housing tenancy, become subject to a registration requirement under a state sex offender registration program.
3. If after admission, the PRPHA discovers facts that made the tenant ineligible.
4. Discovery of material false statements or fraud made by the tenant in connection with an application for assistance or during the reexamination of income.
5. Failure to furnish such information and certifications regarding family composition and income as may be necessary for the PRPHA to make determinations with respect to rent, eligibility, and the appropriateness of unit size.
6. Failure to transfer to an appropriate size dwelling based on family composition, upon appropriate notice by the PRPHA that such unit is available.
7. After having been given proper advance notification, failure to permit PRPHA access to the unit for the purpose of performing routine inspections and maintenance; making improvements or repairs; or showing the dwelling unit for re-leasing, or without advance notice if there is reasonable cause to believe that an emergency exists.

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8. Failure to promptly inform the PRPHA of the birth, adoption or court-awarded custody of a child. In such a case, promptly means within 10 business days of the event.
9. Failure to abide by the provisions of the PRPHA pet policy.
10. If the family has breached the terms of a repayment agreement entered into with the PRPHA.
11. If a family member has violated federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.
12. If a household member has engaged in or threatened violent or abusive behavior toward PRPHA personnel.
 - a. *Abusive or violent behavior towards PRPHA personnel* includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.
 - b. *Threatening* refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

Family Absence from Unit

The family must supply any information or certification requested by the PRPHA to verify that the family is living in the unit, or relating to family absence from the unit, including any PRPHA-requested information or certification on the purposes of family absences. The family must cooperate with the PRPHA for this purpose.

The family must promptly notify the PRPHA when all family members will be absent from the unit for an extended period.

- a. **Abandonment** - If the family vacated the unit without giving proper notice, the PRPHA will follow local landlord-tenant law pertaining to abandonment before taking possession of the unit. If necessary, the PRPHA will secure the unit immediately to prevent vandalism and other criminal activity.

Over-Income Families

The PRPHA will not evict or terminate the tenancies of families solely because they are over income.

13.3.3 Alternatives to termination tenancy

The PRPHA will consider requiring the tenant to exclude a household member in order to continue to reside in the assisted unit, where that household member is participating, has participated in, or has been culpable for action or failure to act in a way that warrants termination.

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As a condition of the family's continued occupancy, the head of household must certify that the culpable household member has vacated the unit and will not be permitted to visit or to stay as a guest in the housing unit. Upon PRPHA's request, the family must present evidence of the former household member's current address.

1. Repayment of Family Debts

If a family owes amounts to the PRPHA, as a condition of continued occupancy, the PRPHA will require the family to repay the full amount or to enter into a repayment agreement, within thirty (30) days of receiving notice from the PRPHA of the amount owed.

13.3.4 Criteria for deciding to terminate tenancy

The PRPHA will use the preponderance of evidence as the standard for making all termination decisions.

Preponderance of evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

1. Consideration of Circumstances

The PRPHA will consider the following factors before deciding whether to terminate the lease for any of the HUD required lease provisions or for any other reasons:

- a. The seriousness of the offending action, especially with respect to how it would affect other residents.
- b. The extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor, a person with disabilities, or a victim of domestic violence, dating violence, or stalking.
- c. The effects that the eviction will have on other family members who were not involved in the action or failure to act.
- d. The effect on the community of the termination, or of the PRPHA failure to terminate the tenancy.
- e. The effect of the PRPHA decision on the integrity of the public housing program.
- f. The demand for housing by eligible families who will adhere to lease responsibilities.
- g. The extent to which the leaseholder has shown personal responsibility and whether they have taken all reasonable steps to prevent or mitigate the offending action.
- h. The length of time since the violation occurred, the family's recent history, and the likelihood of favorable conduct in the future.
- i. In the case of program abuse, the dollar amount of the underpaid rent and whether or not a false certification was signed by the family.

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In determining whether to terminate the lease for illegal drug use or a pattern of illegal drug use, or for abuse or a pattern of abuse of alcohol, by a household member who is no longer engaging in such use or abuse, the PRPHA will consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully.

For this purpose the PRPHA will require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

3. Reasonable Accommodation

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

4. Nondiscrimination Limitation

The PRPHA eviction actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105.

13.3.5 Prohibition against terminating tenancy of victims of domestic violence, dating violence and stalking

1. The Violence against Women Reauthorization Act of 2005 (VAWA), provides that "criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of the tenancy or occupancy rights, if the tenant or immediate family member of the tenant's family is the victim or threatened victim of that abuse." VAWA further provides that incidents of actual or threatened domestic violence, dating violence, or stalking may not be construed either as serious or repeated violations of the lease by the victim of such violence or as good cause for terminating the tenancy or occupancy rights of the victim of such violence.
2. When a tenant family is facing lease termination because of the actions of a tenant, household member, guest, or other person under the tenant's control and a tenant or immediate family member of the tenant's family claims that he or she is the victim of such actions and that the actions are related to domestic violence, dating violence, or

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stalking, the PRPHA will then require the individual to submit documentation affirming that claim.

3. The documentation must include two elements:
 - a. A signed statement by the victim that provides the name of the perpetrator and certifies that the incidents in question are bona fide incidents of actual or threatened domestic violence, dating violence, or stalking
 - b. A police or court record documenting the actual or threatened abuse.
 - c. A statement signed by an employee, agent, or volunteer of a victim service provider; an attorney; a medical professional; or another knowledgeable professional from whom the victim has sought assistance in addressing the actual or threatened abuse. The professional must attest under penalty of perjury that the incidents in question are bona fide incidents of abuse, and the victim must sign or attest to the statement.
4. The required certification and supporting documentation must be submitted to the PRPHA within ten (10) business days after the individual claiming victim status receives a request for such certification. The PRPHA, owner or manager will be aware that the delivery of the certification form to the tenant in response to an incident via mail may place the victim at risk, e.g., the abuser may monitor the mail. The PRPHA may require that the tenant come into the office to pick up the certification form and will work with tenants to make delivery arrangements that do not place the tenant at risk. This ten (10) day deadline may be extended at the PRPHA discretion. If the individual does not provide the required certification and supporting documentation within ten (10) business days, or the approved extension period, the PRPHA may proceed with the termination.
5. The PRPHA also reserves the right to waive these victim verification requirements and accept only a self-certification from the victim if the PRPHA deems the victim's life to be in imminent danger.
6. Once a victim has completed certification requirements, the PRPHA will continue to assist the victim and may use bifurcation as a tool to remove a perpetrator from assistance. Owners will be notified of their legal obligation to continue housing the victim, while using lease bifurcation to remove the perpetrator from a unit. The PRPHA will make all best efforts to work with victims of domestic violence before terminating the victim's assistance.
7. In extreme circumstances when the PRPHA can demonstrate an actual and imminent threat to other participants or those employed at or providing service to the property if the participant's (including the victim's) tenancy is not terminated, the PRPHA will bypass the standard process and proceed with the immediate termination of the family's assistance.

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8. All information provided to the PRPHA on domestic violence, harassment or stalking, including the fact that a person is a victim of such violence or stalking, shall be considered confidential and cannot be entered in a database or provided to any related entity, except to the extent that disclosure (a) is requested or authorized by the person, in writing, (b) is necessary for an eviction, or (c) is otherwise required by applicable law.

PART IV: Notification requirements, eviction procedures and record keeping**13.4.1 Conducting criminal records checks**

The PRPHA will conduct criminal records checks when it has come to the attention of the PRPHA, either from local law enforcement or by other means that an individual has engaged in the destruction of property, engaged in violent activity against another person, or has interfered with the right to peaceful enjoyment of the premises of other residents. Such checks will also include sex offender registration information.

13.4.2 Disclosure of criminal records to family

In all cases where criminal record or sex offender registration information would result in lease enforcement or eviction, the PRPHA will notify the household in writing of the proposed adverse action and will provide an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.

The family will be given ten (10) business days from the date of the PRPHA notice, to dispute the accuracy and relevance of the information. If the family does not contact the PRPHA to dispute the information within the ten (10) business day period, the PRPHA will proceed with the termination action.

If the tenant does not exercise their right to dispute prior to any adverse action, the tenant will still have the right to dispute in the grievance hearing or court trial.

13.4.3 Lease grievance notice**1. Form, Delivery, and Content of the Notice**

The PRPHA will attempt to deliver notices of lease termination directly to the tenant or an adult member of the household. If such attempt fails, the notice will be sent by first-class mail the same day.

All notices of lease termination will include **a statement of the protection against termination provided by VAWA for victims of domestic violence, dating violence, or stalking**. Any family member who claims that the cause for termination involves (a) criminal acts of physical violence against family members or others or (b) incidents of

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domestic violence, dating violence, or stalking against a family member will be given the opportunity to provide documentation.

2. Timing of the Notice

The PRPHA must give written notice of lease termination:

- a. After five (5) calendar days of the rent due date, in the case of failure to pay rent.
- b. A reasonable period of time considering the seriousness of the situation (but not to exceed thirty (30) calendar days).
- c. If the health or safety of other residents, PRPHA employees, or persons residing in the immediate vicinity of the premises is threatened.
- d. If any member of the household has engaged in any drug-related criminal activity or violent criminal activity.
- e. If any member of the household has been convicted of a felony.
- f. Thirty (30) calendar days in any other case, except that if a state or local law allows a shorter notice period, such shorter period shall apply

The Notice to Vacate that may be required under state or local law may be combined with or run concurrently with the notice of lease termination.

3. Notice of Nonrenewal Due to Community Service Noncompliance

If after receiving a notice of initial noncompliance the family does not request a grievance hearing, or does not take either corrective action required by the notice within the required timeframe, a termination notice will be issued in accordance with the policies above.

If a family agreed to cure initial noncompliance by signing an agreement, and is still in noncompliance after being provided the twelve (12) month opportunity to cure, the family will be issued a notice of continued noncompliance.

4. Notice of Termination Based on Citizenship Status

The PRPHA will provide a notice to advise the family of any of the following that apply:

- a. The family's eligibility for proration of assistance,
- b. The criteria and procedures for obtaining relief under the provisions for preservation of families,
- c. The family's right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal, and

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- d. The family's right to request an informal hearing with the PRPHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.

13.4.4 Eviction

When a family does not vacate the unit after receipt of a termination notice and by the deadline given in the notice, the PRPHA will proceed to file an eviction action in a local court with jurisdiction.

If the eviction action is finalized in court in favor of the PRPHA but the family still remains in occupancy beyond the deadline to vacate given by the court, the PRPHA will seek the assistance of the court to remove the family from the premises following local law.

The PRPHA may not proceed with an eviction action if the PRPHA has not made available the documents to be used in the case against the family, and has not afforded the family the opportunity to examine and copy such documents in accordance with the provisions of 24 CFR 966.4(1)(3) and (m).

13.4.5 Notification to post office

When the PRPHA evicts an individual or family for criminal activity, including drug-related criminal activity, the PRPHA must notify the local post office that serves the dwelling unit that the individual or family is no longer residing in the unit.

13.4.6 Record keeping

The PRPHA will keep a written record of every termination and/or eviction at the development where the evicted family was residing. This record will contain the following information:

- a. Name of resident, number and identification of unit occupied.
- b. Date of lease termination notice and any other notices required by state or local law; these notices may be on the same form and will or can run concurrently.
- c. Specific reason(s) for the notices, citing the lease section or provision that was violated, and other facts pertinent to the issuing of the notices described in detail.
- d. Date and method of notifying the resident.
- e. Summaries of any conferences held with the resident including dates, names of conference participants, and conclusions.

CHAPTER XIV - GRIEVANCES AND APPEALS

Introduction

When the PRPHA makes a decision that has a negative impact on an applicant family, the family is often entitled to appeal the decision.

Chapter XIV consists of two (2) parts:

Part 1: Informal Hearing for Public Housing Applicants

Part 2: Grievances and Appeals Procedures for Public Housing Residents

Part 1: Informal Hearings for Public Housing Applicants (24 CFR966.50-57)

14.1.1 Informal Hearing Process

The process and the requirements of Informal Hearing for applicants of public housing programs are described in Part 4 of Chapter III. If the informal hearing is requested by an applicant who cannot demonstrate an eligible immigration status, and that is the reason for the notification of ineligibility, it shall follow the same rules as specified and adopted any regulations established by HUD specifically for such cases. The Informal Hearing determinations are subject to the Uniform Administrative Procedures Act of Puerto Rico.

Part 2: Grievances and Appeals Procedures for Public Housing Residents

14.2.1 Requirements

PRPHA must have a grievance procedure in place through which residents of public housing are provided an opportunity to grieve any PRPHA action or failure to act involving the lease or PRPHA policies which adversely affect their rights, duties, welfare, or status.

The PRPHA grievance procedure will be incorporated by reference in the tenant lease. Residents and resident organizations will have thirty (30) calendar days from the date they are notified by the PRPHA of any proposed changes in the PRPHA grievance procedure, to submit written comments to the PRPHA.

The PRPHA will furnish a copy of the grievance procedure to each tenant and to resident organizations.

14.2.2 Definitions

1. **Grievance** – any dispute which a tenant may have with respect to PRPHA action or failure to act in accordance with the individual tenant’s lease or PRPHA regulations which adversely affect the individual tenant’s rights, duties, welfare or status.
2. **Complainant** – any tenant whose grievance is presented to the PRPHA or at the project management office.

3. **Due Process Determination** – a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit.
4. **Elements of Due Process** – an eviction action or a termination of tenancy in a state or local court in which the following procedural safeguards are required:
 - a. Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction
 - b. Right of the tenant to be represented by counsel
 - c. Opportunity for the tenant to refute the evidence presented by the PRPHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have
 - d. A decision on the merits
5. **Hearing Officer/Panel** – a person/panel selected in accordance with HUD regulations to hear grievances and render a decision with respect thereto.
6. **Tenant** – the adult person (or persons) (other than a live-in aide)
 - a. Who resides in the unit, and who executed the lease with the PRPHA as lessee of the dwelling unit, or, if no such person now resides in the unit,
 - b. Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit.
7. **Resident Organization** – includes a resident management.

14.2.3 Applicability

Potential grievances could address most aspects of a PRPHA operation. However, there are some situations for which the grievance procedure is not applicable.

The grievance procedure is applicable only to individual tenant issues relating to the PRPHA. It is not applicable to disputes between tenants not involving the PRPHA. **Class grievances are not subject to the grievance procedure and the grievance procedure is not to be used as a forum for initiating or negotiating policy changes of the PRPHA.**

If HUD has issued a due process determination, the PRPHA may exclude from the grievance procedure any grievance concerning a termination of tenancy or eviction that involves:

- a. Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PRPHA.

- b. Any violent or drug-related criminal activity on or off such premises.
- c. Any criminal activity that resulted in felony conviction of a household member.

14.2.4 Informal settlement of grievance

The PRPHA will accept requests for an informal settlement of a grievance either orally or in writing within ten (10) business days of the grievable event. The PRPHA will then have ten (10) business days from receipt of the request to arrange a meeting with the tenant at a mutually agreeable time and confirm such meeting in writing.

If a tenant fails to attend the scheduled meeting without prior notice, the PRPHA will reschedule the appointment only if the tenant can show good cause for failing to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.

The PRPHA will prepare a summary of the informal settlement within ten (10) business days; one copy to be given to the tenant and one copy to be retained in the PRPHA tenant file.

14.3.5 Procedures to obtain a hearing

1. Requests for Hearing and Failure to Request

The tenant must submit a written request for a grievance hearing to the PRPHA within ten (10) business days upon receiving the summary of the informal settlement. The Administrative Hearing is subject to the determinations of the Uniform Administrative Procedures Act of Puerto Rico.

If the complainant does not request a hearing, the PRPHA disposition of the grievance under the informal settlement process will become final. However, failure to request a hearing does not constitute a waiver by the complainant of the right to contest the PRPHA action in disposing of the complaint in an appropriate judicial proceeding.

2. Escrow Deposits

Before a hearing is scheduled in any grievance involving the amount of rent that the PRPHA claims is due, the family must pay an escrow deposit to the PRPHA. When a family is required to make an escrow deposit, the amount to deposit will be the rent that is due and payable on the first day of the month preceding the month in which the family's act or failure to act took place. After the first deposit the family must deposit the same amount monthly until the family's complaint is resolved by decision of the hearing officer/panel.

The PRPHA will waive the requirement for an escrow deposit if the family has requested a financial hardship exemption from minimum rent requirements or is grieving the effect of welfare benefits reduction in calculation of family income.

Unless the PRPHA waives the requirement, the family's failure to make the escrow deposit will terminate the grievance procedure. A family's failure to pay the escrow deposit does not waive the family's right to contest the PRPHA disposition of the grievance in any appropriate judicial proceeding.

The PRPHA will not waive the escrow requirement for grievances involving rent amounts except where required to do so by regulation.

3. Scheduling of Hearings

Within ten (10) business days of receiving a written request for a hearing, the hearing officer will schedule and send written notice of the hearing to both the complainant and the PRPHA.

The tenant may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family. Requests to reschedule a hearing must be made orally or in writing forty eight (48) hours prior to the hearing date. At its discretion, the PRPHA may request documentation of the "good cause" prior to rescheduling the hearing.

4. Expedited Grievance Procedure

The PRPHA will establish an expedited grievance procedure for any grievance concerning a termination of tenancy or eviction that involves:

- a. Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees of the PRPHA, or
- b. Any drug-related criminal activity on or near such premises.

Such procedures will provide for an expedited notice of hearing request, an expedited scheduling of the hearing, and for an expedited decision on the grievance. The tenant will have three (3) business days to make their hearing request. The hearing officer will have three (3) business days to schedule the hearing, and three (3) business days to render a decision. All other aspects of the expedited grievance process shall be the same as for other grievances.

14.2.6 Selection of hearing officer

PRPHA grievance hearings will be conducted by a single hearing officer and not a panel. The PRPHA will appoint a person who has been selected in the manner required under the grievance procedure. Efforts will be made to assure that the person selected to be impartial. The person to conduct the Administrative Hearing will have extensive knowledge of Continued Occupancy and applicable Regulations to the Program and lead them in the facilities of PRPHA's Admission and Continued Occupancy Central Office.

14.2.7 Procedures governing the hearing

1. Rights of Complainant

The tenant will be allowed to copy any documents related to the hearing. The family must request discovery of PRPHA documents no later than 12:00 p.m. on the business day prior to the hearing.

Complainant's rights include:

- The rights to be represented by counsel or other person chosen as the tenant's representative and to have such person make statements on behalf of the tenant.
- The right to a private hearing unless the complainant requests a public hearing.
- The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by the PRPHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the PRPHA or project management relies.
- A decision based solely and exclusively upon the facts presented at the hearing.

Hearings may be attended by the following applicable persons:

- A PRPHA representative(s) and any witnesses for the PRPHA.
- The tenant and any witnesses for the tenant.
- The tenant's counsel or other representative.
- Any other person approved by the PRPHA as part of a reasonable accommodation provided to a person with a disability.

2. Decision without Hearing

The hearing officer may render a decision without proceeding with the hearing if the hearing officer determines that the issue has been previously decided in another proceeding.

Failure to Appear

If the tenant does not appear at the scheduled time of the hearing, the hearing officer will wait up to 30 minutes. If the tenant appears within 30 minutes of the scheduled time, the hearing will be held. If the tenant does not arrive within 30 minutes of the scheduled time, they will be considered to have failed to appear.

If the tenant fails to appear and was unable to reschedule the hearing in advance, the tenant must contact the PRPHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The hearing officer will reschedule the hearing only if the tenant shows good cause for the failure to appear, or it is needed as a reasonable accommodation for a person with disabilities.

- “Good cause” is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family.

General Procedures

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

- **Oral evidence:** the testimony of witnesses
- **Documentary evidence:** a writing, which is relevant to the case, for example, a letter written to the PRPHA. Writings include all forms of recorded communication or representation, including letters, emails, words, pictures, sounds, videotapes or symbols or combinations thereof.
- **Demonstrative evidence:** Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.
- **Real evidence:** A tangible item relating directly to the case.

Hearsay Evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer’s decision.

The hearing officer must require the PRPHA, the complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer/panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

If the complainant would like the PRPHA to record the proceedings by audiotape, the request must be made to the PRPHA by 12:00 p.m. on the business day prior to the hearing.

The PRPHA will consider that an audio tape recording of the proceedings is a transcript.

5. Accommodations of Persons with Disabilities

The PRPHA will provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.

If the tenant is visually impaired, any notice to the tenant which is required in the grievance process must be in an accessible format.

14.3.8 Decision of the hearing officer

In rendering a decision, the hearing officer will consider the following matters:

- **PRPHA Notice to the Family:** The hearing officer will determine if the reasons for the PRPHA decision are factually stated in the notice.
- **Discovery:** The hearing officer will determine if the family was given the opportunity to examine any relevant documents in accordance with PRPHA policy.
- **PRPHA Evidence to Support the PRPHA Decision:** The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support the PRPHA conclusion.
- **Validity of Grounds for Termination of Tenancy (when applicable):** The hearing officer will determine if the termination of tenancy is for one of the grounds specified in the HUD regulations and PRPHA policies. The PRPHA's decision will be overturned, if the grounds for termination are not specified in the regulations or are not in compliance with PRPHA policies.

The hearing officer will issue a written decision to the family and the PRPHA no later than ten (10) business days after the hearing. The report will contain the following information:

- **Hearing information:**
 - Name of the complainant
 - Date, time and place of the hearing
 - Name of the hearing officer
 - Name of the PRPHA representative(s)
 - Name of family representative (if any)
 - Names of witnesses (if any)
- **Background:** A brief, impartial statement of the reason for the hearing and the date(s) on which the informal settlement was held, who held it, and a summary of the results of the informal settlement. Also includes the date the complainant requested the grievance hearing.

- **Summary of the Evidence:** The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.
- **Findings of Fact:** The hearing officer will include all findings of fact, based on a preponderance of the evidence. Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.
- **Conclusions:** The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold the PRPHA's decision.
- **Order:** The hearing report will include a statement of whether the PRPHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the PRPHA to change the decision in accordance with the hearing officer's determination. In the case of termination of tenancy, the hearing officer will instruct the PRPHA to restore the family's status.

Procedures for Further Hearing

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of the PRPHA will take effect and another hearing will not be granted.

Final Decision

When the PRPHA considers the decision of the hearing officer to be invalid due to the reasons stated above, it will submit the matter to the PRPHA Board of Commissioners within ten (10) business days from the date of the hearing officer's decision. The Board has thirty (30) calendar days to consider the decision. If the Board decides to reverse the hearing officer's decision, it must notify the complainant within ten (10) business days of its decision.

A decision by the hearing officer/panel, or Board of Commissioners in favor of the PRPHA or which denies the relief requested by the complainant in whole or in part must not constitute a waiver of any rights the complainant may have to a subsequent trial or judicial review in court.

CHAPTER XV – PROGRAM INTEGRITY

Introduction

The PHA is committed to ensuring that funds made available to the PHA are spent in accordance with HUD requirements.

This chapter covers PRPHA policies designed to prevent, detect, investigate and resolve instances of program abuse or fraud. It also describes the actions that will be taken in the case of unintentional errors and omissions.

Chapter XV consists of two (2) parts:

Part 1: Preventing, Detecting, and Investigating Errors and Program Abuse

Parte2: Corrective Measures and Penalties

PART I: PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE

15.1.1 PREVENTING ERRORS AND PROGRAM ABUSE

The PHA anticipates that the vast majority of families and PHA’s employees intend to and will comply with program requirements and make reasonable efforts to avoid errors.

To ensure that the PHA’s program is administered effectively and according to the highest ethical and legal standards, the PHA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

The PHA will provide each applicant and resident with the publication *Things You Should Know (HUD-1140-OIG)* that explains the types of actions a family must avoid and the penalties for program abuse.

The PHA will require mandatory orientation sessions for all prospective residents either prior to or upon execution of the lease. The PHA will discuss program compliance and integrity issues. At the conclusion of all program orientation sessions, the family’s representative will be required to sign a program briefing certificate to confirm that all rules and pertinent regulations were explained to them.

The PHA will routinely provide resident counseling as part of every reexamination interview in order to clarify any confusion pertaining to program rules and requirements.

PHA staff will be required to review and explain the contents of all HUD- and PHA-required forms prior to requesting family member signatures.

The PHA will place a warning statement about the penalties for fraud (as described in the False Statement Act, U.S.C. 1001 and 1010) on key PHA forms and form letters that request information from a family member.

The PHA will provide each PHA employee with the necessary training on program rules and the organization's standards of conduct and ethics.

For purposes of this chapter the term *error* refers to an unintentional error or omission. *Program abuse or fraud* refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

15.1.2 DETECTING ERRORS

The PRPHA will employ a variety of methods to detect errors and program abuse, including:

1. The PHA will routinely use available sources of up-front income verification to compare with family-provided information.
2. At each annual reexamination, current information provided by the family will be compared to information provided at the last annual reexamination to identify inconsistencies and incomplete information.
3. The PHA will compare family-reported income and expenditures to detect possible unreported income.

Independent Audits and HUD Monitoring

OMB Circular A-133 requires all PHAs that expend \$500,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of PHA activities and notifies the PHA of errors and potential cases of program abuse.

The PHA will use the results reported in any IPA or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of the PHA's error detection and abuse prevention efforts.

Individual Reporting of Possible Errors and Program Abuse

The PHA will encourage staff, residents, and the public to report possible program abuse.

15.1.3 INVESTIGATING ERRORS

The PHA will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. In order for the PHA to investigate, the allegation must contain at least one independently-

verifiable item of information, such as the name of an employer or the name of an unauthorized household member.

The PHA will investigate inconsistent information related to the family that is identified through file reviews and the verification process.

Consent to Release of Information [24 CFR 960.259]

The PHA may investigate possible instances of error or abuse using all available PHA and public records. If necessary, the PHA will require applicant/resident families to give consent to the release of additional information.

Analysis and Findings

The PHA will base its evaluation on a preponderance of the evidence collected during its investigation.

Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence that as a whole shows that the fact sought to be proved is more probable than not. Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

For each investigation the PHA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed to the PHA, and (3) what corrective measures or penalties will be assessed.

Consideration of Remedies

In the case of family-caused errors or program abuse, the PHA will take into consideration (1) the seriousness of the offense and the extent of participation or culpability of individual family members, (2) any special circumstances surrounding the case, (3) any mitigating circumstances related to the disability of a family member, (4) the effects of a particular remedy on family members who were not involved in the offense.

Notice and Appeals

The PHA will inform the relevant party in writing of its findings and remedies within ten (10) business days of the conclusion of the investigation. The notice will include (1) a description of the error or program abuse, (2) the basis on which the PHA determined the error or program abuses, (3) the remedies to be employed, and (4) the family's right to appeal the results through an informal hearing or grievance hearing (see Chapter 14).

PART II: CORRECTIVE MEASURES AND PENALTIES

15.2.1 UNDER- OR OVERPAYMENT

An underpayment or overpayment includes an incorrect tenant rent payment by the family, or an incorrect utility reimbursement to a family.

Corrections

Whether the incorrect rental determination is an overpayment or underpayment, the PHA must promptly correct the tenant's rent and any utility reimbursement prospectively.

Increases in the tenant's rent will be implemented only after the family has received thirty (30) days notice.

Any decreases in tenant rent will become effective the first of the month following the discovery of the error.

Reimbursement

Whether the family is required to reimburse the PHA or the PHA is required to reimburse the family depends upon which party is responsible for the incorrect payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

15.2.2 FAMILY-CAUSED ERRORS AND PROGRAM ABUSE

General administrative requirements for participating in the program are discussed throughout this ACOP. This section deals specifically with errors and program abuse by family members.

An incorrect rent determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows the PHA to use incorrect information provided by a third party.

Family Reimbursement to PHA

In the case of family-caused errors or program abuse, the family will be required to repay any amounts of rent underpaid. The PHA may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the amount owed, the PHA will terminate the family's lease in accordance with the policies in Chapter 13.

PHA Reimbursement to Family

The PHA will not reimburse the family for any overpayment of rent when the overpayment is clearly caused by the family.

Prohibited Actions

An applicant or resident in the public housing program must not knowingly:

- Make a false statement to the PHA [Title 18 U.S.C. Section 1001].
- Provide incomplete or false information to the PHA [24 CFR 960.259(a) (4)].
- Commit fraud, or make false statements in connection with an application for assistance or with reexamination of income [24 CFR 966.4(l) (2) (iii) (C)].

Any of the following will be considered evidence of family program abuse:

1. Offering bribes or illegal gratuities to the PHA Board of Commissioners, employees, contractors, or other PHA representatives
2. Offering payments or other incentives to a third party as an inducement for the third party to make false or misleading statements to the PHA on the family's behalf
3. Use of a false name or the use of falsified, forged, or altered documents
4. Intentional misreporting of family information or circumstances (e.g., misreporting of income or family composition)
5. Omitted facts that were obviously known by a family member (e.g., not reporting employment income)
6. Admission of program abuse by an adult family member

The PHA may determine other actions to be program abuse based upon a preponderance of the evidence, as defined earlier in this chapter.

Penalties for Program Abuse

In the case of program abuse caused by a family the PHA may, at its discretion, impose any of the following remedies:

1. The PHA may require the family to repay any amounts owed to the program (see 15-II.B., Family Reimbursement to PHA).
2. The PHA may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit. See policies in Chapter 3 (for applicants) and Chapter 13 (for residents).
3. The PHA may deny admission or terminate the family's lease following the policies set forth in Chapter 3 and Chapter 13 respectively.
4. The PHA may refer the family for state or federal criminal prosecution as described in section 15-II.D.

15.2.3 PHA-CAUSED ERRORS OR PROGRAM ABUSE

The responsibilities and expectations of PHA staff with respect to normal program administration are discussed throughout this ACOP. This section specifically addresses actions of a PHA staff member that are considered errors or program abuse related to the public housing program. Additional standards of conduct may be provided in the PHA personnel policy.

PHA-caused incorrect rental determinations include (1) failing to correctly apply public housing rules regarding family composition, income, assets, and expenses, and (2) errors in calculation.

Repayment to the PHA

The family is not required to repay an underpayment of rent if the error or program abuse is caused by PHA staff.

PHA Reimbursement to Family

The PHA will reimburse a family for any family overpayment of rent, regardless of whether the overpayment was the result of staff-caused error or staff program abuse.

Prohibited Activities

Any of the following will be considered evidence of program abuse by PHA staff:

1. Failing to comply with any public housing program requirements for personal gain.
2. Failing to comply with any public housing program requirements as a result of a conflict of interest relationship with any applicant or resident.
3. Seeking or accepting anything of material value from applicants, residents, vendors, contractors, or other persons who provide services or materials to the PHA.
4. Disclosing confidential or proprietary information to outside parties.
5. Gaining profit as a result of insider knowledge of PHA activities, policies, or practices.
6. Misappropriating or misusing public housing funds.
7. Destroying, concealing, removing, or inappropriately using any records related to the public housing program.
8. Committing any other corrupt or criminal act in connection with any federal housing program.

15.2.4 CRIMINAL PROSECUTION

When the PHA determines that program abuse by a family or PHA staff member has occurred and the amount of underpaid rent meets or exceeds the threshold for prosecution under local or state law, the PHA will refer the matter to the appropriate entity for prosecution. When the amount of underpaid rent meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).

Other criminal violations related to the public housing program will be referred to the appropriate state or federal entity.

15.2.5 FRAUD AND PROGRAM ABUSE RECOVERIES

PHAs who enter into a repayment agreement with a family to collect rent owed, initiate litigation against the family to recover rent owed,; or begin eviction proceedings against a family may retain a hundred percent (100%) of the program funds that the PHA recovers [Notice PIH 2005-7 (HA)].

If the PHA does none of the above, all amounts that constitute an underpayment of rent must be returned to HUD.

The family must be afforded the opportunity for a hearing through the PHA's grievance process.

ADMISSION AND CONTINUED OCCUPANCY POLICY**CHAPTER XVI - PROGRAM ADMINISTRATION****Introduction**

This chapter discusses administrative policies and practices that are relevant to PRPHA.

Chapter XVI consists of seven (7) parts:

Part 1: Setting Utility Allowance

Part 2: Flats Rents and Public Housing Maximum Rents

Part 3: Repayment of Family Debts

Part 4: Public Housing Assessment System (PHAS)

Part 5: Record-Keeping

Part 6: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level.

Part 7: Notification to Applicants and Tenants regarding Protections under the Violence against Woman Reauthorization Act of 2005 (VAWA).

Part 1: Setting utility allowance**16.1.1 Utility Allowance Revisions [24 CFR 965.507]**

The PHA must review at least annually the basis on which utility allowances have been established and must revise the allowances if necessary.

BEDROOMS	UTILITY ALLOWANCES
1	\$50.00
2	\$60.00
3	\$60.00
4	\$70.00
5	\$70.00

16.1.2 Notice Requirements [24 CFR 965.502]

The PHA must give notice to all residents of proposed allowances and scheduled surcharges, and revisions thereof at initial orientation of lease.

ADMISSION AND CONTINUED OCCUPANCY POLICY**Part 2: Flat rents and public housing maximum rents****16.2.1 Rents**

Flat rents are designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

Public housing maximum rents are needed to prorate assistance for a mixed family. A mixed family is one whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigrations status [24 CFR 5.504].

1. Flat Rents [24 CFR 960.253(b)]

Flat rents for public housing units are based on the market rent charged for comparable units in the private unassisted rental market. The flat rent should be equal to the estimated rent for which the PHA could promptly lease the public housing unit after preparation for occupancy.

In determining flat rents, PHAs must consider the following:

- a. Location
- b. Quality
- c. Unit size
- d. Unit type
- e. Age of property
- f. Amenities at the property and in immediate neighborhood
- g. Housing services provided
- h. Maintenance provided by the PHA
- i. Utilities provided by the PHA

2. Review of Flat Rents

The PRPHA will review flat rents on an annual basis, and adjust them as necessary to ensure that flat rents continue to mirror market rent values.

3. Posting of Flat Rents

The PHA will publicly post the schedule of flat rents in a conspicuous manner in the applicable PHA or project office.

4. Documentation of Flat Rents [24 CFR 960.253(b) (5)]

The PHA must maintain records that document the method and process used to determine flat rents.

ADMISSION AND CONTINUED OCCUPANCY POLICY**16.2.2 Public housing maximum rents****1. Review of Public Housing Maximum Rents**

The PRPHA will recalculate the public housing maximum rents on an annual basis.

2. Posting of Public Housing Maximum Rents

The PRPHA will publicly post the schedule of public housing maximum rents in a conspicuous manner in the applicable PRPHA or project office.

3. Documentation of Public Housing Maximum Rents

The PRPHA will maintain records that document how the PRPHA determined the 95th percentile of TTP, whether the maximum rent was determined PHA-wide, project-wide, or with groupings of projects, and the methodology used to determine maximum rents for each unit size.

Part 3: Public housing assessment system (PHAS)**16.3.1 General Information**

The purpose of the Public Housing Assessment System (PHAS) is to improve the delivery of services in public housing and enhance trust in the public housing system among PHAs, public housing residents, HUD and the general public by providing a management tool for effectively and fairly measuring the performance of a public housing agency in essential housing operations.

16.3.2 PHAS Indicators [24 CFR 902]

The table below lists each of the PHAS indicators, the points possible under each indicator, and a brief description of each indicator. A PHA's performance is based on a combination of all four indicators.

Indicator 1: Physical condition of the PHA's properties**Maximum Score: 30**

- The objective of this indicator is to determine the level to which a PHA is maintaining its public housing in accordance with the standard of decent, safe, sanitary, and in good repair.
- To determine the physical condition of a PHA's properties, inspections are performed of the following five major areas of public housing: site, building exterior, building systems, dwelling units, and common areas. The inspections are performed by an independent inspector arranged by HUD, and include a statistically valid sample of the units in the PHA's public housing portfolio.

ADMISSION AND CONTINUED OCCUPANCY POLICY**Indicator 2: Financial condition of a PHA****Maximum Score: 30**

- The objective of this indicator is to measure the financial condition of a PHA for the purpose of evaluating whether it has sufficient financial resources and is capable of managing those financial resources effectively to support the provision of housing that is decent, safe, sanitary, and in good repair.
- A PHA's financial condition is determined by measuring the PHA's entity-wide performance in each of the following components: current ratio, number of months expendable fund balance, tenant receivable outstanding, occupancy loss, expense management/utility consumption, and net income or loss divided by the expendable fund balance.

Indicator 3: Management operations of a PHA**Maximum Score: 30**

- The objective of this indicator is to measure certain key management operations and responsibilities of a PHA for the purpose of assessing the PHA's management operations capabilities.
- A PHA's management operations are assessed based on the following sub-indicators: vacant unit turnaround time, capital fund, work orders, PHA annual inspection of units and systems, security, and economic self-sufficiency.

Indicator 4: Resident service and satisfaction**Maximum Score: 10**

- The objective of this indicator is to measure the level of resident satisfaction with living conditions at the PHA.
- The PHA's score for this indicator is based on the results of resident surveys and the level of implementation and follow-up or corrective actions the PHA takes based on the results of the survey.

Part 4: Record keeping**16.4.1 General Information**

The PHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, the PHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

ADMISSION AND CONTINUED OCCUPANCY POLICY

1. During the term of each public housing tenancy, and for at least four (4) years thereafter, the PHA will keep all documents related to a family's eligibility, tenancy, and termination.
2. In addition, the PHA will keep the following records for at least four (4) years:
 - a. An application from each ineligible family and notice that the applicant is not eligible.
 - b. Lead-based paint records as required by 24 CFR 35, Subpart B.
 - c. Documentation supporting the establishment of flat rents and the public housing maximum rent.
 - d. Documentation supporting the establishment of utility allowances and surcharges.
 - e. Documentation supporting PHAS scores.
 - f. Accounts and other records supporting PHA budget and financial statements for the program.
 - g. Other records as determined by the PHA or as required by HUD.
 - h. If a hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents.

This policy will be in harmony with the laws, regulations, administrative orders, or approved for the conservation and disposition of documents. The PRPHA determine the terms of conservation of documents when necessary.

16.4.2 Records management

All applicant and participant information will be kept in a secure location and access will be limited to authorized PHA staff.

PHA staff will not discuss personal family information unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action.

1. Privacy Act Requirements [24 CFR 5.212 and Form-9886]

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent

ADMISSION AND CONTINUED OCCUPANCY POLICY

applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or the PHA may release the information collected.

2. Upfront Income Verification (UIV) Records

The PRPHA establish procedures to ensure the security and confidentiality of information through any system of Upfront Income Verification approved by HUD and used by PRPHA. These guarantees will be made in accordance with the laws and regulations.

3. Criminal Records

The PHA may only disclose the criminal conviction records which the PHA receives from a law enforcement agency to officers or employees of the PHA, or to authorized representatives of the PHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

4. Medical/Disability Records

PHAs are not permitted to inquire about the nature or extent of a person's disability. The PHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition, the PHA should not place this information in the tenant file.

Part 5: Reporting requirements for children with environmental intervention blood lead level

1. The PHA will provide the public health department written notice of the name and address of any child identified as having an environmental intervention blood lead level.
2. The PHA will provide written notice of each known case of a child with an environmental intervention blood level to the HUD field office within five_(5) business days of receiving the information.

Part 6: Notification to applicants and tenants regarding protections under the Violence Against Woman Reauthorization Act of 2005 (VAWA)

1. The PRPHA will provide all applicants and tenants with notification of their protections and rights under VAWA at the time they request an application for housing assistance, at the time of admission or annual reexamination.

ADMISSION AND CONTINUED OCCUPANCY POLICY

The notice will explain the protections afforded under the law, inform each applicant of PHA confidentiality requirements, and provide contact information for local victim advocacy groups or service providers. The PHA will also include in all notices of denial provisions of the law relating to lease termination.

CHAPTER XVII - LOW INCOME HOUSING TAX CREDIT UNITS

Introduction

The Low Income Housing Tax Credit (LIHTC) is a federal tax incentive used to encourage private sector investors, developers and lenders to finance, construct and operate affordable housing. Since the program's founding in 1986, LIHTC tax credits have been allocated for the construction and rehabilitation of more than 1.6 million housing units.

The PRPHA will substantially rehabilitate public housing units under the Low Income Housing Tax Credit Program throughout its existing properties. Therefore, the admissions and occupancy of those units must comply with the regulations outlined in Section 42 of the Internal Revenue Code, as well as, the requirements of the public housing program. This Chapter addresses the changes and modifications to the procedures in the management of LIHTC units under the Admission and Continued Occupancy Policy. Management of LIHTC units must comply with this Chapter. In absence of guidance under this Chapter all policies and procedures outlined elsewhere in this ACOP apply.

Chapter XVII consists of eight (8) parts:

- Part 1: Eligibility for Admission - LIHTC Units
- Part 2: Application, Waiting List and Tenant Selection
- Part 3: Occupancy Standards and Unit Offer
- Part 4: Income and Rent Determination
- Part 5: Verification of Family Information and Income
- Part 6: Lease, Inspection and Lease Termination
- Part 7: Annual Reexamination
- Part 8: Transfer Policy - LIHTC Units

Part I: Eligibility for Admission - LIHTC units

17.1.1: Eligibility

Area Median Gross Income (AMGI) is a significant concept in the Low Income Housing Tax Credit Program (the "Program"), as it is the starting point for both the income limits and rent limits; for both federal and state purposes. For families to initially be eligible to enter the program and occupy a LIHTC unit, their total gross income cannot exceed sixty

percent (60%) of AMGI, which is the Owner's minimum set-aside election, for their family size without any deductions or adjustments.

When determining income levels for qualifying tenants, an accurate family size must be determined. A family includes all occupants of a unit. Household size is critical in calculating the maximum allowable income for LIHTC properties and/or units. For the Public Housing Program, all people living in a unit are included in determining the appropriate unit size, even if they are not considered in determining the maximum allowable income for the Tax Credit Program. The following table summarizes who should be included to determine appropriate unit size for the public housing program and maximum allowable income for the tax credit program:

	Includes for Determining Unit Size	Includes for Determining Maximum Income Limit
Head/Co Head	Yes	Yes
Spouse	Yes	Yes
Dependants	Yes	Yes
Other Adults	Yes	Yes
Temporarily Absent Family Member	Yes	Maybe (17.1.1)
Persons Permanently Confined to Hospital or Nursing Home	No	Maybe (17.1.2)
Children under Joint Custody (present more than 50% of the time)	Yes	Maybe (17.1.3)
Live-in Aide/ Assistant	Yes	No
Children Away at School who live at Home during School Recesses	Yes	Yes
Unborn Children	Yes	Yes
Foster Children	Yes	No
Foster Adults	Yes	No
Children Pending Adoption or Custody	Yes	Yes
Guest	No	No

17.1.2 Income of Temporarily Absent Family Members

A. Owners must count all income of family members approved to reside in the unit, even if some members are temporarily absent.

B. If the Owner determines that an absent person is no longer a family member, the individual must be removed from the lease, the TIC¹ and Form HUD-50058.

¹ Tenant Income Certification

C. A temporarily absent individual on active military duty can be removed from the family lease, and his or her income must not be counted unless that person is the head of the family, spouse, or co-head.

i. However, if the spouse or a dependent of the person on active military duty resides in the unit, that person's income must be counted in full, even if the military member is not the head, or spouse of the head of the family.

17.1.3: Income of Permanently Confined Family Members

An individual permanently confined to a nursing home or hospital may not be named as family head, spouse, or co-head but may continue as a family member at the family's discretion. The family's decision on whether or not to include the permanently confined family member as a family member determines if that person's income will be counted.

A. Include the individual as a family member and the income (and for the Public Housing Program allowable deductions related to the medical care of the permanently confined individual) are counted;

Or

b. Exclude the individual as a family member and the income and allowances based on the medical care of the permanently confined individual are not counted.

If the family elects to include the permanently confined member, the individual is listed on the TIC and Form HUD-50058, as an adult who is not the head, spouse, or co-head, even when the permanently confined family member is married to the person who is or will become the head of the family. The Owner should consider extenuating circumstances that may prevent the confined member from being able to sign the TIC.

If the Owner determines the confined member is unable to sign the TIC, the Owner must document in the file as to why the signature was not obtained. If the family elects not to include the permanently confined member, the individual would not be listed on the TIC neither the HUD-50058.

17.1.4: Children Joint Custody

When more than one family shares custody of a child and both families live in assisted housing, only one family at a time can claim the dependent deduction. The family that counts the dependent deduction also counts the unearned income of the child. The other family claims neither the dependent deduction nor the unearned income of the child.

For eligibility of tenants occupying a LIHTC unit at the time of acquisition/rehabilitation of the development, the initial income certification must be completed within one hundred twenty (120) days after the date of acquisition or the placed-in-service date. The

effective date of the tenant income certification is the date of acquisition or the placed-in-service date.

Tenants who are eligible for a LIHTC unit must also qualify for the public housing program per the policies of this ACOP.

Part II: Application, Waiting List and Tenant Selection

17.2.1 Application

Applications for LIHTC units must be signed and dated by all adult members of the family household (age eighteen (18) years or older at the time of application) on or before the Initial Income Certification date for the LIHTC unit.

All members of the household must indicate their student status.

17.2.2 Waiting List

The Tax Credit Program does not have a waiting list regulation or procedure. The applicable procedures are as per those under the Public Housing Program referenced in Chapter 4.

A sub-list will be maintained at each Regional Office for families that are LIHTC income and otherwise eligible for admissions to LIHTC units. All preferences and points will be secondary to income eligibility for admissions.

17.2.3 Tenant Selection

The PRPHA will comply with all applicable rules and regulations pertaining to the LIHTC units at the time of tenant selection, as well as those pertaining to the public housing program referenced in Chapter 4.

Vacant Units

Vacant units do not qualify as low-income units when low-income tenants do not occupy them. Reasonable attempts must be made to rent to tenant having a qualifying income and student status.

Suitable for Occupancy

A unit will not be treated as a low-income unit if it is not suitable for occupancy, determined in accordance with Treasury regulations taking into account local health, safety, and building codes². Property managers should continually monitor the physical

² IRC §42(i) (3) (B).

condition of their low-income units to ensure they fulfill this suitability for occupancy test, before making them available for rent and tenant selection.

Full-Time Students Rule

A unit is not considered a LIHTC unit if all the occupants of such units are full-time students. As defined in IRC Section 151(c) (4) a “student” is an individual who during each of five calendar months during the calendar year, in which the taxable year of the taxpayer begins, is a full-time student at an education organization. The determination of student status as full or part-time should be based on the criteria used by the educational organization the student is attending. The term “educational organization” includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. It does not include on-the-job training courses.

As per IRC Section 42(i) (3) (D), the exceptions to the full-time student rule include:

- a. Students who are married and are entitled to file a joint tax return;
- b. Students who receive assistance under Title IV of the Social Security Act;
- c. Students enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or Local laws;
- d. Students who are single parent receiving Aid to Families with Dependent Children (AFDC) payments with minor children who are also student; or
- e. Students who are single parents and their children and such parents are not dependents (as defined in IRC Section 152, determined without regard to subsection (b)(1), (b)(2) thereof) of another individual and such children are not dependents (as of define) of another individual other than a parent of such children.

For dealing with full-time students in tax credit properties, the PRPHA will thoroughly evaluate all student status and will require documentation of full-time student status exception, as applicable. Each full-time student eighteen (18) years of age or older residing in a LIHTC household must complete a LIHTC Student Eligibility Certification (LIHTC Form 049) at initial certification and every recertification of the household.

Part III: Occupancy Standards and Unit Offers

17.3.1 Occupancy Standards

The Tax Credit Program does not have an occupancy standard regulation. The applicable procedures are as per those under the Public Housing Program referenced in Chapter V.

17.3.2 Unit Offers

All current public housing families occupying LIHTC units and current public housing families wishing to transfer to LIHTC units must be certified as per the Full-time Student Rule and be income eligible under the LIHTC program.

Any other transfer of families to public housing units shall be in accordance to the public housing applicable policies and procedures.

Part IV: Tenant Income and Rent Determination

17.4.1 Tenant Income

Annual income is the gross anticipated annualized income that is determined the qualifying tenant will receive. At admission, all families must meet the income eligibility criteria of no more than sixty percent (60%) of the area median gross income (AMGI). The family's gross income from all sources and assets –with exception to the excluded tenant annual income items - will be used for certification without any adjustments or deductions under the LIHTC Program.

The Tenant Income Certification (TIC) should be signed and dated on or before its effective date. Other documents accompanying the income certification should be obtained and dated on or before but no more than 120 days before the TIC effective date.

Property Managers must verify all income and assets directly from the source of the income, whenever possible and as applicable. Below some examples of items that should be included and excluded in determining tenant annual income and items included and excluded as tenant assets:

Included Tenant Annual Income	Excluded Tenant Annual Income
Gross amount of wages, salaries, overtime pay, commissions, fees, tips, bonuses and other compensation for personal services of all adults in the household even if it is a mandatory earned income disregard (EID) for annual income under the Public Housing Program.	Earned income of children younger than 18 and earned income in excess of \$480 of dependants that are full-time students.
Annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic payments.	“Meals on Wheels” or other programs that provide food for the needy.
Income from a business.	Grants for: handicapped persons auxiliary apparatus, medical expenses, attendant care, and education.

Alimony and child support. Owners must count alimony or child support amounts awarded by the court unless the applicant certifies that payments are not being made and that he or she has taken all reasonable legal actions to collect amounts due, including filing with the appropriate courts or agencies responsible for enforcing payment.	Income of live-in attendants.
Public assistance income in welfare programs. Social Security Payments.	Payment received for care of foster children. Principal repayments received on mortgages or deeds of trust.
Income of temporarily absent family members.	Student loans.
Income of persons permanently confined to a hospital or nursing home if the persons are included for purposes of income.	Inheritance.
Lottery winnings paid in periodic payments.	Insurance settlement under health and accident insurance and workers compensation.
Interest, dividends and other income from net family assets.	Lottery winnings paid in lump sum payments (it is included as asset).
	Settlement for personal or property losses. Annual rent credits paid to senior citizens.
Any regular contributions and gift from persons not living in the unit. These sources may include rent and utility payment paid on behalf of the family, and other cash or non-cash contribution provided on a regular basis.	Groceries and/or contributions paid directly to the childcare provider by persons not living in the unit are excluded from annual income. Temporary, nonrecurring, or sporadic income (including gifts) is not counted.
Amounts derived from assets to which family members have access.	Hazardous duty pays to a family member in the military.
	Payments received under training programs funded by HUD.
	Earned income tax credits.
	Adoption assistance payments in excess of \$480.

17.4.2 Assets

Assets are items of value that may be turned into cash. The calculation to determine the amount of income from assets to include in annual income considers both of the following:

- a. The total cash value of the family's assets; and
- b. The amount of income those assets are earning or could earn.

The rule for calculating income from assets differs depending on whether the total cash value of family assets is \$5,000 or less, or is more than \$5,000. To comply with the rule for determining the amount of income from assets, it is necessary to first determine whether the total "cash value" of family assets exceeds \$5,000.

The "cash value" of an asset is the market value less reasonable expenses that would be incurred in selling or converting the asset to cash, such as the following:

- (1) Penalties for premature withdrawal;
- (2) Broker and legal fees; and
- (3) Settlement costs for real estate transactions.

The cash value is the amount the family could actually receive in cash, if the family converted an asset to cash. If the total cash value of all the family's assets is \$5,000 or less, the actual income the family receives from assets is the amount that is included in annual income as income from assets. When net family assets are more than \$5,000, annual income includes the greater of the following:

- a. Actual income from assets;

Or

- b. A percentage of the value of family assets based upon the current passbook savings rate as established by HUD. This is called imputed income from assets. The passbook rate is currently set at 2%.

To begin this calculation, first add the cash value of all assets. Multiply the total cash value of all assets by .02. The product is the "imputed income" from assets. Then, add the actual income from all assets. The greater of the imputed income from assets or the actual income from assets is included in the calculation of annual income.

Below some examples of items that should be included and excluded in determining tenant assets:

Included Tenant Assets	Excluded Tenant Assets
Cash held in savings, checking accounts, safety deposit boxes.	Necessary personal property.
Principal value of any trust available to the household.	Vehicles equipped for the handicapped.
Equity in rental property or other capital investments.	Interests in Indian trust land.
Stocks, bonds, treasury bills, certificates of deposit and money market funds.	Life insurance policies.

Individual retirement and KEOGH accounts. Retirement and pension funds.	Equity in the cooperative unit in which the family lives.
Lump sum receipts of: inheritances, capital gains, one-time lottery winnings, settlements on insurance and other claims.	Assets that are part of an active business. Business does not include rental of properties that are held as investments and not a main occupation.
Personal property held as investment (gems, jewelry, coin collections, or antique cars).	Assets that are not effectively owned by the tenant.
Assets disposed of for less than fair market value within 2 years before effective date of certification/re-certification.	

For further guidance on other included and excluded income items and assets, and verification methods, see HUD Handbook 4350.3 REV-1, Chapter V.

17.4.3 Rent Determination

LIHTC properties/units must comply with maximum rent and resident income limits. Household income limits and maximum rents are based on an "Area Median Income" (AMI) formula as calculated by HUD. The AMI is determined annually, is adjusted for family size and varies by location. These units are also required to comply with affordability standards that are consistent with their mission of providing rent restricted housing to qualified low-income households. The primary restrictions of the LIHTC program include the "minimum set aside" and limitations on household incomes and allowable rents.

Hence, families occupying LIHTC units will never pay more than the maximum rent calculated according to the LIHTC regulation. Public Housing Program Flat Rents can be applied to the LIHTC units but this amount cannot exceed the Tax Credit Maximum Rent.

17.4.4 Utility Allowances

Any necessary utilities paid directly by the tenant, as defined by the PRPHA and which excludes telephone costs, will require a corresponding utility allowance that reduces the maximum rent that can be charged to the tenant.

The PRPHA must annually review its Utility Allowances Schedule, and must also revise during any given period specific Utility Allowances for a specific category that has increased 10% or more since its last revision. The PRPHA has 90 days to implement updates to utility allowances made by the agency or by the utility companies into their rents calculations.

Part V: Verification of Family Information and Income

17.5.1 Verifications

Property Managers must verify all income and assets directly from the source of the income, whenever possible and as applicable. The PRPHA must receive third party verifications of income and assets from all sources for all adult members of the household not more than 120 days before the start of the twelve (12) month time period of the income certification. Written verification sent directly by a third party source is the preferred method of verification.

If written third party verification is not possible, the next acceptable method is by phone with documentation of the conversation. If a third party is not available, the Project Manager will determine net income based on historical documents, tenant declaration, among others. All verifications must be signed and dated by the third party person verifying the information and send directly to the PRPHA (Management Agent or Representatives).

Acceptable verifications are, in order of acceptability, third-party verification, review of documents, and family certification. If third-party verification is not available, owners must document the tenant file to explain why third-party verification was not available.

Families who do not have assets in excess of \$5,000 must sign a sworn statement "Certification of Assets" indicating that his or her assets are less than \$5,000. The sworn statement waives the third-party verification; otherwise, all other verification procedures under Chapter 7 of this ACOP will apply.

Part VI: Lease, Inspections and Lease Terminations

17.6.1 Lease

The initial Lease Term for LIHTC units must be at least six (6) full months for any one bedroom or more than one bedroom unit.

The Lease must be signed by all adult members of the family (age 18 or older at the time of certification).

17.6.2 Inspections

All LIHTC units under IRC Section 42 must satisfy local health, safety, and building codes standards, and are subject to inspections by the State Allocating agency. Such requirements are in addition to HUD's Uniform Physical Condition Standards (UPCS) applicable for units convened under the public housing program. Units that do not meet the requirements of the LIHTC program will be identified as a violation and may be excluded from the tax credit status.

17.6.3 Lease Termination

In addition to those reasons outlined in Chapter XIII - Lease Terminations, families residing in LIHTC units can also have their lease terminated:

- a. If all members of the family composition are full-time students and do not qualify for one of the applicable exceptions, as per Section 17.2.2 of this Chapter;
- b. If household tenants fail to fulfill their annual recertification requirements; or
- c. Any other material identified non-compliance of the Lease.

Part VII: Annual Reexamination

17.7.1 Annual Reexaminations

Recertification for LIHTC must be performed annually by the anniversary of the family's effective certification date for the LIHTC unit. All verification procedures under Chapter VII of the PRPHA ACOP, HUD and LIHTC requirements apply.

In some instances, the LIHTC Allocating Agency may waive this requirement. Effective July 30, 2008, 100 percent (100%) tax credit property owners no longer need to annually recertify resident household incomes. That is, resident must continue to be income qualified upon initial residency, but need not be recertified thereafter. Property files will still need to contain thorough third party verifications of income upon initial occupancy.

Notwithstanding the above, Puerto Rico Housing Finance Authority (Puerto Rico LIHTC Allocating Agency) still requires the preparation of the first annual recertification of all the units in the project. This certification process is identical to the initial certification. The use of the Alternate Certification is required for all the subsequent anniversary dates.

Part VIII: Transfer Policy

17.8.1 Transfer

Families may be transferred into a LIHTC unit even if they are over-income only if they are transferred to a unit in a building with the same Building Identification Number (BIN). To be eligible to a transfer to a building with other Building Identification Number, the family has to be income eligible. Families may be transferred from one LIHTC unit to another based also on the Transfer Policies outlined in Chapter XII.

Tenants that transfer from one unit to another unit must be recertified.