



THE
SPECTRUM
COMPANIES

STAR

RD 515 Rural Rental Housing

PART 1

SPECTRUM

INTRODUCTION/FORMAT

This SPECTRUM SEMINARS, INC. Rural Development (RD) 515 Training Manual has been prepared for use in the S.T.A.R. Certification course. It is also designed for use on-site at the 515 property or in the management office as a reference tool.

SPECTRUM SEMINARS, INC. is offering the S.T.A.R. Certification to resident, site and property managers as well as interested owners and Agency staff, the certification which covers RD 515 RRH properties refers to the Multi-Family Program Apartments (515):

RRH = Rural Rental Housing

LH = Labor Housing

RCH = Rural Co-operative Housing (See note pg. 59)

Plan II w/Interest Credit = Minimum Rent is Basic Rent

Plan II w/RA = Rental Assistance. Tenants pay 30% of Income for Rent and utilities. Balance subsidized to Basic Rent by RHS.

Plan I/full Profit = Older projects with one set Market Rate

515/8 RHS financed w/Project Based Section 8 from HUD

Section 8 Certification/Voucher Tenants = Basic Rent units with subsidy and rent calculated by Public Housing Authority.

The STAR manual is comprised of four separate sections:

Part 1. Spectrum pages – Notes, Discussions, Explanations and Examples of all the Program Rules. Page numbers are in the lower right-hand corner (1-93).

Part 2. 3560 Regulation – The key guide to Program Regulations is 198 pages long with page numbers at the top.

Part 3. HB-2 Excerpts – Certain parts of the Asset Management Handbook are included in this section to supplement the Spectrum pages and the 3560. Pages are number at the bottom with 2 digits, the first is the chapter, the second is the page.

Part 4. HUD 3560.3 Rev 1 (6-07) – All of the statutory definitions of income an dassets are included in the part. Pages are numbered at the bottom with the first digit being the chapter and the second, the page. Also included is HUD's updated schedule of medical deductions.

To receive the S.T.A.R. Certification, participants must take the S.T.A.R. course and pass the examination.

LEGISLATION OVERVIEW

The 3560 Regulation and Asset Management Handbook became effective on February 24, 2005. The new regulation replaces the old 1930-C handbook and consolidates hundreds of pages of old regulation into a sleeker more usable format. The Agency has postponed the implementation of Citizenship & Alien procedures until sometime in the near future. RD may not require Social Security Numbers in the same way that HUD does, but they are encouraged and may be necessary to completely process an application.

In addition, there will be a final rule correcting some existing mistakes in the Asset Mgmt handbook. Whenever there is a conflict between the 3560 Regulation and the Handbook, always use the 3560.

The 1930-C handbook has been retired. If there are questions about old regulations from management, Agency staff, or residents, old handbooks may be reviewed to clarify outdated requirements; but only use the 3560 for current regulations. There have been several previous versions of the 1930-C Handbook issued: October 27, 1980; December 19, 1983; and October 1, 1986; August 30, 1993. These manuals are no longer valid for use in management of an RD 515 property.

The 3560 is a Regulation. There are three major themes in the new regulation: Letting managers manage. There is no more RD approval of management plans, management agreements or evictions. The second theme is subsidy. The third is Civil Rights. It is essential that all managers and owners of 515 properties also be clear on important Federal Laws inclusive of Fair Housing, Section 504 and the Americans with Disabilities Act. These laws supercede Regulations. In addition, it is important to understand state landlord laws as these govern many important aspects regarding real estate. Further, keep up to date on important US Supreme Court cases as these decisions have a great impact on our industry.

The S.T.A.R. Certification Course will cover all pertinent changes to the Regulations, and provides the attendee with information necessary to effectively certify applicants and tenants for housing in these 515 projects.

In the fall of 1994, RD became Rural Economic and Community Development (RECD) with reorganization in process for realigning servicing offices and staffing. In 1996 the Agency officially became Rural Housing Services with State and Field offices called Rural Development.

ASSETS

HANDBOOK REFERENCES: Attachment 6-D, page 6-13
3560 page 87
HUD 4350.3 pages 5-20 to 5-36, 5-86 to 5-90

An integral part of the certification process is the determination of any assets a household may have. Managers should never assume that simply because a household is very low income that they have no assets, nor should there be confusion that someone would not be eligible if they did have assets. The key element in dealing with assets is ACCESS. Does the individual or household possess and have accessible any assets? If so, the asset should be reflected on the Tenant Certification regardless of whether or not the asset produces income.

VALUING ASSETS

The key with assets of any kind is valuation. As part of the 1983 HURRA, the concept of CASH VALUE was introduced. Cash value is the market or face value of an asset minus any reasonable costs that would be incurred in converting the asset to cash unless it is already in that form. These costs may include:

1. Penalties for withdrawing funds before maturity
2. Broker/legal fees in selling an asset
3. Settlement costs for real estate transactions

NOTE RD does not favor a costly or burdensome process for determining market value for property. Recent appraisals, broker estimates for property on the market for sale already, bank estimates, or in many cases tax valuations factored to market value can be acceptable. The idea is not to make the applicant (in most cases the elderly) with property expend money for appraisal simply for a value determination.

EXAMPLES of Cash Value calculations:

1. Applicant or tenant owns real estate. Estimated market value equals \$100,000. If this asset were "converted" to cash, the reasonable costs incurred might include a 6% brokers fee (based on what the going rate is in your area) and \$2000 settlement/legal costs (again based on area comparables).

The Cash Value would be:	\$100,000 Market value
	- 2,000 Settlement costs
	- <u>6,000</u> 6% broker fee
	\$ 92,000 CASH VALUE

If a mortgage balance existed, that would also be deducted here.

Cash value is also applied to any type of funds or investment where a penalty or cost may be assessed on the principal balance.

2. An applicant or tenant has savings in an I.R.A. in the amount of \$2000. If withdrawn, a penalty of 10% is imposed (bank estimate).

The CASH VALUE \$2000
 - 200 10% penalty
 \$1800

NOTE: In the case of invested funds in Certificates of Deposit and similar savings mechanisms, if a penalty is only on the interest (CD's often impose an interest penalty for withdrawal before maturing date), the cash value would not differ from the verified value of the CD.

In applying the concept of Cash Value, the Asset becomes the
NET FAMILY ASSET

Having discussed valuation, Net Family Assets need to be detailed. First, there needs to be a discussion of what RD excludes as assets, in other words, what is not listed.

EXCLUDED ASSETS

Please refer to Page 6-69 and Attachment 6-D

INCLUDED ASSETS

See Page 6-69 and Attachment 6-D / Also, Pages 6-13, 6-15

The following ARE considered assets:

REMINDER: The key with determining any of these assets is ACCESS. If the household member has access then count the asset. If the asset is not effectively owned, don't count it. (In the case of a person named as a power of attorney or a battered spouse who legitimately has no access to a home, etc.)

- a) Value of equity in real property (current market value less balance of loans secured against property and reasonable costs incurred in selling)
- b) Cash held in checking, savings accounts, safety deposit boxes, cash on hand, etc. **FOR ALL MEMBERS OF THE HOUSEHOLD**

NOTE: Value of checking account should be determined by the average 6 month daily balance . This is a major change as in the past the actual balance was used.

- c) Stocks, bonds, CD's, money markets, treasury bills, IRA's, Keoughs and other capital investments
- d) Personal property held as an investment
- e) Principal portions of contracts of sale, deeds or mortgages held

- f) Cash value of whole life insurance
- g) Retirement and pension funds:
 - If applicant/tenant is employed, count amount accessible as an ASSET.
 - If applicant/tenant is retired and receives a periodic benefit, count as INCOME (most retirement pension funds are inaccessible after monthly or weekly benefit payments begin).
 - If applicant/tenant has IRA's, after retirement count accessible funds as an ASSET.
- h) Lump sum payments inclusive of settlements (such as insurance, workman's comp., or social security disability), inheritances and lottery winnings in one payment. Lump sum assets do not include processing delays or lottery winnings in periodic payments. SEE INCOME.
- i) Trust accounts except for irrevocable trusts
- j) Assets disposed of for less than market value. If a member of the household has disposed of any asset (business or household) for less than fair market value, the amount to be counted as an asset is:
 - Fair market value
 - Amount received or spent
 - = Difference called the Asset Disposed of.

EXAMPLE: A home is worth \$100,000. The home is deeded to a relative or a friend for \$1.00. Anywhere in the US, two legal adults may transfer ownership of a property via a quit claim deed for a transfer tax of \$1.00. In this example, the asset disposed of for less than fair market value would be:

$$\begin{array}{r}
 \$100,000 \\
 \underline{\quad\quad\quad 1} \\
 \$ 99,999
 \end{array}$$

Once the asset disposed of has been determined, the amount is to be counted for a specific period of time. Count assets disposed of within two years preceding the effective date of the certification or recertification.

Key questions to be asked in this determination:

1. Did you dispose of any assets?
2. Did you dispose of any assets for less than fair market value? If no, a tenant statement is sufficient. If YES, continue.
3. What was the market value?
4. When did you dispose of the asset?

EXAMPLE: Use the house listed above. In questioning the applicant household, it is discovered that the house was deeded to a relative on June 2, 1998. There are 3 steps that can help in determining assets disposed of:

1. What was the asset disposed of?
2. When was it disposed of?
3. What is the effective date of the certification?

When you are preparing a tenant certification as part of Net Family Assets, count the assets disposed of if the answer to the following question is yes:

Did you dispose of an asset for less than fair market value in the two years Preceding _____ (fill in the effective date of certification or recertification).

Assets disposed of for less than fair market value also include money that is given away, placed in an irrevocable trust or put in other people's names or accounts to avoid being counted. The key here is intention. Did someone give away money or property on purpose? If so, then it may be considered as asset disposed of.

NOTE: Spending money is NOT considered disposing of an asset.

Should the dollar amount of the asset disposed of for less than fair market value be \$1000 or less, in 515/8 projects (as well as with the Low Income Housing Tax Credit), HUD states not to count this as an asset disposed. Be aware that RD has adopted this particular rule.

Do NOT count assets disposed of resulting from divorce, bankruptcy, or foreclosure.

The verification of assets disposed of is done by a tenant statement certifying that assets were or were not disposed. A SPECTRUM SEMINARS INC. sample form follows on the next page.

Applicant / Tenant Certification

Assets: Current & Disposed

RD regulations require that all applicants/tenants reveal all sources of income and assets. Applicants/tenants for housing in this RD property must fill out this asset certification by filling in the requested information and certifying this form.

CURRENT ASSETS (List all assets currently held and the cash value. Cash value is the market value less any reasonable costs that would be incurred in converting the asset to cash, i.e., broker and legal fees.)

ASSET	CASH VALUE	ASSET	CASH VALUE
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Applicants/tenants must also disclose any assets disposed of for less than fair market value in the two years preceding the effective date of the certification or recertification.

Did you have any assets in the last two years not listed above? Yes _____ No _____

If yes, did you dispose of any assets for less than market value? Yes _____ No _____
(This means that the assets were either given away or sold at less than the allotted market value.)

If yes, what were the assets, market value, amount received and date you disposed of the assets?

Any assets listed as disposed of for less than fair market value in the two years preceding the effective date of the certification or recertification will be counted as assets. If the difference between the value and the amount disposed of is \$1000 or less, in a 515/8 project, this would not be counted.

I do hereby certify that the information listed on this form and the questions answered are true and complete to the best of my knowledge. I further certify that I have revealed all assets currently held or previously disposed of and that I have no other assets than those listed on this form (other than personal property). I realize that false statements are fraudulent and are a criminal offense which is punishable by fine or imprisonment or both.

Date

Applicant/Tenant

ANNUAL INCOME

HANDBOOK REFERENCES:

Attachment 6-A
3560 Page 87
HUD 4350.3 pages 5-3 to 5-20,
5-81 to 5-85

RD defines annual income as the anticipated TOTAL amount of income to be received by all members of the household (even if temporarily absent) to be in residence during 12 months following the effective date of the Tenant Certification.

NOTES (1) Certain income will be exempt. The key is to ask about all sources and then management can make the determination whether or not to include in annual income. **SEE EXEMPTED INCOME.**

(2) Income should always be projected and annualized; even if actual receipt period is less. Example: schoolteacher pay received over 9 or 10 months should be considered annual pay.

(3) The temporarily absent reference in the above definition can include employment, the military or absence due to medical conditions. There are three steps that can help with this determination:

A. Is the individual away from the household still a member of that household?

If no, you are done.

B. Is the individual who is temporarily absent employed while away? If no, you are done.

C. If there is any income attributable to the absent individual, is it countable? If so, proceed with recertification.

DEFINITIONS OF ANNUAL INCOME

All definitions of income listed in the Handbook will be reviewed. Listed below are some important notes and clarifications.

1. Wages, salaries, overtime pay, commissions, fees, tips and bonuses:

- NOTES:**
- (1) Be sure full time employment is clarified to state whether that is 35, 37.5 or 40 hours per week.
 - (2) Be clear on the differences between pay received bi-weekly (26 pay periods) or semi-monthly (24 pay periods).
 - (3) Even if there are deductions from employment income, the amount to be counted is always GROSS annual income.
 - (4) Total income is counted for employment even if household member is temporarily absent.

2. Self Employment:

NOTE: Self employment, if a business, will follow the definitions listed under "Net income" in the Handbook. Verification of other types of self employment such as selling products (i.e. Avon, Amway, Tupperware, etc.) may require review of receipts for several months or quarters until an average earning can be determined. Using Schedule C of last year's tax return is acceptable.

3. Income from Assets Page 6-13

Do not confuse the asset and the income from assets. List the assets first and then determine if any or all of the assets have any actual projected income.

NOTE: Actual income means exactly that. Do not change interest rates on bank accounts to determine actual income. Example: A tenant has \$300 in the bank earning 2% interest. Actual income is $\$300 \times 2\%$. In dealing with bank accounts, actual income is determined by taking the verified balance times the interest rate. That amount equals a projected annual income since interest rates are based on an annual yield.

Actual income from assets includes:

- A. Interest or dividend income from assets (count even if income stays in a bank account or accrues as part of a CD).
- B. Interest portion of monthly or annual payments on contracts of sale, deeds or mortgages held.
- C. Net income from rental property. Take gross income less any costs for mortgage interest payments, real estate taxes, insurance and maintenance.

EXAMPLE: A property owned by a tenant is rented for \$500/month.

Annual gross income	= \$6000
Projected costs	500 insurance
	1000 mortgage interest
	1000 taxes
	<u>500 maintenance</u>
	\$3000

Gross Income	\$6000
	<u>- 3000</u>
Net Income	\$3000

NOTE: If there is no projected rental income, these costs cannot be deducted elsewhere. Example: A tenant owns a piece of land that is not rented and brings to management a real estate tax bill. This cannot be given as a deduction since there is no rental income and should NEVER be deducted as a cash value calculation on the asset itself.

D. Imputed income from assets.

Imputing income from assets is a formula to be used in certain circumstances ONLY. After a list of assets has been made inclusive of assets disposed of for less than fair market value (if applicable), at that time the question "do you impute" can be answered.

If total net family assets equal \$5000 or less, DO NOT IMPUTE. As part of ANNUAL INCOME count the actual income derived from net family assets.

If total net family assets exceed \$5000, IMPUTE and as part of annual income, count the GREATER of:

the actual income from assets
OR
the imputed income from assets

Imputed income is derived by multiplying the total net family assets by the Bank Passbook Rate. As part of the new Regulation and Handbook, RD has adopted a National Passbook Rate as set by HUD. The current rate is 2%. There is no longer any need to call banks as the National office will update all staff, borrowers and managers should be rate change.

EXAMPLES of Imputed Income Calculation:

1. Family has savings account and a wood lot for assets:

	<u>Net Family Asset</u>	<u>Income</u>
Savings	\$5,000	\$200
Wood lot cash value	<u>\$20,000</u>	<u>-0-</u>
Total	\$25,000	\$200

Because the total net family assets is more than \$5,000, a calculation of imputed assets must be made.

$$\begin{array}{rcl}
 \text{Total Net Family Assets} & = & \$25,000 \\
 & \times & \underline{\$2.0\%} \\
 & & \$500
 \end{array}$$

2. An elderly tenant has a small checking account with no interest and a certificate paying 5.5%:

	<u>Net Family Asset</u>	<u>Income</u>
Checking	\$300	-0-
Certificate	<u>\$10,000</u>	<u>\$550</u>
Total	\$10,300	\$550

Because the net family assets exceed \$5,000, the imputed calculate is done:

$$\$10,300 \quad \times \quad 2.0\% \quad = \quad \$206$$

Compare the actual income (\$550) to imputed income (\$206) and use the greater. In this example, actual income of \$550 is used.

4. Earned Income vs. Benefit Income: Page 6-57

NOTE: Benefit Income is always counted whereas Earned Income depends on the status of the household member. Refer to the definitions as well as exemptions for minors earning income.

5. Social Security/Disability/SSI

NOTE: There are considered benefit income and are counted for all members of the household regardless of age or status including tenants, co-tenants, and payments received by minors for their own support or by adults on behalf of minors. Count the gross amount before any Medicare deduction (if applicable) for Social Security. SSI, as a rule, is linked to Medicaid, with no Medicare deduction. The 2014 increase for Social Security is 1.5%.

6. **Alimony and Child Support:**

NOTE: Count the amount the tenant or co-tenant can reasonably expect to receive. If this amount varies from amounts listed on divorce or other legal decrees, revised amount can be used with proof of a lesser payment or non-payment. Be aware that RD has adopted the HUD Statutory Definition which further requires proof that the applicant/tenant has taken legal steps to obtain such payments if they are not being received. In addition, it is strongly recommended that never married parents with children sign an affidavit indicating whether or not any support is received.

7. **Regularly recurring contributions or gifts received from persons not residing in the unit.**

NOTE: This may include rental or utility payments (such as electric or heating bills paid by family not living in the unit) made on behalf of tenant or co-tenant. This also may include in-kind contributions. There is a serious issue related to this topic in regard to 0 income. If the household claims that family is "helping them out", that is income. On page 6-9 RD has adopted a strict new policy of not accepting 0 Income Certifications.

8. **Military pay. Count all regular pay, special pay and allowances of a member of the armed forces who is the tenant, co-tenant or spouse whether or not that family member lives in unit.**

NOTES:

- (1) Hazardous duty pay for persons in a war zone or under hostile fire is NOT counted.
- (2) Adult children on active military duty are no longer members of the household. Example: 19 year old (non-tenant) going in the service for three years.
- (3) Unless separated or divorced - tenants, co-tenants and spouses of either would be members of the household even if away on active military duty or in the reserves for extended periods of time.
- (4) On Page 6-18 the Agency references the Soldiers and Sailors Relief Civil Act, wherein a tenant or co-tenant of spouse may terminate a lease at any time for military service.

5.609

HUD 4350.3 REVISION 1 INCOME CHANGES & CLARIFICATIONS

On June 2007 the new HUD Revisions became effective. Chapter 5 still deals with assets and income. Listed below are key changes, additions and/or clarifications which must be used to compute gross annual income for all 4350.3 listed programs as well as the low income housing tax credit.

- 1) Income of Dependent Minors: The chapter clarifies that a tenant, co-tenant, spouse of either or an emancipated minor who is the tenant, can never be considered a dependent regardless of their age. Example: a 21 year old tenant is married to a 17 year old who works and earns \$10,000 a year. This is income and must be counted.
- 2) Full Time Students: The Handbook clarifies that if a full-time student 18 or older who is not the tenant works, the maximum counted is \$480, even if the student is away at school and resides with the parent(s) only during the summer. The Handbook further clarifies that if the tenant is a full-time student, all income must be counted.
- 3) Educational Scholarships or Grants: The new Revision 1 incorporates the Student Definition of Income change that went into effect January 2006. Unless the student is 24 years of age or older, with a dependent child (in this case, everything from a scholarship or grant is exempted) tuition is exempt, student loans are exempt; everything else is now income.
- 4) Social Security Payments: The Regulation clarifies that Social Security received by adults on behalf of minor children is income
- 5) Federal Government Pension Funds Paid to a Former Spouse: This is a new definition wherein if by the terms of the divorce decree the former Federal employee must give part of any Federal Pension to an ex-spouse that money is not income to the former Federal employee.
- 6) Withdrawal of Cash or Assets from an Investment: The new Revision 1 changed this definition to state that any money received in periodic payments is income. Under the old regulation, it was only income after the original principal was paid out. Now it does not matter what the money is from, if it is regular payments it is income. The confusion arises where it goes on to state that any remaining amounts in the account are NOT assets. However, under annuities and Exhibit 5-2, if the tenant has access to the balance it is still an asset. In other words, if once periodic payments are being made and the tenant has no access to the funds than there is no asset; but, if they can access the money, then can still count it as an asset.

ADJUSTED ANNUAL INCOME

HANDBOOK REFERENCES: Pages 6-10-12, 6-67
3560 pages 24, 25, 32, 87

To arrive at adjusted annual income, certain allowances or deductions from gross annual income may need to be calculated. Managers need to review whether a household qualifies for any or all of the allowances available. Once the allowances are totaled and subtracted from gross annual income, the result is adjusted annual income.

NOTE: Gross annual income and adjusted annual income can be the same when there are no allowable deductions. If there is even one deduction, adjusted annual income will be less than gross annual income. Adjusted annual income can NEVER be greater than gross annual income. It is possible for adjusted annual income to be zero or a negative number.

Individuals or households may receive any or all of these allowances based on eligibility:

For All Households

- A. \$480 for each minor, handicapped or disabled dependent.
- B. Childcare expenses.
- C. Disability* assistance expenses.

For Elderly Households ONLY

- D. \$400 elderly household deduction.
- E. Medical expenses
*Note: RD is adopting the HUD Section 8 Definitions of Medical, with one major change: Household help will be allowed as medical if prescribed by a doctor.

* The word Handicapped has been changed to Disabled throughout the regulation and handbooks.

A. MINOR-/DISABLED DEPENDENT DEDUCTION

\$480 may be given to each member of the household who meets the definition of minor or disabled dependent.

NOTE: NEVER count tenant, co-tenant, spouse of either or foster children, or a foster adult as a minor or dependent.

A MINOR is defined as an eligible household member who is:

1. 17 years of age or younger
2. full time students 18 years of age or older

Full time students must carry a subject load considered full time by the educational institution attended.

A DISABLED DEPENDENT is defined as an eligible household member who is:

1. 18 years of age or older, and
2. disabled

NOTES: (1) To receive a \$480 minor or dependent deduction, an individual must simply meet one of the definitions listed above.

(2) An unborn child does not receive a \$480 deduction.

(3) Foster children or foster adults never receive a \$480 deduction.

B. CHILDCARE EXPENSES

Deductions may be given for the care of children age 12 or younger and may be given for care that will enable a family member to work or go to school.

1. Childcare for work - the amount should not exceed amount earned.
2. Childcare for school - the amount should not exceed a sum reasonably expected to cover class time and travel time to and from classes.

NOTE: Childcare for school is NOT limited to full time students.

Childcare expenses should only be given when these factors apply:

- 1. No adult member of the household is capable of providing care.**
- 2. The amount is not paid to a family member living in the unit.**
- 3. The amount is not reimbursed by an agency or individual.**

NOTE : The amount for childcare should be reasonable.

Childcare expenses may NOT be deducted for:

- 1. Children age 13 years of age or older.**
- 2. Child support payments made on behalf of children not living in the unit.**

C. DISABILITY ASSISTANCE EXPENSES

This deduction can only be given when the expense enables a family member (including the disabled members) to work.

Reasonable attendant care and auxiliary apparatus expenses may be given for amounts which exceed 3% of annual income.

Like Childcare, Disability Assistance Expense cannot be paid to a member of the household or reimbursed by an agency or individual.

NOTE: The disability expense must enable someone to work as opposed to being an expense related to the nature of the disability. The amount should be reasonable and not exceed earnings.

ELDERLY HOUSING ALLOWANCES

Elderly allowances are household expenses, not individual expenses. When the tenant or co-tenant is 62 or older, or disabled (as defined on Page 6-2/3), the household is considered “elderly” and qualifies for the following allowances.

NOTE: Elderly households may live in elderly or family projects. These deductions are based on the eligibility of the household not the type of project. Throughout the new Regulation and Handbook, the word handicapped has been deleted. Everyone in this category is now a “person with a disability.”

D. \$400 HOUSEHOLD DEDUCTION

A \$400 deduction is granted for the household.

E. MEDICAL EXPENSES Pages 6-3, 4, 8, 10, 12, 6-67 HUD 4350.3 5-43 to 5-48, 5-91 to 5-93

Total medical expenses in excess of 3% of annual income may be deducted for any elderly family. If the household is considered “elderly,” all members of the household (except foster children) qualify for medical expenses. Medical expenses are those costs ANTICIPATED for the next 12 months following the effective date of the certification which are NOT covered by insurance, nor are they reimbursed. These include:

1. Doctors visits/physicals, travel & related expenses
2. Dental expenses
3. Prescription medicine & non-prescription medically needs items
4. Medical & health insurance premiums including Medicare deducted from Social Security payments is \$104.90 as of 2014. Note: Do not assume everyone is on Medicare.
5. Medicare and other insurance deductibles that are paid.
6. Medicare Plan D payments
7. Eyeglasses, Hearing aids and batteries
8. Costs related to maintaining an assistance animal.
9. Monthly payments required on accumulated major medical bills. This can include that portion of the spouse’s or children’s nursing home care paid from tenant family income.
10. Cost of a live-in resident assistant.

NOTE: It is a household’s decision, when a member is permanently confined to a hospital or nursing home to choose whether to include annual income and subtract applicable allowances or to exclude that member’s income and allowances. Remember the household makes this decision, NOT management, NOT RD.

LIVE IN CARE ATTENDANTS / RESIDENT ASSISTANTS

This type of care is allowed in all housing in the United States because of the Fair Housing Law. You cannot require that a tenant be able to live on their own, or to be able to evacuate the building by themselves. That said, there are many games that occur in regard to this care especially when involving relatives and/or boyfriends and girlfriends. The key part of the definition of a Care Attendant is that they would only be living there to provide needed support services. Remember that the income of a live-in care attendant is exempted. Thus, management must determine if the only reason the individual(s) is there is solely for care purposes. There are two individuals who can *never* qualify as care givers – a spouse or an un-emancipated minor.

Because in many cases doctors are willing to provide notes for their patients, Spectrum strongly suggests that a form be in management files to submit to the doctor when a care attendant is requested. The form should ask how many hours a day the person needs care, and what level of care they need. It is further suggested that a statement be included above where the doctor signs the form that says “I agree to testify to this in a court of law if necessary.”

CALCULATING DISABILITY ASSISTANCE & MEDICAL EXPENSES

Be sure to have a worksheet in the tenant file that shows the 3% calculation to determine allowable expenses for disability assistance or medical costs. The amount allowed is total medical or disability expenses less three percent (3%) of gross annual income (line 18f-3560-8).

EXAMPLES:

- (1) Family A has anticipated disability expenses of \$100/month. Annual income equals \$12,000.

Total anticipated disabled costs \$100 x 12 =	\$1200
3% of the gross annual income(\$12,000) =	<u>360</u>
Allowable disabled expense:	\$ 840

- (2) Family B (elderly) has anticipated medical expenses of \$25/month. Annual income is \$10,300.

Total anticipated medical costs \$25 x 12 =	\$ 300
3% of the gross annual income(\$10,300) =	<u>309</u>
Allowable medical expense:	\$ -0-

No medical is allowed since the 3% was not spent.

REMEMBER: If 3% of annual income is greater than anticipated costs, there is no allowance.

NOTE: If an elderly family had both disabled and medical costs, add the two together, then subtract 3%.

INCOME LIMITS AND ELIGIBILITY

HANDBOOK REFERENCES: Pages 6-9-12

ELIGIBILITY AND ADMISSION

Regardless of how long an applicant is on the waiting list, in processing their application for a move-in, the applicant must be income-eligible at the time of the tenant selection. In other words, there is no grandfathering simply because somebody was eligible when they applied.

For the 515 program, eligibility for admission and income status for recertification is determined by comparing ADJUSTED ANNUAL INCOME to the per person income limit. Once adjusted income has been determined, that will be compared to the income limit for very low, low, and moderate income depending on household size.

NOTE: For the purpose of determining income status, **DO NOT** count foster children, or live-in resident assistants as members of the household.

Examples: (1) A household consists of two parents and three children, one of whom is a foster child. While there are five people and that number may be used to determine bedroom size, when using the income limits chart, use the 4-person income limit.

(2) An elderly applicant for housing needs a live-in resident assistant. While there are two people and that number may be used to determine bedroom size, when using the income limits chart, use the 1-person income limit.

Important: RD has adopted the HUD position that a pregnant woman is a two-person household for income limits.

INCOME LIMITS

Adjusted income is compared to very low, low, or moderate-income limits based on the number of persons in the household. Each state has an income limit chart by county locality. The charts of all states are listed in HB-1-3550, Appendix 9 (available at the RD District or state office or on the RD Website). The most recent income limits became effective February 7, 2013. Income limits may be changed by RD periodically. Borrowers/managers should use the income limit chart issued by the RD District Office until the instructions and updated charts are issued to supersede those now in effect.

----- A J U S T E D I N C O M E L I M I T S -----

P R O G R A M	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON*
Knox County, ME								
VERY LOW INCOME	20800	23750	26700	29650	32050	34400	36800	39150
LOW INCOME	33200	37950	42700	47450	51250	55050	58850	62650
MODERATE INCOME	38700	43450	48200	52950	56750	60550	64350	68150
38 YEAR TERM	24900	28500	32050	35600	38450	41300	44150	47000
ADJ. MEDIAN INC.**	41600	47500	53400	59300	64100	68800	73600	78300
Lincoln County, ME								
VERY LOW INCOME	22150	25300	28450	31600	34150	36700	39200	41750
LOW INCOME	35400	40450	45500	50550	54600	58650	62700	66750
MODERATE INCOME	40900	45950	51000	56050	60100	64150	68200	72250
38 YEAR TERM	26550	30300	34100	37900	40950	43950	47000	50050
ADJ. MEDIAN INC.**	44300	50600	56900	63200	68300	73400	78400	83500
Oxford County, ME								
VERY LOW INCOME	19250	22000	24750	27450	29650	31850	34050	36250
LOW INCOME	30750	35100	39500	43900	47400	50900	54450	57950
MODERATE INCOME	36250	40600	45000	49400	52900	56400	59950	63450
38 YEAR TERM	23050	26350	29650	32950	35600	38200	40850	43500
ADJ. MEDIAN INC.**	38500	44000	49500	54900	59300	63700	68100	72500
Piscataquis County, ME								
VERY LOW INCOME	19250	22000	24750	27450	29650	31850	34050	36250
LOW INCOME	30750	35100	39500	43900	47400	50900	54450	57950
MODERATE INCOME	36250	40600	45000	49400	52900	56400	59950	63450
38 YEAR TERM	23050	26350	29650	32950	35600	38200	40850	43500
ADJ. MEDIAN INC.**	38500	44000	49500	54900	59300	63700	68100	72500
Somerset County, ME								
VERY LOW INCOME	19250	22000	24750	27450	29650	31850	34050	36250
LOW INCOME	30750	35100	39500	43900	47400	50900	54450	57950
MODERATE INCOME	36250	40600	45000	49400	52900	56400	59950	63450
38 YEAR TERM	23050	26350	29650	32950	35600	38200	40850	43500
ADJ. MEDIAN INC.**	38500	44000	49500	54900	59300	63700	68100	72500
Waldo County, ME								
VERY LOW INCOME	19250	22000	24750	27450	29650	31850	34050	36250
LOW INCOME	30750	35100	39500	43900	47400	50900	54450	57950
MODERATE INCOME	36250	40600	45000	49400	52900	56400	59950	63450
38 YEAR TERM	23050	26350	29650	32950	35600	38200	40850	43500
ADJ. MEDIAN INC.**	38500	44000	49500	54900	59300	63700	68100	72500

* ADD 8% OF 4 PERSON LIMIT FOR EACH PERSON IN EXCESS OF 8 EXCEPT FOR MODERATE INCOME FAMILIES,
FOR WHICH \$5500 SHOULD BE ADDED TO THE RESPECTIVE LOW-INCOME LIMIT FOR 8+ PERSON FAMILIES
** RHS ADJ. MEDIAN INCOMES SHOWN EQUAL TWICE THE RESPECTIVE VERY LOW-INCOME LIMIT

RD TENANT RENTAL PAYMENT FORMULAS

3560 page 106

There is a two step formula in calculating tenant rental payments. The first step is to use the RD rental payment formulas listed below to calculate the "Gross Tenant Contribution". The second step is to subtract the utility allowance, if applicable, to arrive at the tenant rental payment or "Net Tenant Contribution". To calculate the Gross Tenant Contribution (GTC) the formula calls for the greater of:

1. 30% of Adjusted Monthly Income
OR
2. 10% Monthly Income
OR
3. AS PAID STATES ONLY – Designated Welfare Shelter Payment = the portion of the Public Assistance Payment designated for shelter costs (the ACTUAL amount the family receives for shelter and utilities)
OR
4. The Gross Basic Rent when no Rental Assistance (RA) is available.

Once the greater of these options has been calculated, the utility allowance, when applicable, is then subtracted to arrive at the Net Tenant Contribution (NTC).

- NOTES:
- (1) "Gross Basic Rent" = Basic Rent + Utility Allowance. In projects where there is no Utility Allowance, the Basic Rent and Gross Basic Rent would be the same.
 - (2) "Gross Note Rate Rent" = Note Rate Rent + Utility Allowance. In the 8/30/93 Handbook the term "Note Rate Rent" has replaced the old term "Market Rent".
 - (3) In calculating annual income in As Paid States, use the maximum amount for shelter and utilities that the public assistance agency would pay in addition to the personal needs grant. In RD rental payment formula, use the actual shelter/utility payment received. Be sure to use ONLY is states with Designated Welfare Shelter Payments.
 - (4) In no case would the Gross Tenant Contribution exceed Note Rate Rent (formerly called Market Rent) plus the Utility Allowance.
 - (5) The Gross Tenant Contribution will always be 10% of gross monthly income in cases where adjusted annual income is zero or a negative number.

EXAMPLES OF FORMULA CALCULATION:

A. Plan II Interest Credit with RA

Tenants Gross Annual Income = \$9000
Tenants Adjusted Annual Income = \$7500

Gross Annual Income divided by 12 = Gross Monthly Income or \$750.
Adjusted Annual Income divided by 12 = Adjusted Monthly Income or \$625.
Basic Rent = \$290 Utility Allowance = \$50

COMPARE:

30% Adjusted Monthly Income = \$188
10% Monthly Income = \$75
(Gross Basic Rent = \$340)

Since there is RA available, the Gross Tenant Contribution would equal 30% Adjusted Monthly Income or \$188. (If this project had no RA the Gross Basic Rent of \$340 would be used.)

B. Plan II Interest Credit With RA

Tenant's Gross Annual Income = \$3500
Tenant's Adjusted Annual Income = \$1000

Tenant income is not from Welfare, so Designated Shelter Cost Payment is omitted (Gross Basic Rent = \$340)

\$3500 divided by 12 = gross monthly income or \$292
\$1000 divided by 12 = adjusted monthly income or \$83

COMPARE

30% Adjusted Monthly Income = \$25
10% Monthly Income = \$29
(Gross Basic Rent = \$340)

Since there is RA, Gross Tenant Contribution would be \$29 or 10% monthly income.

To arrive at Net Family Contribution, subtract Utility Allowance.

RD FORM 3560-8 TENANT CERTIFICATION

The 3560-8 Tenant Certification form has been designed to deal with all of the regulations and definitions. The 3560-8 incorporates:

1. Definitions of Income, Assets, Income from Assets, Allowances and Adjusted Income
2. Income Eligibility Calculations
3. Tenant Rental Contribution Formulas

REMINDER: Be sure to read the instructions for this form before attempting to use it!!!

NOTES: (1) It is important to be clear on the definition of Household for this form. Household is the total number of persons NOT inclusive of foster children or live-in attendants. These individuals still count toward the bedroom size allocated.

(2) The 3560-8 does not list the Borrower Name, Manager Name, Addresses nor Project location. Tracking is done by Borrower ID # (formerly referred to as Case #) and Project #. Be sure to copy those numbers correctly. The Project Name is required on page 1 and while the project name is "OPTIONAL" on page 2, it is recommended that it always be used.

(3) Effective Date of the 3560-8 correlates to the 3560-29 Project Worksheet and is ALWAYS EFFECTIVE on the 1st day of the month. Managers need to understand the difference between signature dates, the Date of Initial Project Entry and the Effective Date.

- A. Signature Dates - Tenant
Manager/Owner

Literally mean when an individual signed

- B. Date of Initial Project Entry
(Line 23 - 3560-8) Any day of the month corresponds to Legal (not physical) move-in date which is effective date of initial lease. Once this date is known, it will never change. It is project entry not unit entry.

C. Effective Date

(Line 1 – 3560-8) Must be 1st of month.

If Line 23 is the 1st, Line 1 is the 1st of the same month.

If Line 23 is the 2nd to the end of the month, Line 1 is the 1st of the next month.

EXAMPLE: A tenant leases an apartment on February 1st. The effective date of the the 3560-8 is February 1st. A tenant leases an apartment on February 2nd. The effective date of the 3560-8 is March 1st.

Note: When doing a move-in certification, you must fill out line 23 first and then go to line 1 on the 3560-8.

(4) The newest revision to the 3560-8 Tenant Certification is dated 8/11. The Agency will be issuing a revised form dealing with Social Security numbers and other corrections in the near future.

(5) Effective 2/24/06 electronic transmissions of certifications is required for all projects of 8 units or more. If certs and recerts are not received by the Agency by the tenth of the month in which they are effective, they are considered late and there is a penalty of note-rate rent.

PART I — PROJECT AND UNIT IDENTIFICATION

1. Effective Date:

2. Project Name:

3. Borrower ID and Project Number:

4. Unit Type:

5. Unit Number:

Initial Certification Certification Expired & Eviction in Process
 Recertification Designate 60 Day Absence
 Modify Certification End 60 Day Absence
 Cotenant to Tenant Tenant Transfer
 Assign/Remove RA
 Vacate a Unit

WARNING STATEMENT: Section 1001 of Title 18, United States Code provides, "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years, or both."

PART II — TENANT HOUSEHOLD INFORMATION

6. Tenant Subsidy Code (enter code)

0 — No Deep Tenant Subsidy
 1 — Rental Assistance (RA)
 2 — Project Based Section 8
 4 — Other Public RA
 5 — Private RA
 6 — HUD Voucher
 7 — Other Types at Basic Rent
 Other Subsidy Indicator (leave blank if none, P-Partial or F-Full) Other Subsidy Amount (For Partial) \$

STATEMENT REQUIRED BY THE PRIVACY ACT: Title V of the Housing Act of 1949 authorizes RHS to collect the information on this form. Your disclosure of the information is voluntary. However, failure to disclose certain information may delay the processing of your eligibility or rejection. RHS will not deny eligibility if you refuse to disclose your Social Security Number.

This information is collected principally to determine eligibility for occupancy and to determine your tenant contribution for rent. However, the information collected may be released to appropriate Federal, State and Local Agencies, credit bureaus and servicing agents when relevant to civil, criminal or regulatory proceedings or to enforce regulations by manual or automated verification procedures.

Round all monetary figures up to the nearest dollar at .50 and above.

7. Social Security No.	8. Household Member Name (Last, First and Middle)	9. SEX	10. Date of Birth M M D D Y Y	11. Race	12. Ethnicity	12a. Race Determination Code	13. Minor, Disabled, Handicapped or Full-Time Student 18 or Older	14. Elderly, Disabled or Handicapped
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Choices for Race are:
 1 - American Indian or Alaskan Native
 2 - Asian
 3 - Black or African American
 4 - Native Hawaiian or Pacific Islander
 5 - White

Choices for Race Det. Code:
 C - Customer Provided
 E - Employee Observed

8a. Number of Foster Children (if any)

13. (Complete this only when household member is not the Tenant or a Co-Tenant)

14. (Check below when coded above) Elderly Status

PART III — ASSET INCOME

15. Net Family Assets (NOTE: If Line 15 is less than \$5,000, enter zero on Line 16.) \$

16. Imputed Income from Assets (Bank Passbook Savings Rate (*) x Line 15.) \$

17. Income from Assets \$

Choices for Ethnicity are:
 a - Hispanic/Latino
 b - Non-Hispanic/Latino

PART IV — INCOME CALCULATIONS

18. Income

a. Wages, Salaries, etc. \$

b. Soc. Sec., Pensions, etc. \$

c. Assistance \$

d. Income Contributed by Assets (Greater of Line 16 or Line 17) \$

e. Other \$

f. Annual Income \$

g. Household Has Exempt Income

19. Adjustments to Income

a. \$480 x total of Line 13 \$

b. \$400 if elderly status \$

c. Medical exceeding 3% of Line 18f. (if elderly, handicapped or disabled) \$

d. Child Care \$

e. Total Adjustments \$

20. Adjusted Annual Income (Line 18.f. minus Line 19.e.) \$

PART V — INCOME LEVELS

21. Number of Household Members

22. Current Eligibility Income Level (Enter Code)

23. Date of Initial Project Entry

24. Eligibility Income Level at Initial Project Entry (Enter Code)

PART VI — CERTIFICATION BY TENANT

I certify and acknowledge that if the Agency provides unauthorized assistance to the borrower/multi-family housing project owner for my benefit based on erroneous or fraudulent information provided in this tenant certification. I will reimburse the Agency for that unauthorized amount. If I do not, the Agency may use all remedies available to collect it, including those under the Debt Collection Act, to recover on the Federal debt directly from me. In accordance with the requirements of the Privacy Act of 1974, which protects my confidential records from unauthorized release. I authorize the Agency to release information collected in this tenant certification to appropriate Agencies for income recertification purpose.

a. Date: b. Tenant Signature

c. Date: d. Co-Tenant Signature

PART VII—PRELIMINARY CALCULATIONS

25. Adjusted Monthly Income (Line 20 ÷ 12)	a. \$		x .30	= b. \$	
26. Monthly Income (Line 18.f. + 12)	a. \$		x .10	= b. \$	
				27. Designated Monthly Welfare Shelter Payment	\$
				28. Highest of Line 25.b., Line 26.b., or Line 27.	
29. Gross Basic Rent					
a. Basic Rent	\$				
b. Utility Allowance	\$				
c. (Line 29.a. + Line 29.b.)	\$				
				30. Gross Note Rate Rent	
a. Note Rate Rent	\$				
b. Utility Allowance	\$				
c. (Line 30.a. + Line 30.b.)	\$				

PART VIII—DETERMINING GROSS TENANT CONTRIBUTION (GTC)

Decision: (check one)

A. If tenant receives rental assistance (RA) enter Line 28 on Line 31 below. If Line 28 exceeds Line 29.c., go to Decision B since this Tenant will not receive RA.

B. If tenant does not receive RA and this project receives Plan II Interest Credit, enter the greater of Line 28 or Line 29.c. (but not to exceed Line 30.c.) on Line 31 below.

C. If tenant does not receive RA and this project is a Plan I, Full Profit or Labor Housing project, complete Lines C.1. thru C.3. and enter Line C.3. on Line 31.

1. Enter Line 30.c.	\$	
2. Add Plan I Surcharge (if any)	\$	
3. Total (enter on Line 31)	\$	

PART IX—DETERMINING NET TENANT CONTRIBUTION (NTC)

31. GTC (From PART VIII)	\$
32. Utility Allowance (Line 29.b. or Line 30.b.)	\$
33. Final NTC (Line 31 minus Line 32)	\$

(Amount Tenant pays Borrower for rent. If Line 33 is negative, Borrower pays the difference to Tenant for utilities.)

PART X—CERTIFICATION BY BORROWER

I certify that the information on this form has been verified as required by federal law and the tenant household

is eligible to live in the unit, or has been granted ineligible occupancy by RHS.

a. Date Signed

M	M	D	D	Y	Y

b. Signature of Borrower or Borrower's Representative

INSTRUCTIONS FOR PREPARATION

1. Borrower (or Borrower's representative) must designate the effective date in Line 1, sign and date in PART X and submit to the Agency within 10 days of the effective date but no earlier than the month preceding the effective date. Check the appropriate box to indicate the type of certification action.

NOTE: A tenant certification is effective for 12 full months. For example, a Form RD 3560-8 with an effective date of February 1, 2003, has an effective period from February 1, 2003, until January 31, 2004.

TENANT ACTION CODE DESCRIPTION

CODE DESCRIPTION OF ACTION AND DOCUMENTATION

Initial Certification. Submit the certification form for any new tenant. The "effective date" of this action, is the first day of the month following the date of initial project entry. If the date of initial project entry is the first day of the month, it is also the effective date.

Recertification. Submit a new certification form for any tenant previously certified, who is now being recertified.

Assign RA. Code a copy of existing certification to indicate that a tenant is assigned RA during their certification period. Since no new verification and certification of income and status is needed, amend the current certification form. When you assign RA, reverify and recertify at the same time, follow the guidance for a recertification.

Vacate a Unit. For any tenant who has left the project. Enter the actual vacate date and notify the Agency no later than the first of the following month. When a tenant vacates on the first, notify the Agency on or before the tenth of that month. No further documentation is required.

Certification Expired and Eviction in Process. For any tenant situation meeting the requirements of applicable Agency regulations. This code requests interest credit be provided and overage waived for this tenant during the period that the eviction is actively pursued by the borrower. The required documentation of this action must be sent with this form or already be on file with the Servicing Official.

Designate 60 Day Absence. For any tenant not meeting the eligibility requirements of applicable Rural Development regulations. This code alerts Rural Development that tenant contribution has increased to market rent in Plan II projects or a surcharge has been added to tenant contribution in Plan I projects. Be sure your files contain information to support this action.

Tenant Transfer. Use this code to indicate when a tenant has moved from one unit to another within a project. The effective date of a tenant transfer is always the first day of the month. In Block 5, indicate the old unit number and the new unit number. A transfer does not change the effective date of the tenant's current certification.

Cotenant to Tenant. Use for tenant situations when the cotenant becomes the tenant.

PART I. PROJECT AND UNIT IDENTIFICATION

2. Enter the project name.

3. Enter the project's borrower ID (Example: 0123456789) and project number (017). If you do not know the correct numbers to enter on Line 3, contact your Servicing Office.

4. Enter this tenant household's apartment unit size, according to the following:

- | | | | | | | | | | |
|---|---|-------------------------|--------------------------------------------------------------------------------------------------------------------------|--------------|--|--|---|-------------|--|
| 0 | — | efficiency, no bedrooms | | For example: | | | | | |
| 1 | — | one-bedroom | | | | | | | |
| 2 | — | two-bedrooms | <table border="1" style="display: inline-table; vertical-align: middle;"><tr><td> </td><td> </td><td> </td></tr></table> | | | | — | one-bedroom | |
| | | | | | | | | | |
| 3 | — | three-bedrooms | | | | | | | |
| 4 | — | four-bedrooms | | | | | | | |

Only when there is more than one type of each size of apartment unit, and there is a distinct rental rate for each type, begin the unit type code as follows:

- | | | | | | | | | | |
|---|---|--------------------|--------------------------------------------------------------------------------------------------------------------------|--------------|---|--|---|--------------------|--|
| S | — | Small | | For example: | | | | | |
| M | — | Medium | | | | | | | |
| L | — | Large | <table border="1" style="display: inline-table; vertical-align: middle;"><tr><td> </td><td>S</td><td> </td></tr></table> | | S | | — | Small one-bedroom | |
| | S | | | | | | | | |
| H | — | Handicapped Design | <table border="1" style="display: inline-table; vertical-align: middle;"><tr><td> </td><td>M</td><td> </td></tr></table> | | M | | — | Medium one-bedroom | |
| | M | | | | | | | | |

5. Enter this tenant household's apartment unit number. The unit number may consist of up to six characters of either letters or numbers.

- For example:

A	1	0	4
---	---	---	---

 — Apartment No. A-104

			4
--	--	--	---

 — Apartment No. 4

PART II. TENANT HOUSEHOLD INFORMATION

6. Enter the appropriate tenant code as follows:

"0" No Deep Tenant Subsidy. Tenants receiving no deep tenant subsidy. "Deep tenant subsidy" is assistance that allows a tenant to contribute less than the basic rent for shelter costs (or note rate rent in those projects with note rate rent only).

"1" Rural Development Rental Assistance (RA).

"2" Project Based Section 8. Project Based Section 8 properties may utilize Form RD 3560-8 or similar HUD approved form. However, if submitting Project Based Section 8 data electronically must use this code.

INSTRUCTIONS FOR PREPARATION (Continued)

PART II. TENANT HOUSEHOLD INFORMATION (continued)

"4" Other Public RA. Tenants receiving deep tenant subsidy from any Federal, State or local public agency, other than Rural Development or HUD.

"5" Private RA. Tenants receiving deep tenant subsidy funded by a borrower (include rent incentives only when they will be provided for 12 months or longer).

"6" HUD Voucher. Tenants receiving a HUD Voucher.

"7" Other Types at Basic Rent. Tenants receiving any other type of deep tenant subsidy not listed above, which requires that the total funds available for rent from the tenant and subsidy provider equal basic rent. Only when directed by your servicing office, indicate the other subsidy code indicator and amount as follows:

"P" - Partial

"F" - Full

Subsidy Amount for Partial _____

7. Corresponding to the name in Line 8, enter the social security number for any Tenant, Co-Tenant and all other household members. If the tenant, co-tenant or any other household member does not have a social security number but is eligible for housing, complete the field with all zeros or use the alien registration number.
8. Enter the name of each tenant household member. Foster children are not considered to be members of the tenant household and are not to be entered on this line. Always place the "tenant's" (person who signs the lease as tenant) name first and the "co-tenant's" (a person who signs the lease as co-tenant) name next.
- 8a. Enter the number of foster children who will reside in the unit or unborn children anticipated to reside in the unit this certification period. The number of foster or unborn children will be used *only* to determine the appropriate size unit.
9. Corresponding to the name in Line 8, enter the sex of each tenant household member. If any household member chooses not to furnish their sex, you are required to note the sex based on visual observation or surname.
10. Corresponding to the name in Line 8, enter the date of birth of each tenant household member.

For example: 12 | 02 | 55 — December 2, 1955
- 11-12. Enter the appropriate code for the race and ethnicity of all household members. You are to obtain this information from the tenant household's completed application for occupancy or from the previous tenant certification. One or more choices for race may be selected. One choice for ethnicity may be selected. If the tenant, co-tenant, or any household members chooses not to furnish it, you are required to note the race and ethnicity on the basis of visual observance or surname.
- 12a. Enter the appropriate race determination code.
C - Customer provided (the tenant entered the information on the application).
E - Employee observed (the tenant chose not to provide this information so management noted race/ethnicity based on visual observation or surname.)
See 7 CFR 3560.154(a)(9).

13. Corresponding to the name in Line 8, enter the appropriate code for each tenant household member other than the tenant or co-tenant who is a minor, handicapped, disabled or full-time student 18 or older. Add all the marked boxes and place the total in the box marked "Total". Always code handicapped or disabled minors as handicapped or disabled rather than minors. Always code students under 18 as minors rather than full-time students.

Code for Line 11: M — Minor

H — Individual with handicap

D — Individual with disability

F — Full-Time Student 18 or Older

For example: M — Minor

H — Individual with handicap

The terms *minor*, *individual with handicap*, and *individual with disability* are defined in Paragraph 6.5 B. of HB-2-3560.

14. Corresponding to the name in Line 8, enter the appropriate code for the tenant or co-tenant if either is considered elderly, or an individual with handicap or disability. If any spaces are coded, check the bottom box to indicate that the household has an elderly family status. Always code an elderly person with a handicap or disability as an individual with handicap or individual with disability rather than elderly.

Code for Line 12: E — Elderly

H — Individual with handicap

D — Individual with disability

For example: E — Elderly

H — Tenant or cotenant with handicap

The terms *elderly families*, *individual with handicap*, and *individual with disability* are defined in Paragraph 6.5 B. of HB-2-3560.

PART III. ASSET INCOME

15. Enter all net family assets. "Net Family Assets" is defined in Paragraph 6.9 of HB-2-3560.
16. To obtain the imputed income from assets, multiply net family assets (Line 15) by the Agency's approved bank passbook savings and enter the result. Be sure to enter the Agency's approved bank passbook savings rate in the space provided.

Note: If net family assets entered in Line 15 do not exceed \$5,000, enter zero on this line.

17. Enter actual income received from net family assets.

PART IV. INCOME CALCULATIONS

18. Insert the tenant household's total annual income from each of the sources specified in Line 18a thru 18e, and enter the total from all sources in Line 18f. *Annual income* sources are listed in Attachment 6-A of HB-2-3560.
- 18g. Household has Exempt Income:
This block should be checked if some or all of the income for the household is exempt for purposes of rent determination. See Attachment 6-A of HB-2-3560 for a list.
19. Enter any adjustments to income. Add Lines 19a thru 19d and enter the total on Line 19e. "Calculating adjusted income" is described in Paragraph 6.8 C. of HB-2-3560.
- Multiply \$480 times the number indicated in the "Total" box of Line 13.
 - \$400 when "elderly" family status is indicated in Line 14 (limited to \$400 per tenant household).
 - When Line 14 indicates elderly status, all allowable medical expenses in excess of 3 percent of annual income (Line 18 f) may be entered. When Line 14 does not indicate elderly status, only disability assistance in excess of 3 percent of annual income may be entered.
 - Child care expenses.
 - Total adjustments.
20. Subtract the total adjustments to income (Line 19 e) from annual income (Line 18 f) and enter the difference. When adjusted income is less than zero, enter zero on this line.

PART V. INCOME LEVEL

21. Enter the total number of household members described in Line 8. Do not include foster or unborn children.
22. This line determines if the tenant household is income eligible to receive RA and remain in the project. Go to the income tables in Appendix 9 of HB-1-3550 and determine the income level based on the adjusted annual income (Line 20) and the total number of household members (Line 21). You are to code the income level as follows:
- | | | | | | |
|---|---|-----------------|---|---|-----------------------------|
| V | — | Very Low-Income | M | — | Moderate-Income |
| L | — | Low-Income | A | — | Above Moderate (Ineligible) |
23. Enter the date this tenant household initially occupied this Rural Development financed project.
24. For all tenant households who initially occupy this Rural Development financed project after October 1, 1986, enter the first "Eligibility" income level from Line 22 of the initial "Tenant Certification" form. (During subsequent recertification this can be obtained from Line 24 of the preceding tenant certification). This is to be maintained throughout the tenant household's tenancy for comparative purposes. Use the same coding system for income levels described in Line 22.

PART VI. CERTIFICATION BY TENANT

The Tenant and Co-Tenant (if any) must certify to the accuracy of PARTS II through IV by dating and signing in the appropriate space.

PART VII. PRELIMINARY CALCULATIONS

25. Enter the adjusted monthly income [adjusted annual income (Line 20) divided by 12] on Line 25 a. Determine 30 percent (30%) of adjusted monthly income by multiplying Line 25 a by .30 as shown on the Form. Enter 30% of adjusted monthly income on Line 25 b.
26. Enter the monthly income [annual income (Line 18f) divided by 12] on Line 26 a. Determine 10 percent (10%) of monthly income by multiplying Line 26 a by .10 as shown on the Form. Enter 10% of monthly income on Line 26 b.
27. Enter the designated monthly welfare shelter payment if applicable. This will be the amount the tenant household actually receives from the Public Assistance Agency for shelter.
28. Compare Lines 25 b, 26 b and 27 and enter the highest amount.
29. Calculate the gross basic rent, which is the approved basic rent plus any utility allowance, when required. Basic and note rate rents must be shown on the project budget (Form RD 3560-7) for the year and approved according to Paragraph 4.21 of HB-2-3560. Utility allowances, when required, are determined and approved according to Paragraph 7.3 of HB-2-3560. Any change in rental rates must be processed according to Paragraph 4.28 of HB-2-3560. Any change in utility allowances must be processed according to Paragraph 7.3 of HB-2-3560.
- Enter the approved basic rent.
 - Enter the approved utility allowances (if any).
 - Add Lines 29 a and 29 b and enter the total.
30. Calculate the gross note rate rent which is the approved note rate plus any utility allowance, when required.
- Enter the approved note rate.
 - Enter the approved utility allowances (if any).
 - Add Lines 30 a and 30 b and enter the total.

PART VIII. DETERMINING GROSS TENANT CONTRIBUTION (GTC)

Check the box that applies to this tenant household and follow the directions for that decision.

NOTE #1: When attempting to provide RA to a new tenant compare Lines 28 and 29 c. If Line 28 is greater or no RA is available to the tenant, check Decision "B" or "C", because the tenant cannot be assisted by RA.

TENANT CERTIFICATION ISSUES

HANDBOOK REFERENCES: Pages 6-15, 6-38, 6-40, 7-4

- NOTES: (1) Managers should have all applicants and tenants sign a Release form so that all sources of income, assets and allowances can be verified. NEVER let tenants hand carry verifications to employers, banks, etc. Managers should verify these items directly with the third party.
- (2) Information for the determination of eligibility is valid for not more than 90 days before the effective date of the Tenant Certification.*
- (3) Check with your RD office to see if the Social Security Award letter (sent in December) may be used for the entire year.
- (4) The penalty for late submission of Certification and Recertification is Note Rate Rent. Managers need to be clear on the due date for submission of Certifications in order to avoid costly penalties. These penalties apply to manual and electronic submissions. Certification forms must be received by the Agency no later than the 10th of the month of which the form is effective.
- (5) Be aware that in June 2007 when HUD issued the new Revision 1 to the 4350.3, that written verifications for HUD programs and Tax Credits are now acceptable for 120 days from the date of receipt by the owner.

* In a major policy revision, RD has instituted a policy whereby verifications are still valid for a 2nd 90 day period with oral re-verification.

RECERTIFICATION

HANDBOOK REFERENCES: Pages 6-37-40
3560 page 86

- NOTES: (1) There is no such thing as an "Interim Recertification" under RD 515 Regulations. All Recerts are annual Certs with an expiration 12 months following the effective date of the new Recert. Therefore, Recerts are either scheduled or unscheduled.
- (2) A scheduled Recert is one that will be due at the expiration of 12 months. Example: Current Cert or Recert effective date = 5/01/06; scheduled annual Recert effective date = 5/01/07.
- (3) An unscheduled Recert is one that occurs before the expiration of the current Cert. This would be initiated either by the tenant household or the management. The 90 day rule is important here. If the last recert was done within 90 days and the tenant reported a change in household composition, all that would need to be verified is that change. However, using the same example, if the last recert occurred less than six months prior, all information could be re-verified orally since it is within 180 days. The next recert would be 12 months from the effective date of the unscheduled recert.
- (4) A common problem for Managers is the assumption that Certification and Lease effective dates must be the same. This is not necessary since required clauses in a Lease approved for use at an RD 515 property must allow the rents to increase or decrease during the term of the current lease.
- (5) A technical issue is expiration and effective dates. All Certs and Recerts expire on the last day of the month. All Certs and Recerts are effective on the first day of the month.

WHEN TO RECERTIFY : Pages 6-38, 7-10

Managers need to be clear on RD 515 regulation requirements for Recertification. Procedure outlines the following circumstances for processing Recertifications:

1. Annually – at least once in a 12 month period to be done by the expiration date of the current certification on file.
2. Change in household size of composition.
3. Changes in income when there is a change of \$100 or more per month. Borrowers must recertify of changes of \$50 per month if the tenant requests such a change be made. This is a major revision in policy.

WHEN RECERTIFICATION IS NOT REQUIRED

RD instructions to the 3560-8 Tenant Certification form state...

NOTE: “The completion of a new Tenant Certification is not required when project rents or utility allowances change or when the tenant household moves to a different unit within the project. To recognize these changes, notate lines 29 and 30, and recomputed lines 31 thru 33 and 30 when applicable.

When a tenant who was eligible for RA, but did not receive it, now is being assigned RA during a certification effective period, correct PART VIII and adjust the remainder of the Form accordingly.”

It is strongly suggested that any changes on the Tenant Certification be initialed by both the Borrower/manager and Tenant. Check with your RD office to see if they wish to have copies of initialed certs for rent changes and/or utility allowances sent to them

NOTE: A correction to an existing form (otherwise known as a modification) is NOT a Recertification. Therefore, the effective date of the in-place form does not change.

FAILURE TO RECERTIFY: Page 7-10
3560 page 110

Interest Credit and RA may be claimed only for tenants with current Tenant Certifications. Overage up to the Note Rate Rent must be paid by borrowers for tenants without current Tenant Certifications if the previous Tenant Certification expired due to the failure to recertify on the part of the borrower. However, the Handbook regulations explain that when the Failure to Recertify is due to the TENANT not complying with Recertification requirements, then penalties may be waived so long as the Borrower has followed the requirements.

TENANT FRAUD: Pages 8-17,18
3560 pages 110, 190

Managers should document any cases where the tenant has failed to report sources of income or assets or misrepresented the household composition, circumstances in regard to the household or allowances. The file should contain documented evidence of verified fraud on the part of the tenant before any legal action should be pursued or rent changes. If fraud can be documented, the manager should then recalculate tenant rent to see if adjustments to RA and/or NTC need to be made. In some states, RD can assist with suspicion of non-reported income by performing wage matching. In a major policy change when the Borrower/Manager has proof of tenant fraud, the Agency will now make the efforts to collect any monies due.

DAY TWO

S.T.A.R. CERTIFICATION COURSE

The topics to be covered on Day Two of the S.T.A.R. Certification Course all relate to Occupancy. Presentations will be made along with discussions on setting Occupancy Policy, determining Occupancy Eligibility, doing required Affirmative Marketing, knowing Fair Housing and Section 504 Requirements, setting Application & Waiting List Policy, assigning Rental Assistance, renting to Students, creating a Tenant Selection Policy, rejection of applicants and Grievance Procedure, dealing with changes in household income and occupancy after tenancy has begun, required transfers, pet regulations, lease and security deposit, rules and termination of tenancy.

NOTE: In rural cooperative housing there are not tenants, but members of the cooperative. Do not confuse this term with a member of the household.

OCCUPANCY

HANDBOOK REFERENCES: Occupancy Policy – Pages 6-19-21,6-41
3560 page 91

Prior to tenant selection, income eligibility must be determined for the household. In addition to meeting income limits, the household must also be occupancy eligible. Since 8/30/93, RD no longer sets Occupancy Standards for RD 515 projects. . That is the responsibility of the Owner/Manager. Managers need to review the Handbook guidelines and also check with State law, local municipal ordinances, local fire departments and Public Housing Authorities to determine if any requirements and/or local guidelines exist.

- NOTES:**
- (1) Occupancy policy should be carefully determined so as not to overcrowd or under utilize space.
 - (2) Remember that the Owner now sets Occupancy Standards not RD.
 - (3) Be aware that Occupancy Standards have a direct link to Fair Housing in that restrictive requirements set by an Owner that would not be mandated by local ordinances and that would not overcrowd units, could have an impact on the protects class of familial status.

AFFIRMATIVE FAIR HOUSING MARKETING PLANS

HANDBOOK REFERENCE: Page 6-25; 3560 Regulation Page 75 HUD 935.2 AFFIRMATIVE FAIR HOUSING MARKETING PLAN

- NOTES:**
- (1) The current version of the HUD 935.2 that must be used is dated 12/2011.**
 - (2) Managers must document all Affirmative Marketing as well as community contacts, marketing incentives (which should be approved by RD) and maintain copies of all advertising and mailings in a file.**
 - (3) RD requires that Affirmative Marketing be done at least once per year regardless of whether a waiting list exists, whether vacancies are currently available for occupancy or whether any vacancies are anticipated in the next 12 months.**
 - (4) The HUD 935.2 Affirmative Fair Housing Marketing Plan is included in the course manual beginning on the next page as a reference.**
 - (5) The approved Affirmative Plan along with the Fair Housing poster, 3560 Grievance & Appeal and the And Justice For All poster must be displayed at RD properties.**
 - (6) In addition to the above mentioned posters, in marketing 515 properties, managers should list a contact phone number, the TDD phone number; use the Equal Opportunity symbol along with universal accessibility.**
 - (7) Due to the requirement of the 935.2 for education and training of staff on Civil Rights Laws, the Agency may be asking for verification of this.**
 - (8) While HUD policy is to review the document once every five years and update as needed, RD has maintained a three year requirement to coincide with the Supervisory Visit/Compliance Review**

Note to all applicants/respondents: This form was developed with Nuance, the official HUD software for the creation of HUD forms. HUD has made available instructions for downloading a free installation of a Nuance reader that allows the user to fill-in and save this form in Nuance. Please see <http://portal.hud.gov/hudportal/documents/huddoc?id=nuancereaderinstall.pdf> for the instructions. Using Nuance software is the only means of completing this form.

Affirmative Fair Housing Marketing Plan (AFHMP) - Multifamily Housing

**U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity**

OMB Approval No. 2529-0013
(exp. 8/31/2013)

1a. Project Name & Address (including City, County, State & Zip Code) 	1b. Project Contract Number 	1c. No. of Units
	1d. Census Tract 	
	1e. Housing/Expanded Housing Market Area Housing Market Area: Expanded Housing Market Area:	

1f. Managing Agent Name, Address (including City, County, State & Zip Code), Telephone Number & Email Address

1g. Application/Owner/Developer Name, Address (including City, County, State & Zip Code), Telephone Number & Email Address

1h. Entity Responsible for Marketing (check all that apply)

Owner Agent Other (specify) _____

Position, Name (if known), Address (including City, County, State & Zip Code), Telephone Number & Email Address

1i. To whom should approval and other correspondence concerning this AFHMP be sent? Indicate Name, Address (including City, State & Zip Code), Telephone Number & E-Mail Address.

2a. Affirmative Fair Housing Marketing Plan

Plan Type Date of the First Approved AFHMP:

Reason(s) for current update:

2b. HUD-Approved Occupancy of the Project (check all that apply)

Elderly Family Mixed (Elderly/Disabled) Disabled

2c. Date of Initial Occupancy

2d. Advertising Start Date

Advertising must begin *at least* 90 days prior to initial or renewed occupancy for new construction and substantial rehabilitation projects.

Date advertising began or will begin

For existing projects, select below the reason advertising will be used:

To fill existing unit vacancies

To place applicants on a waiting list (which currently has individuals)

To reopen a closed waiting list (which currently has individuals)

3a. Demographics of Project and Housing Market Area
Complete and submit Worksheet 1.

3b. Targeted Marketing Activity

Based on your completed Worksheet 1, indicate which demographic group(s) in the housing market area is/are *least* likely to apply for the housing without special outreach efforts. (check all that apply)

- White American Indian or Alaska Native Asian Black or African American
 Native Hawaiian or Other Pacific Islander Hispanic or Latino Persons with Disabilities
 Families with Children Other ethnic group, religion, etc. (specify)

4a. Residency Preference

Is the owner requesting a residency preference? If yes, complete questions 1 through 5.
If no, proceed to Block 4b.

(1) Type

(2) Is the residency preference area:

The same as the AFHMP housing/expanded housing market area as identified in Block 1e?

The same as the residency preference area of the local PHA in whose jurisdiction the project is located?

(3) What is the geographic area for the residency preference?

(4) What is the reason for having a residency preference?

(5) How do you plan to periodically evaluate your residency preference to ensure that it is in accordance with the non-discrimination and equal opportunity requirements in 24 CFR 5.105(a)?

Complete and submit Worksheet 2 when requesting a residency preference (see also 24 CFR 5.655(c)(1)) for residency preference requirements. The requirements in 24 CFR 5.655(c)(1) will be used by HUD as guidelines for evaluating residency preferences consistent with the applicable HUD program requirements. See also HUD Occupancy Handbook (4350.3) Chapter 4, Section 4.6 for additional guidance on preferences.

4b. Proposed Marketing Activities: Community Contacts

Complete and submit Worksheet 3 to describe your use of community contacts to market the project to those least likely to apply.

4c. Proposed Marketing Activities: Methods of Advertising

Complete and submit Worksheet 4 to describe your proposed methods of advertising that will be used to market to those least likely to apply. Attach copies of advertisements, radio and television scripts, Internet advertisements, websites, and brochures, etc.

5a. Fair Housing Poster

The Fair Housing Poster must be prominently displayed in all offices in which sale or rental activity takes place (24 CFR 200.620(e)). Check below all locations where the Poster will be displayed.

Rental Office Real Estate Office Model Unit Other (specify)

5b. Affirmative Fair Housing Marketing Plan

The AFHMP must be available for public inspection at the sales or rental office (24 CFR 200.625). Check below all locations where the AFHMP will be made available.

Rental Office Real Estate Office Model Unit Other (specify)

5c. Project Site Sign

Project Site Signs, if any, must display in a conspicuous position the HUD approved Equal Housing Opportunity logo, slogan, or statement (24 CFR 200.620(f)). Check below all locations where the Project Site Sign will be displayed. Please submit photos of Project signs.

Rental Office Real Estate Office Model Unit Entrance to Project Other (specify)

The size of the Project Site Sign will be x

The Equal Housing Opportunity logo or slogan or statement will be x

6. Evaluation of Marketing Activities

Explain the evaluation process you will use to determine whether your marketing activities have been successful in attracting individuals least likely to apply, how often you will make this determination, and how you will make decisions about future marketing based on the evaluation process.

7a. Marketing Staff

What staff positions are/will be responsible for affirmative marketing?

7b. Staff Training and Assessment: AFHMP

- (1) Has staff been trained on the AFHMP?
- (2) Has staff been instructed in writing and orally on non-discrimination and fair housing policies as required by 24 CFR 200.620(c)?
- (3) If yes, who provides instruction on the AFHMP and Fair Housing Act, and how frequently?

- (4) Do you periodically assess staff skills on the use of the AFHMP and the application of the Fair Housing Act?
- (5) If yes, how and how often?

7c. Tenant Selection Training/Staff

- (1) Has staff been trained on tenant selection in accordance with the project's occupancy policy, including any residency preferences?
- (2) What staff positions are/will be responsible for tenant selection?

7d. Staff Instruction/Training:

Describe AFHM/Fair Housing Act staff training, already provided or to be provided, to whom it was/will be provided, content of training, and the dates of past and anticipated training. Please include copies of any AFHM/Fair Housing staff training materials.

8. Additional Considerations Is there anything else you would like to tell us about your AFHMP to help ensure that your program is marketed to those least likely to apply for housing in your project? Please attach additional sheets, as needed.

9. Review and Update

By signing this form, the applicant/respondent agrees to implement its AFHMP, and to review and update its AFHMP in accordance with the instructions to item 9 of this form in order to ensure continued compliance with HUD's Affirmative Fair Housing Marketing Regulations (see 24 CFR Part 200, Subpart M). I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (See 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802).

Signature of person submitting this Plan & Date of Submission (mm/dd/yyyy)

Name (type or print)

Title & Name of Company

For HUD-Office of Housing Use Only

Reviewing Official:

For HUD-Office of Fair Housing and Equal Opportunity Use Only

Approval

Disapproval

Signature & Date (mm/dd/yyyy)

Signature & Date (mm/dd/yyyy)

Name
(type
or
print)

Title

Name
(type
or
print)

Title

Public reporting burden for this collection of information is estimated to average six (6) hours per initial response, and four (4) hours for updated plans, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget (OMB) control number.

Purpose of Form: All applicants for participation in FHA subsidized and unsubsidized multifamily housing programs with five or more units (see 24 CFR 200.615) must complete this Affirmative Fair Housing Marketing Plan (AFHMP) form as specified in 24 CFR 200.625, and in accordance with the requirements in 24 CFR 200.620. The purpose of this AFHMP is to help applicants offer equal housing opportunities regardless of race, color, national origin, religion, sex, familial status, or disability. The AFHMP helps owners/agents (respondents) effectively market the availability of housing opportunities to individuals of both minority and non-minority groups that are least likely to apply for occupancy. Affirmative fair housing marketing and planning should be part of all new construction, substantial rehabilitation, and existing project marketing and advertising activities.

An AFHM program, as specified in this Plan, shall be in effect for each multifamily project throughout the life of the mortgage (24 CFR 200.620(a)). The AFHMP, once approved by HUD, must be made available for public inspection at the sales or rental offices of the respondent (24 CFR 200.625) and may not be revised without HUD approval. This form contains no questions of a confidential nature.

Applicability: The form and worksheets must be completed and submitted by all FHA subsidized and unsubsidized multifamily housing program applicants.

INSTRUCTIONS:

Send completed form and worksheets to your local HUD Office, Attention: Director, Office of Housing

Part 1: Applicant/Respondent and Project

Identification. Blocks 1a, 1b, 1c, 1g, 1h, and 1i are self-explanatory.

Block 1d- Respondents may obtain the Census tract number from the U.S. Census Bureau (www.census.gov) when completing Worksheet One.

Block 1e- Respondents should identify both the housing market area and the expanded housing market area for their multifamily housing projects. Use abbreviations if necessary. A **housing market area** is the area from which a multifamily housing project owner/agent may reasonably expect to draw a substantial number of its tenants. This could be a county or Metropolitan Division. The U.S. Census Bureau provides a range of levels to draw from.

An **expanded housing market area** is a larger geographic area, such as a Metropolitan Division or a Metropolitan Statistical Area, which may provide additional demographic diversity in terms of race, color, national origin, religion, sex, familial status, or disability.

Block 1f- The applicant should complete this block only if a Managing Agent (the agent cannot be the applicant) is implementing the AFHMP.

Part 2: Type of AFHMP

Block 2a- Respondents should indicate the status of the AFHMP, i.e., initial or updated, as well as the date of the first approved AFHMP. Respondents should also provide the reason (s) for the current update, whether the update is based on the five-year review or due to significant changes in project or local demographics (See instructions for Part 9).

Block 2b- Respondents should identify all groups HUD has approved for occupancy in the subject project, in accordance with the contract, grant, etc.

Block 2c- Respondents should specify the date the project was/will be first occupied.

Block 2d- For new construction and substantial rehabilitation projects, advertising must begin at least 90 days prior to initial occupancy. In the case of existing projects, respondents should indicate whether the advertising will be used to fill existing vacancies, to place individuals on the project's waiting list, or to re-open a closed waiting list. Please indicate how many people are on the waiting list when advertising begins.

Part 3 Demographics and Marketing Area.

"Least likely to apply" means that there is an identifiable presence of a specific demographic group in the housing market area, but members of that group are not likely to apply for the housing without targeted outreach, including marketing materials in other languages for limited English proficient individuals, and alternative formats for persons with disabilities. Reasons for not applying may include, but are not limited to, insufficient information about housing opportunities, language barriers, or transportation impediments.

Block 3a - Using Worksheet 1, the respondent should indicate the demographic composition of the project's residents, current project applicant data, census tract, housing market area, and expanded housing market area. The applicable housing market area and expanded housing market area should be indicated in Block 1e. Compare groups within rows/across columns on Worksheet 1 to identify any under-represented group(s) relative to the surrounding housing market area and expanded housing market area, i.e., those group(s) "least likely to apply" for the housing without targeted outreach and marketing. If there is a particular group or subgroup with members of a protected class that has an identifiable presence in the housing market area, but is not included in Worksheet 1, please specify under "Other."

Respondents should use the most current demographic data from the U.S. Census or another official source such as a local government planning office. Please indicate the source of your data in Part 8 of this form.

Block 3b - Using the information from the completed Worksheet 1, respondents should identify the demographic group(s) least likely to apply for the housing without special outreach efforts by checking all that apply.

Part 4 - Marketing Program and Residency Preference (if any).

Block 4a - A residency preference is a preference for admission of persons who reside or work in a specified geographic area (see 24 CFR 5.655(c)(1)(ii)). Respondents should indicate whether a residency preference is being utilized, and if so, respondents should specify if it is new, revised, or continuing. If a respondent wishes to utilize a residency preference, it must state the preference area (and provide a map delineating the precise area) and state the reason for having such a preference. The respondent must ensure that the preference is in accordance with the non-discrimination and equal opportunity requirements in 24 CFR 5.105(a) (see 24 CFR 5.655(c)(1)).

Respondents should use Worksheet 2 to show how the percentage of the eligible population living or working in the residency preference area compares to that of residents of the project, project applicant data, census tract, housing market area, and expanded housing market area. The percentages would be the same as shown on completed Worksheet 1.

Block 4b - Using Worksheet 3, respondents should describe their use of community contacts to help market the project to those least likely to apply. This table should include the name of a contact person, his/her address, telephone number, previous experience working with the target population(s), the approximate date contact was/will be initiated, and the specific role the community contact will play in assisting with affirmative fair housing marketing or outreach.

Block 4c - Using Worksheet 4, respondents should describe their proposed method(s) of advertising to market to those least likely to apply. This table should identify each media option, the reason for choosing this media, and the language of the advertisement. Alternative format(s) that will be used to reach persons with disabilities, and logo(s) that will appear on the various materials (as well as their size) should be described. **Please attach a copy of the advertising or marketing material.**

Part 5 - Availability of the Fair Housing Poster, AFHMP, and Project Site Sign.

Block 5a - The Fair Housing Poster must be prominently displayed in all offices in which sale or rental activity takes place (24 CFR 200.620(e)). Respondents should indicate all locations where the Fair Housing Poster will be displayed.

Block 5b -The AFHMP must be available for public inspection at the sales or rental office (24 CFR 200.625). Check all of the locations where the AFHMP will be available.

Block 5c -The Project Site Sign must display in a conspicuous position the HUD-approved Equal Housing Opportunity logo, slogan, or statement (24 CFR 200.620(f)). Respondents should indicate where the Project Site Sign will be displayed, as well as the size of the Sign and the size of the logo, slogan, or statement. **Please submit photographs of project site signs.**

Part 6 - Evaluation of Marketing Activities.

Respondents should explain the evaluation process to be used to determine if they have been successful in attracting those individuals identified as least likely to apply. Respondents should also explain how they will make decisions about future marketing activities based on the evaluations.

Part 7- Marketing Staff and Training.

Block 7a - Respondents should identify staff positions that are/will be responsible for affirmative marketing.

Block 7b - Respondents should indicate whether staff has been trained on the AFHMP and Fair Housing Act.

Please indicate who provides the training and how frequently. In addition, respondents should specify whether they periodically assess staff members' skills in using the AFHMP and in applying the Fair Housing Act. They should state how often they assess employee skills and how they conduct the assessment.

Block 7c - Respondents should indicate whether staff has been trained on tenant selection in accordance with the project's occupancy policy, including residency preferences (if any). Respondents should also identify those staff positions that are/will be responsible for tenant selection.

Block 7d - Respondents should include copies of any written materials related to staff training, and identify the dates of past and anticipated training.

Part 8 - Additional Considerations.

Respondents should describe their efforts not previously mentioned that were/are planned to attract those individuals least likely to apply for the subject housing.

Part 9 - Review and Update.

By signing the respondent assumes responsibility for implementing the AFHMP. Respondents must review their AFHMP every five years or when the local Community Development jurisdiction's Consolidated Plan is updated, or when there are significant changes in the demographics of the project or the local housing market area. When reviewing the plan, the respondent should consider the current demographics of the housing market area to determine if there have been demographic changes in the population in terms of race, color, national origin, religion, sex, familial status, or disability. The respondent will then determine if the population least likely to apply for the housing is still the population identified in the AFHMP, whether the advertising and publicity cited in the current AFHMP are still appropriate, or whether advertising sources should be modified or expanded. Even if the demographics of the housing market area have not changed, the respondent should determine if the outreach currently being performed is reaching those it is intended to reach as measured by project occupancy and applicant data. If not, the AFHMP should be updated. The revised AFHMP must be submitted to HUD for approval. HUD may review whether the affirmative marketing is actually being performed in accordance with the AFHMP. If based on their review, respondents determine the AFHMP does not need to be revised, they should maintain a file documenting what was reviewed, what was found as a result of the review, and why no changes were required. HUD may review this documentation.

Notification of Intent to Begin Marketing.

No later than 90 days prior to the initiation of rental marketing activities, the respondent must submit notification of intent to begin marketing. The notification is required by the AFHMP Compliance Regulations (24 CFR 108.15). The Notification is submitted to the Office of Housing in the HUD Office servicing the locality in which the proposed housing will be located. Upon receipt of the Notification of Intent to Begin Marketing from the applicant, the monitoring office will review any previously approved plan and may schedule a pre-occupancy conference. Such conference will be held prior to initiation of sales/rental marketing activities. At this conference, the previously approved AFHMP will be reviewed with the applicant to determine if the plan, and/or its proposed implementation, requires modification prior to initiation of marketing in order to achieve the objectives of the AFHM regulation and the plan.

OMB approval of the AFHMP includes approval of this notification procedure as part of the AFHMP. The burden hours for such notification are included in the total designated for this AFHMP form.

FAIR HOUSING REQUIREMENTS & RELATED OCCUPANCY ISSUES

HUD 928.1 FAIR HOUSING POSTER AND JUSTICE FOR ALL POSTER

DISCUSSION OUTLINE

- A. **Protected Classes:** There are 7 Federally protected classes under Fair Housing. Managers need to be clear if anyone else is protected by State Law or city/town ordinances.
- B. **Non-Protected Classes:** Do not confuse Fair Housing protection with eligibility. Unless you have standing under the law, then discrimination cannot occur. Not protected under Federal law includes : single people, married couples, sexual orientation, people living together, roommates, students, the elderly, income, age, convicted felons, occupations, persons using or selling illegal drugs and smokers.
- C. **Familial Status:** (3560 page 26) The Fair Housing Law defines Familial Status “...this term means one or more individual (who have not attained the age of 18 years) being domiciled with a parent of another person having legal custody of such individual or individuals; or the designee of such parent or another person having such custody, with the written permission of such parent or other person. The protection against discrimination afforded by familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individuals who had not attained the age of 18 years.”

Fair Housing Amendments Act of 1988, Final Rule – 1/23/89 Exemption From Familial Status Requirements: Section 100.302

“The Provisions regarding Familial Status in this part shall not apply to housing provided under any Federal or State programs that the Secretary determines is specifically designed and operated to assist elderly persons, as defined in the State or Federal program.”

NOTE: This is a direct reprint from the Fair Housing Law. RD has received this exemption in regard to its Elderly Housing. It is strongly suggested that managers include the following in your tenant selection criteria for 515 Elderly Housing; “This is Federal Elderly Housing. We are exempt from renting to non-elderly families with children.”

D. Definitions of Disabled/Elderly

HANDBOOK REFERENCES: Definitions – Pages 6-2,3

3560 pages 24-25

NOTE: (1) There are now 2 definitions in the Handbook under this section for Individuals with a Disability .

In terms of Federal protections under Fair Housing & 504, this is 1 class. For a household where the tenant or co-tenant is 62 or old use code “E” ; for a household where the tenant or co-tenant is disabled under 62 (but of legal age) use code “D”

(2) Remember the tenant or co-tenant must meet one of these definitions for the household to qualify as “handicapped”. If the household meets this definition, then they meet the qualification as an elderly household, receive the \$400 and medical, and qualify for either elderly or family housing.

E. Legal and Illegal Questions

HANDBOOK REFERENCE: 6-16 DOJ Policy Statement

NOTES: (1) This section of the Fair housing Law is probably the single most important reference for managers. This deals with the questions that can legally be asked of all applicants inclusive of handicapped applicants. Managers need to be well versed in this area.

(2) The major issue in regard to these questions is with the verifications. It is NEVER acceptable to verify disability; however it is acceptable to verify eligibility.

(3) Consistent screening criteria of all applicant household is mandated by the Fair Housing Law.

(4) Do NOT ask on the application for 515 housing whether an individual is handicapped. Rather define an elderly household, state that this qualifies for \$400 and medical. Ask if they are applying for status as an elderly household?

F. Independent Living & Legal Capacity

NOTES: (1) Independent living has been ruled in court to be an unacceptable form of applicant selection, applicant rejection in regard to tenancy nor can this be used as a means to evict a tenant. In a similar manner, linked to independent living as unacceptable is the use of criteria determining where individuals or households may reside based on the ability to evacuate safely in an emergency. Both of these practices have been ruled illegal. Check your tenant selection criteria and lease in regard to these issues.

(2) Under the Fair Housing Law it is considered a Reasonable Accommodation to allow a guardian to sign documents on behalf of a tenant who is of legal age but does not possess legal capacity to sign documents. Copies of the guardian papers should be on file.

G. Special Provisions Under The Fair Housing Law 3560 pages 46-48

There are 3 special provisions in the Fair Housing legislation that pertain only to the handicapped/disabled community. No one else is covered by these provisions.

1. New Construction Requirements

NOTE: Effective March 13, 1991 all new construction of housing in the United States (where there are four or more units in a building) must be handicapped accessible. This includes an unobstructed route to the dwelling, doorways wide enough for wheelchair entry, lowered light switches, thermostats/climate controls, blocking in bathroom walls for later installation of grab bars & useable kitchens and bathrooms designed for wheelchair use. Managers may wish to obtain a copy of the Federal Register dated March 6, 1991 which is HUD's final rule for implementing design requirements

The new construction requirements apply only to new construction, not rehabs. Properties with an occupancy permit prior to 3/13/91 and properties with a continuous or renewed building permit on or before 6/15/90, regardless of occupancy permit date, are exempt from these provisions. New construction since 3/13/91 of single family homes, duplexes, triplexes, and multi-story townhouses are also exempt.

2. Reasonable Modification
3560 page 77

- NOTES:**
- (1) The Fair Housing law states that it is unlawful to refuse to allow a handicapped/disabled applicant the right to request "reasonable" alterations to an apartment if it will afford more enjoyable living.**
 - (2) It is strongly suggested that all requests be put in writing and reviewed by an objective third party within your organization. If the request is reasonable, it should be done as soon as possible. If it is not reasonable, then you have every right to say no.**
 - (3) Certain items that are always reasonable include: grab bars in a bathroom, ramps, appliance changes, visual and hearing enhancements.**
 - (4) While Fair Housing states that these modification costs can be passed along to the resident, there is a more restrictive requirement set forth by a separate law, Section 504. This will be discussed separately.**

3. Reasonable Accommodations : HANDBOOK REFERENCE 3-45

- NOTES:**
- (1) Reasonable Accommodation may encompass project rules and regulations such as a single handicapped individual occupying a two-bedroom unit on a permanent basis due to specific needs; or consideration of requests for pets in non-elderly housing; or other requests on the part of applicants/tenants such as parking closer to the unit or main building door.**
 - (2) While managers are never required to rent to an individual whose tenancy would pose a direct threat to the health and safety of other individuals or the property of others, be aware that under Fair Housing and Section 504 if a threat can be removed, then it may be reasonable to provide that accommodation to rent to that individual.**
 - (3) It is acceptable to ask for verification from a qualified third party that the applicant/tenant would benefit from the proposed accommodation.**

H. Section 504 Requirements

HANDBOOK REFERENCES: 3-6, Communication 3-45

Lease Reference 6-73

Assigning Handicapped Units 6-33

Self Evaluation/ Transition Plans 3-6

NOTES: (1) Managers may wish to obtain a copy of the Federal Register dated June 2, 1988 containing HUD's final rule for implementing these requirements. These regulations pertain to all Federal programs inclusive of housing. Be aware that Section 504 only pertains to the disabled community. No one else is covered by this Law.

(2) Specifically, in regard to 515 housing, since June 1982 5% of the units or a minimum of one must be fully adapted for wheelchair living. For properties on line prior to June, 1982 it is strongly recommended that 5% be created if possible.

(3) One of the most important requirements set forth by Section 504 is in regard to communications. TDD's and accommodations for the visually impaired are required for Federal housing.

(4) All RD properties must perform a self evaluation and create a transition plan to be sure that all common areas are accessible to and usable by persons with mobility impairments. It is recommended that this be done using a wheelchair as this will open your eyes to accessibility issues.

(5) Section 504 also requires that reasonable accommodation must be given to handicapped/disabled applicants or tenants

(6) Section 504 also requires reasonable modifications. This is more restrictive than Fair Housing in that these costs may not be passed along to residents, but are a project expense. The Law states that these requirements do NOT require a borrower to take any action that would result in a fundamental alteration of the nature of the program or project or items that would result in an undue financial and administrative burden.



**EQUAL HOUSING
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**We Do Business in Accordance With the Federal Fair
Housing Law**

(The Fair Housing Amendments Act of 1988)

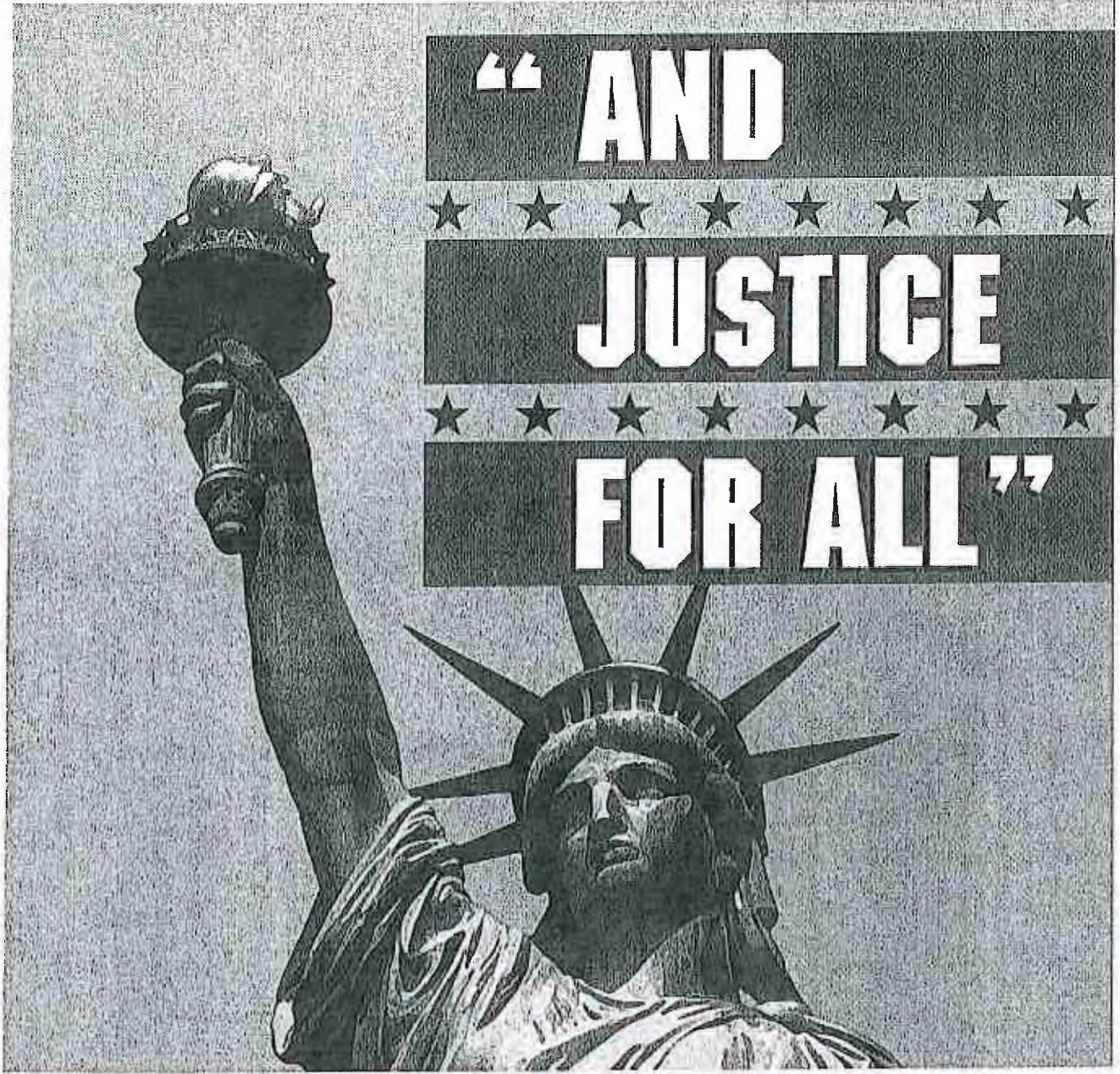
**It is illegal to Discriminate Against Any Person
Because of Race, Color, Religion, Sex,
Handicap, Familial Status, or National Origin**

- In the sale or rental of housing or residential lots
- In the provision of real estate brokerage services
- In advertising the sale or rental of housing
- In the appraisal of housing
- In the financing of housing
- Blockbusting is also illegal

Anyone who feels he or she has been discriminated against may file a complaint of housing discrimination:

1-800-669-9777 (Toll Free)
1-800-927-9275 (TTY)

U.S. Department of Housing and
Urban Development
Assistant Secretary for Fair Housing and
Equal Opportunity
Washington, D.C. 20410



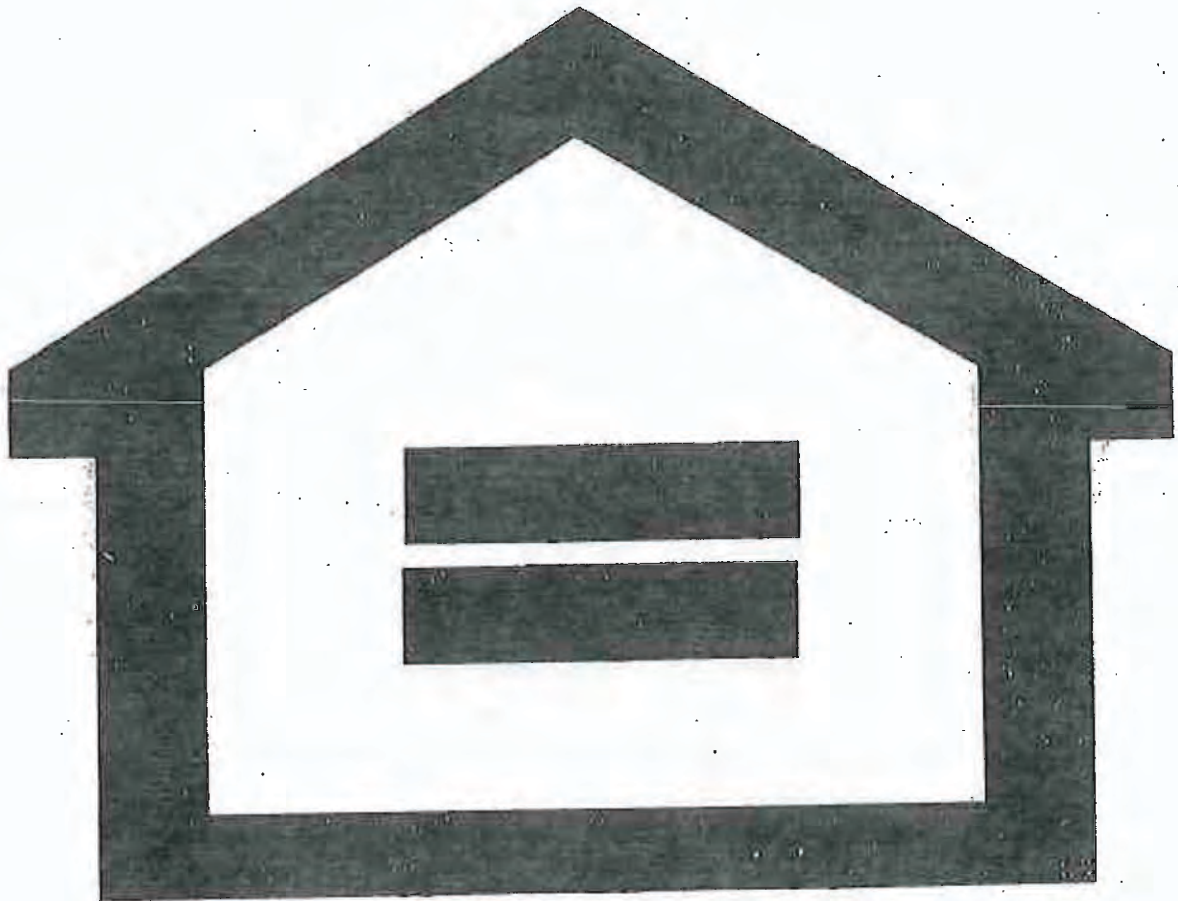
In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call 800.795.3272 (voice) or 202.720.6382 (TTY). USDA is an equal opportunity provider and employer.

De acuerdo a lo establecido por las leyes Federales y el Departamento de Agricultura de los EE.UU. (USDA, siglas en inglés), se prohíbe a este organismo la discriminación por raza, color, origen nacional, sexo, edad, o impedimentos de las personas. (No todos las bases de prohibición se aplican a todos los programas.)

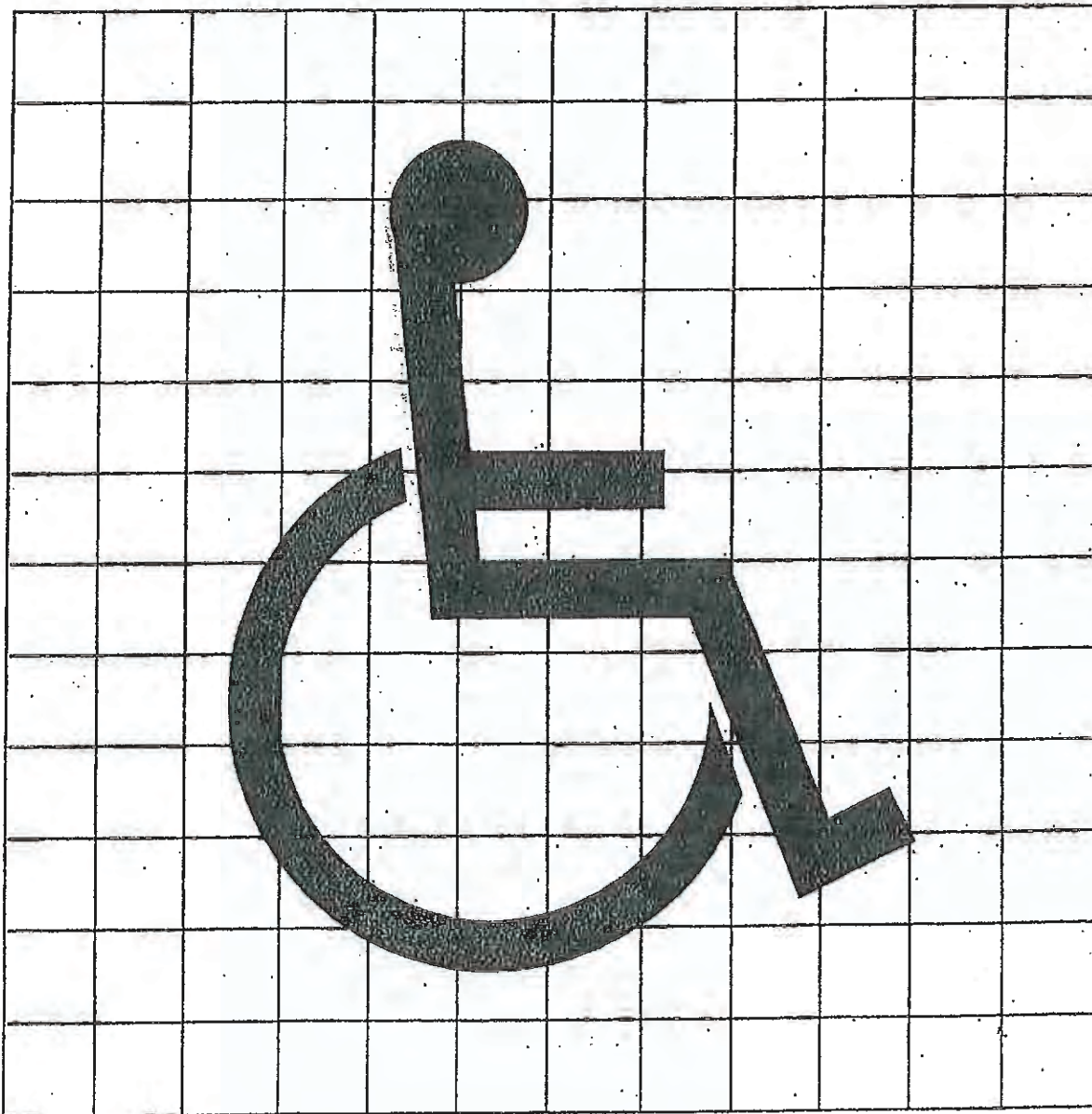
Para presentar una queja sobre discriminación, escriba a USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410, o llame al 800.795.3272 (voz) o 202.720.6382 (TTY). USDA es un proveedor y empleador que ofrece oportunidad igual a todos.

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U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

Washington, D.C.
May 17, 2004

JOINT STATEMENT OF
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND THE DEPARTMENT OF JUSTICE

*REASONABLE ACCOMMODATIONS UNDER THE
FAIR HOUSING ACT*

Introduction

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the federal Fair Housing Act¹ (the "Act"), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.² One type of disability discrimination prohibited by the Act is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.³ HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable accommodations to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to

¹ The Fair Housing Act is codified at 42 U.S.C. §§ 3601 - 3619.

² The Act uses the term "handicap" instead of the term "disability." Both terms have the same legal meaning. See *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that definition of "disability" in the Americans with Disabilities Act is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

³ 42 U.S.C. § 3604(f)(3)(B).

reasonable accommodations.⁴

Questions and Answers

1. What types of discrimination against persons with disabilities does the Act prohibit?

The Act prohibits housing providers from discriminating against applicants or residents because of their disability or the disability of anyone associated with them⁵ and from treating persons with disabilities less favorably than others because of their disability. The Act also makes it unlawful for any person to refuse “to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling.”⁶ The Act also prohibits housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because those persons may require reasonable accommodations. In addition, in certain circumstances, the Act requires that housing providers allow residents to

⁴ Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability and require recipients of federal financial assistance to provide reasonable accommodations to applicants and residents with disabilities. Although Section 504 imposes greater obligations than the Fair Housing Act, (e.g., providing and paying for reasonable accommodations that involve structural modifications to units or public and common areas), the principles discussed in this Statement regarding reasonable accommodation under the Fair Housing Act generally apply to requests for reasonable accommodations to rules, policies, practices, and services under Section 504. See U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Notice PIH 2002-01(HA) (www.hud.gov/offices/fheo/disabilities/PIH02-01.pdf) and “Section 504: Frequently Asked Questions,” (www.hud.gov/offices/fheo/disabilities/sect504faq.cfm#anchor272118).

⁵ The Fair Housing Act’s protection against disability discrimination covers not only home seekers with disabilities but also buyers and renters without disabilities who live or are associated with individuals with disabilities 42 U.S.C. § 3604(f)(1)(B), 42 U.S.C. § 3604(f)(1)(C), 42 U.S.C. § 3604(f)(2)(B), 42 U.S.C. § (f)(2)(C). See also H.R. Rep. 100-711 – 24 (reprinted in 1988 U.S.C.A.N. 2173, 2184-85) (“The Committee intends these provisions to prohibit not only discrimination against the primary purchaser or named lessee, but also to prohibit denials of housing opportunities to applicants because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities.”). Accord: Preamble to Proposed HUD Rules Implementing the Fair Housing Act, 53 Fed. Reg. 45001 (Nov. 7, 1988) (citing House Report).

⁶ 42 U.S.C. § 3604(f)(3)(B). HUD regulations pertaining to reasonable accommodations may be found at 24 C.F.R. § 100.204.

make reasonable structural modifications to units and public/common areas in a dwelling when those modifications may be necessary for a person with a disability to have full enjoyment of a dwelling.⁷ With certain limited exceptions (*see* response to question 2 below), the Act applies to privately and publicly owned housing, including housing subsidized by the federal government or rented through the use of Section 8 voucher assistance.

2. Who must comply with the Fair Housing Act's reasonable accommodation requirements?

Any person or entity engaging in prohibited conduct – *i.e.*, refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling – may be held liable unless they fall within an exception to the Act's coverage. Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. *See e.g.*, City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); Project Life v. Glendening, 139 F. Supp. 703, 710 (D. Md. 2001), aff'd 2002 WL 2012545 (4th Cir. 2002). Under specific exceptions to the Fair Housing Act, the reasonable accommodation requirements of the Act do not apply to a private individual owner who sells his own home so long as he (1) does not own more than three single-family homes; (2) does not use a real estate agent and does not employ any discriminatory advertising or notices; (3) has not engaged in a similar sale of a home within a 24-month period; and (4) is not in the business of selling or renting dwellings. The reasonable accommodation requirements of the Fair Housing Act also do not apply to owner-occupied buildings that have four or fewer dwelling units.

3. Who qualifies as a person with a disability under the Act?

The Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

⁷ This Statement does not address the principles relating to reasonable modifications. For further information see the HUD regulations at 24 C.F.R. § 100.203. This statement also does not address the additional requirements imposed on recipients of Federal financial assistance pursuant to Section 504, as explained in the Introduction.

The term "substantially limits" suggests that the limitation is "significant" or "to a large degree."

The term "major life activity" means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.⁸ This list of major life activities is not exhaustive. *See e.g., Bragdon v. Abbott*, 524 U.S. 624, 691-92 (1998) (holding that for certain individuals reproduction is a major life activity).

4. Does the Act protect juvenile offenders, sex offenders, persons who illegally use controlled substances, and persons with disabilities who pose a significant danger to others?

No, juvenile offenders and sex offenders, by virtue of that status, are not persons with disabilities protected by the Act. Similarly, while the Act does protect persons who are recovering from substance abuse, it does not protect persons who are currently engaging in the current illegal use of controlled substances.⁹ Additionally, the Act does not protect an individual with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.

5. How can a housing provider determine if an individual poses a direct threat?

The Act does not allow for exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (*e.g.*, current conduct, or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat. Consequently, in evaluating a recent history of overt acts, a provider must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat (*i.e.*, a significant risk of substantial harm). In such a situation, the provider may request that the individual document

⁸ The Supreme Court has questioned but has not yet ruled on whether "working" is to be considered a major life activity. *See Toyota Motor Mfg. Kentucky, Inc. v. Williams*, 122 S. Ct. 681, 692, 693 (2002). If it is a major activity, the Court has noted that a claimant would be required to show an inability to work in a "broad range of jobs" rather than a specific job. *See Sutton v. United Airlines, Inc.*, 527 U.S. 470, 492 (1999).

⁹ *See, e.g., United States v. Southern Management Corp.*, 955 F.2d 914, 919 (4th Cir. 1992) (discussing exclusion in 42 U.S.C. § 3602(h) for "current, illegal use of or addiction to a controlled substance").

how the circumstances have changed so that he no longer poses a direct threat. A provider may also obtain satisfactory assurances that the individual will not pose a direct threat during the tenancy. The housing provider must have reliable, objective evidence that a person with a disability poses a direct threat before excluding him from housing on that basis.

Example 1: A housing provider requires all persons applying to rent an apartment to complete an application that includes information on the applicant's current place of residence. On her application to rent an apartment, a woman notes that she currently resides in Cambridge House. The manager of the apartment complex knows that Cambridge House is a group home for women receiving treatment for alcoholism. Based solely on that information and his personal belief that alcoholics are likely to cause disturbances and damage property, the manager rejects the applicant. The rejection is unlawful because it is based on a generalized stereotype related to a disability rather than an individualized assessment of any threat to other persons or the property of others based on reliable, objective evidence about the applicant's recent past conduct. The housing provider may not treat this applicant differently than other applicants based on his subjective perceptions of the potential problems posed by her alcoholism by requiring additional documents, imposing different lease terms, or requiring a higher security deposit. However, the manager could have checked this applicant's references to the same extent and in the same manner as he would have checked any other applicant's references. If such a reference check revealed objective evidence showing that this applicant had posed a direct threat to persons or property in the recent past and the direct threat had not been eliminated, the manager could then have rejected the applicant based on direct threat.

Example 2: James X, a tenant at the Shady Oaks apartment complex, is arrested for threatening his neighbor while brandishing a baseball bat. The Shady Oaks' lease agreement contains a term prohibiting tenants from threatening violence against other residents. Shady Oaks' rental manager investigates the incident and learns that James X threatened the other resident with physical violence and had to be physically restrained by other neighbors to keep him from acting on his threat. Following Shady Oaks' standard practice of strictly enforcing its "no threats" policy, the Shady Oaks rental manager issues James X a 30-day notice to quit, which is the first step in the eviction process. James X's attorney contacts Shady Oaks' rental manager and explains that James X has a psychiatric disability that causes him to be physically violent when he stops taking his prescribed medication. Suggesting that his client will not pose a direct threat to others if proper safeguards are taken, the attorney requests that the rental manager grant James X an exception to the "no threats" policy as a reasonable accommodation based on James X's disability. The Shady Oaks rental manager need only grant the reasonable accommodation if James X's attorney can provide satisfactory assurance that James X will receive appropriate counseling and

periodic medication monitoring so that he will no longer pose a direct threat during his tenancy. After consulting with James X, the attorney responds that James X is unwilling to receive counseling or submit to any type of periodic monitoring to ensure that he takes his prescribed medication. The rental manager may go forward with the eviction proceeding, since James X continues to pose a direct threat to the health or safety of other residents.

6. What is a "reasonable accommodation" for purposes of the Act?

A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. The Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

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

Example 1: A housing provider has a policy of providing unassigned parking spaces to residents. A resident with a mobility impairment, who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation. There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first come, first served basis. The provider must make an exception to its policy of not providing assigned parking spaces to accommodate this resident.

Example 2: A housing provider has a policy of requiring tenants to come to the rental office in person to pay their rent. A tenant has a mental disability that makes her afraid to leave her unit. Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation. The provider must make an exception to its payment policy to accommodate this tenant.

Example 3: A housing provider has a "no pets" policy. A tenant who is deaf requests that the provider allow him to keep a dog in his unit as a reasonable accommodation. The tenant explains that the dog is an assistance animal that will alert him to several sounds, including knocks at the door, sounding of the smoke detector, the telephone ringing, and cars coming into the driveway. The housing

provider must make an exception to its "no pets" policy to accommodate this tenant.

7. Are there any instances when a provider can deny a request for a reasonable accommodation without violating the Act?

Yes. A housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability-related need for the accommodation. In addition, a request for a reasonable accommodation may be denied if providing the accommodation is not reasonable – *i.e.*, if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

When a housing provider refuses a requested accommodation because it is not reasonable, the provider should discuss with the requester whether there is an alternative accommodation that would effectively address the requester's disability-related needs without a fundamental alteration to the provider's operations and without imposing an undue financial and administrative burden. If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it. An interactive process in which the housing provider and the requester discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations is helpful to all concerned because it often results in an effective accommodation for the requester that does not pose an undue financial and administrative burden for the provider.

Example: As a result of a disability, a tenant is physically unable to open the dumpster placed in the parking lot by his housing provider for trash collection. The tenant requests that the housing provider send a maintenance staff person to his apartment on a daily basis to collect his trash and take it to the dumpster. Because the housing development is a small operation with limited financial resources and the maintenance staff are on site only twice per week, it may be an undue financial and administrative burden for the housing provider to grant the requested daily trash pick-up service. Accordingly, the requested accommodation may not be reasonable. If the housing provider denies the requested accommodation as unreasonable, the housing provider should discuss with the tenant whether reasonable accommodations could be provided to meet the tenant's disability-related needs – for instance, placing an open trash collection can in a location that is readily accessible to the tenant so the tenant can dispose of his own trash and the provider's maintenance staff can then transfer the trash to the dumpster when they are on site. Such an accommodation would not involve a

fundamental alteration of the provider's operations and would involve little financial and administrative burden for the provider while accommodating the tenant's disability-related needs.

There may be instances where a provider believes that, while the accommodation requested by an individual is reasonable, there is an alternative accommodation that would be equally effective in meeting the individual's disability-related needs. In such a circumstance, the provider should discuss with the individual if she is willing to accept the alternative accommodation. However, providers should be aware that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and an individual is not obligated to accept an alternative accommodation suggested by the provider if she believes it will not meet her needs and her preferred accommodation is reasonable.

8. What is a "fundamental alteration"?

A "fundamental alteration" is a modification that alters the essential nature of a provider's operations.

Example: A tenant has a severe mobility impairment that substantially limits his ability to walk. He asks his housing provider to transport him to the grocery store and assist him with his grocery shopping as a reasonable accommodation to his disability. The provider does not provide any transportation or shopping services for its tenants, so granting this request would require a fundamental alteration in the nature of the provider's operations. The request can be denied, but the provider should discuss with the requester whether there is any alternative accommodation that would effectively meet the requester's disability-related needs without fundamentally altering the nature of its operations, such as reducing the tenant's need to walk long distances by altering its parking policy to allow a volunteer from a local community service organization to park her car close to the tenant's unit so she can transport the tenant to the grocery store and assist him with his shopping.

9. What happens if providing a requested accommodation involves some costs on the part of the housing provider?

Courts have ruled that the Act may require a housing provider to grant a reasonable accommodation that involves costs, so long as the reasonable accommodation does not pose an undue financial and administrative burden and the requested accommodation does not constitute a fundamental alteration of the provider's operations. The financial resources of the provider, the cost of the reasonable accommodation, the benefits to the requester of the requested accommodation, and the availability of other, less expensive alternative accommodations that would effectively meet the applicant or resident's disability-related needs must be considered in determining whether a requested accommodation poses an undue financial and administrative

burden.

10. What happens if no agreement can be reached through the interactive process?

A failure to reach an agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation. If the individual who was denied an accommodation files a Fair Housing Act complaint to challenge that decision, then the agency or court receiving the complaint will review the evidence in light of applicable law and decide if the housing provider violated that law. For more information about the complaint process, see question 19 below.

11. May a housing provider charge an extra fee or require an additional deposit from applicants or residents with disabilities as a condition of granting a reasonable accommodation?

No. Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation.

Example 1: A man who is substantially limited in his ability to walk uses a motorized scooter for mobility purposes. He applies to live in an assisted living facility that has a policy prohibiting the use of motorized vehicles in buildings and elsewhere on the premises. It would be a reasonable accommodation for the facility to make an exception to this policy to permit the man to use his motorized scooter on the premises for mobility purposes. Since allowing the man to use his scooter in the buildings and elsewhere on the premises is a reasonable accommodation, the facility may not condition his use of the scooter on payment of a fee or deposit or on a requirement that he obtain liability insurance relating to the use of the scooter. However, since the Fair Housing Act does not protect any person with a disability who poses a direct threat to the person or property of others, the man must operate his motorized scooter in a responsible manner that does not pose a significant risk to the safety of other persons and does not cause damage to other persons' property. If the individual's use of the scooter causes damage to his unit or the common areas, the housing provider may charge him for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

Example 2: Because of his disability, an applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable accommodation. The housing provider may not require the applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep the assistance animal. However, if a tenant's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, the housing provider may charge the tenant for

the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

12. When and how should an individual request an accommodation?

Under the Act, a resident or an applicant for housing makes a reasonable accommodation request whenever she makes clear to the housing provider that she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of her disability. She should explain what type of accommodation she is requesting and, if the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and her disability.

An applicant or resident is not entitled to receive a reasonable accommodation unless she requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time. A person with a disability need not personally make the reasonable accommodation request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable accommodation request does not need to mention the Act or use the words "reasonable accommodation." However, the requester must make the request in a manner that a reasonable person would understand to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability.

Although a reasonable accommodation request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

Example: A tenant in a large apartment building makes an oral request that she be assigned a mailbox in a location that she can easily access because of a physical disability that limits her ability to reach and bend. The provider would prefer that the tenant make the accommodation request on a pre-printed form, but the tenant fails to complete the form. The provider must consider the reasonable accommodation request even though the tenant would not use the provider's designated form.

13. Must a housing provider adopt formal procedures for processing requests for a reasonable accommodation?

No. The Act does not require that a housing provider adopt any formal procedures for reasonable accommodation requests. However, having formal procedures may aid individuals with disabilities in making requests for reasonable accommodations and may aid housing providers in assessing those requests so that there are no misunderstandings as to the nature of the request, and, in the event of later disputes, provide records to show that the requests received proper consideration.

A provider may not refuse a request, however, because the individual making the request did not follow any formal procedures that the provider has adopted. If a provider adopts formal procedures for processing reasonable accommodation requests, the provider should ensure that the procedures, including any forms used, do not seek information that is not necessary to evaluate if a reasonable accommodation may be needed to afford a person with a disability equal opportunity to use and enjoy a dwelling. See Questions 16 - 18, which discuss the disability-related information that a provider may and may not request for the purposes of evaluating a reasonable accommodation request.

14. Is a housing provider obligated to provide a reasonable accommodation to a resident or applicant if an accommodation has not been requested?

No. A housing provider is only obligated to provide a reasonable accommodation to a resident or applicant if a request for the accommodation has been made. A provider has notice that a reasonable accommodation request has been made if a person, her family member, or someone acting on her behalf requests a change, exception, or adjustment to a rule, policy, practice, or service because of a disability, even if the words "reasonable accommodation" are not used as part of the request.

15. What if a housing provider fails to act promptly on a reasonable accommodation request?

A provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.

16. What inquiries, if any, may a housing provider make of current or potential residents regarding the existence of a disability when they have not asked for an accommodation?

Under the Fair Housing Act, it is usually unlawful for a housing provider to (1) ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or (2) ask about the nature or severity of such persons' disabilities. Housing providers may, however, make the following inquiries, provided these inquiries are made of all applicants, including those with and without disabilities:

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability; and
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability.

Example 1: A housing provider offers accessible units to persons with disabilities needing the features of these units on a priority basis. The provider may ask applicants if they have a disability and if, in light of their disability, they will benefit from the features of the units. However, the provider may not ask applicants if they have other types of physical or mental impairments. If the applicant's disability and the need for the accessible features are not readily apparent, the provider may request reliable information/documentation of the disability-related need for an accessible unit.

Example 2: A housing provider operates housing that is legally limited to persons with chronic mental illness. The provider may ask applicants for information needed to determine if they have a mental disability that would qualify them for the housing. However, in this circumstance, the provider may not ask applicants if they have other types of physical or mental impairments. If it is not readily apparent that an applicant has a chronic mental disability, the provider may request reliable information/documentation of the mental disability needed to qualify for the housing.

In some instances, a provider may also request certain information about an applicant's or a resident's disability if the applicant or resident requests a reasonable accommodation. See Questions 17 and 18 below.

17. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable accommodation?

A provider is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information

about the requester's disability or the disability-related need for the accommodation.

If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.

Example 1: An applicant with an obvious mobility impairment who regularly uses a walker to move around asks her housing provider to assign her a parking space near the entrance to the building instead of a space located in another part of the parking lot. Since the physical disability (*i.e.*, difficulty walking) and the disability-related need for the requested accommodation are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested accommodation.

Example 2: A rental applicant who uses a wheelchair advises a housing provider that he wishes to keep an assistance dog in his unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent but the need for an assistance animal is not obvious to the provider. The housing provider may ask the applicant to provide information about the disability-related need for the dog.

Example 3: An applicant with an obvious vision impairment requests that the leasing agent provide assistance to her in filling out the rental application form as a reasonable accommodation because of her disability. The housing provider may not require the applicant to document the existence of her vision impairment.

18. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested accommodation?

A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability (*see* Answer 16, above). However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation. Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself (*e.g.*, proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits¹⁰ or a credible statement by the individual). A doctor or other

¹⁰ Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI") benefits in most cases meet the definition of disability under the Fair Housing Act, although the converse may not be true. *See e.g., Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795, 797 (1999)

medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable accommodation request or unless disclosure is required by law (*e.g.*, a court-issued subpoena requiring disclosure).

19. If a person believes she has been unlawfully denied a reasonable accommodation, what should that person do if she wishes to challenge that denial under the Act?

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for reasonable accommodation, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed with HUD, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;
- By completing the "on-line" complaint form available on the HUD internet site: <http://www.hud.gov>; or
- By mailing a completed complaint form or letter to:

Office of Fair Housing and Equal Opportunity
Department of Housing & Urban Development
451 Seventh Street, S.W., Room 5204
Washington, DC 20410-2000

(noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section – G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section's website at <http://www.usdoj.gov/crt/housing/hcehome.html>.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

Important US Supreme Court Cases

Discussion: With both HUD and RD recognizing that Federal laws supercede regulations and with the fact that one ruling by the US Supreme Court can set a major precedent in regard to a housing policy, listed below are some landmark US Supreme Court cases that have had a major impact on our industry in recent years.

Reference: US-SupremeCourt.com (Note: Cases may be researched by name, year or category) or Supremecourtus.gov
If interested in Department of Justice lawsuits in regard to violations of FH New Design Requirements go to DOJ.com

1. Richmond Redevelopment & Housing Authority vs. Hicks – On June 16, 2003 the US Supreme Court reversed a lower court ruling and allowed this housing authority to impose strict trespassing ordinances due to drugs and other criminal activity. Hicks had argued this violated his free speech and freedom of assembly. The Supreme Court rules that unless a person is a resident, a visitor or a person doing business on the property that they can be cited for trespassing.

2. Megan's Law - On March 6, 2003 the US Supreme Court unanimously ruled from a Connecticut case that the names, pictures and other information about convicted child molesters may be published without giving the offender a hearing to determine whether he/she is still dangerous.

3. Social Security vs. Walton – On March 27, 2002 in a major case regarding disability Walton sued the Social Security Administration because he was denied SSD benefits since the medical verification stated his gainful activity would be affected for 11 months. The court ruled that the strict definition adopted by SSA in the 1990's that substantial gainful activity must be disrupted for at least 12 months, stands!

4. Watchtower Bible & Tract Society of New York vs. Village of Stratton Ohio - On June 17, 2002 US Supreme Court ruled on a major case regarding freedom of speech and religion vs. a no soliciting policy. The village of Stratton Ohio passed an ordinance that stated anyone who wished to go door to door for any purpose must have permission of Town Hall. The Jehovah's Witnesses sued claiming their rights were violated under the US Constitution. The US Supreme Court in reviewing the ordinance stated it was so broad that children on Halloween would need permission of Town Hall to trick or treat, that someone who wished to borrow a cup of sugar would need Town Hall consent. In striking down the ordinance the Supreme Court has okayed door to door visits by any religious group even on private property in the United States. Each American citizen has the right to not answer the door, slam the door or engage in a conversation.

Several cases have also set amazing precedents in regard to persons with disabilities!

5. Bragdon vs. Abbott - In a case decided June 25, 1998 the US Supreme Court affirmed that the definition of disability under the ADA (virtually the same as the Fair Housing law) stands whereby if an individual has a condition that does not substantially impact on a major life activity, he/she is not disabled. In this case Bragdon argued that due to HIV she could not be given special treatment from a dentist for a root canal and that she was further disabled due to a choice not to have children and pass along HIV. The Supreme Court ruled that a medical professional has the right in any case to protect themselves from a direct threat. Further the case was dismissed because the Supreme Court stated that since the HIV had not affected any major life activities and that having children was a choice not a reproductive disorder that Bragdon was not disabled and not entitled to protection under federal law.

6. Sutton/Hinton vs. United Airlines - In a case decided on June 22, 1999 the Supreme Court ruled that Sutton and Hinton, two sisters with a severe myopic condition with coke bottle glasses who applied for and denied pilots jobs at United Airlines were not disabled since by putting on the glasses they could see which alleviated the condition, thus they were not disabled and not entitled to protection under federal law.

7. Murphy vs. United Parcel Service - In a case similar to the previous also decided on June 22, 1999 Murphy had sued UPS after being denied a job as a truck driver due to high blood pressure. He claimed discrimination based on disability. In an identical ruling to the Sutton case, the Supreme Court stated that should Murphy take the appropriate medication, the condition was under control, he was not disabled and entitled to no protection.

8. Williams vs. Toyota of Kentucky - In a case settled on January 8, 2002 whereby Williams sued Toyota for developing carpal tunnel syndrome while working on the assembly line; demanding a huge settlement and protection under the ADA, the US Supreme Court ruled that carpal tunnel syndrome is not a disability since it does not affect every aspect of your life. The case was dismissed.

9. Barnett vs. US Airways - This is a very important case decided on April 29, 2002 regarding seniority in a company vs. a disability. Barnett was injured on the job doing baggage and was told by a physician he could no longer do heavy labor. The Airline allowed him to apply for a lateral transfer but the position he requested also had an application from a worker with 20 years seniority. The Supreme Court ruled that if a company has a clear policy in regard to promotions and seniority that this supercedes an applicants claim that they should be give a job solely due to a disability.

10. Chevron vs. Echazabal - In a case decided on June 10, 2002 Echazabal was laid off from a Chevron refinery due to a liver condition. The company argued that the fumes of chemicals could have a negative effect on the worker causing danger to

himself and other workers. He sued under the ADA claiming he should be able to decide. The Supreme Court ruled that an employer may decide when there is a direct threat to the health and safety to the worker or other individuals.

11. HUD vs. Rucker – In a landmark decision regarding the discovery of drugs both being used and sold by a younger member of the household, with the older relatives claiming no knowledge or support, in an Oakland Housing Authority case decided on March 26, 2002 the Supreme Court ruled that the entire household may be evicted when drugs are involved and the long term phrase in almost every lease; “the tenant is responsible for the conduct of all members of the households...” stands!



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

SPECIAL ATTENTION OF:

HUD Regional and Field Office Directors
of Public and Indian Housing (PIH); Housing;
Community Planning and Development (CPD), Fair
Housing and Equal Opportunity; and Regional Counsel;
CPD, PIH and Housing Program Providers

FHEO Notice: **FHEO-2013-01**
Issued: April 25, 2013
Expires: Effective until
Amended, Superseded, or
Rescinded

Subject: Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs

- 1. Purpose:** This notice explains certain obligations of housing providers under the Fair Housing Act (FHAct), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Americans with Disabilities Act (ADA) with respect to animals that provide assistance to individuals with disabilities. The Department of Justice's (DOJ) amendments to its regulations¹ for Titles II and III of the ADA limit the definition of "service animal" under the ADA to include only dogs, and further define "service animal" to exclude emotional support animals. This definition, however, does not limit housing providers' obligations to make reasonable accommodations for assistance animals under the FHAct or Section 504. Persons with disabilities may request a reasonable accommodation for any assistance animal, including an emotional support animal, under both the FHAct and Section 504. In situations where the ADA and the FHAct/Section 504 apply simultaneously (*e.g.*, a public housing agency, sales or leasing offices, or housing associated with a university or other place of education), housing providers must meet their obligations under both the reasonable accommodation standard of the FHAct/Section 504 and the service animal provisions of the ADA.
- 2. Applicability:** This notice applies to all housing providers covered by the FHAct, Section 504, and/or the ADA².

¹ Nondiscrimination on the Basis of Disability in State and Local Government Services, Final Rule, 75 Fed. Reg. 56164 (Sept. 15, 2010) (codified at 28 C.F.R. part 35); Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, Final Rule, 75 Fed. Reg. 56236 (Sept. 15, 2010) (codified at 28 C.F.R. part 36).

² Title II of the ADA applies to public entities, including public entities that provide housing, *e.g.*, public housing agencies and state and local government provided housing, including housing at state universities and other places of education. In the housing context, Title III of the ADA applies to public accommodations, such as rental offices, shelters, some types of multifamily housing, assisted living facilities and housing at places of public education. Section 504 covers housing providers that receive federal financial assistance from the U.S. Department of Housing and Urban Development (HUD). The Fair Housing Act covers virtually all types of housing, including privately-owned housing and federally assisted housing, with a few limited exceptions.

3. **Organization:** Section I of this notice explains housing providers' obligations under the FHAct and Section 504 to provide reasonable accommodations to persons with disabilities³ with assistance animals. Section II explains DOJ's revised definition of "service animal" under the ADA. Section III explains housing providers' obligations when multiple nondiscrimination laws apply.

Section I: Reasonable Accommodations for Assistance Animals under the FHAct and Section 504

The FHAct and the U.S. Department of Housing and Urban Development's (HUD) implementing regulations prohibit discrimination because of disability and apply regardless of the presence of Federal financial assistance. Section 504 and HUD's Section 504 regulations apply a similar prohibition on disability discrimination to all recipients of financial assistance from HUD. The reasonable accommodation provisions of both laws must be considered in situations where persons with disabilities use (or seek to use) assistance animals⁴ in housing where the provider forbids residents from having pets or otherwise imposes restrictions or conditions relating to pets and other animals.

An assistance animal is not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability-related functions, including but not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. For purposes of reasonable accommodation requests, neither the FHAct nor Section 504 requires an assistance animal to be individually trained or certified.⁵ While dogs are the most common type of assistance animal, other animals can also be assistance animals.

Housing providers are to evaluate a request for a reasonable accommodation to possess an assistance animal in a dwelling using the general principles applicable to all reasonable accommodation requests. After receiving such a request, the housing provider must consider the following:

³ Reasonable accommodations under the FHAct and Section 504 apply to tenants and applicants with disabilities, family members with disabilities, and other persons with disabilities associated with tenants and applicants. 24 CFR §§ 100.202; 100.204; 24 C.F.R. §§ 8.11, 8.20, 8.21, 8.24, 8.33, and case law interpreting Section 504.

⁴ Assistance animals are sometimes referred to as "service animals," "assistive animals," "support animals," or "therapy animals." To avoid confusion with the revised ADA "service animal" definition discussed in Section II of this notice, or any other standard, we use the term "assistance animal" to ensure that housing providers have a clear understanding of their obligations under the FHAct and Section 504.

⁵ For a more detailed discussion on assistance animals and the issue of training, see the preamble to HUD's final rule, Pet Ownership for the Elderly and Persons With Disabilities, 73 Fed. Reg. 63834,63835 (October 27, 2008).

- (1) Does the person seeking to use and live with the animal have a disability – *i.e.*, a physical or mental impairment that substantially limits one or more major life activities?
- (2) Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person's existing disability?

If the answer to question (1) or (2) is “no,” then the FHAct and Section 504 do not require a modification to a provider’s “no pets” policy, and the reasonable accommodation request may be denied.

Where the answers to questions (1) and (2) are “yes,” the FHAct and Section 504 require the housing provider to modify or provide an exception to a “no pets” rule or policy to permit a person with a disability to live with and use an assistance animal(s) in all areas of the premises where persons are normally allowed to go, unless doing so would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider’s services. The request may also be denied if: (1) the specific assistance animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation, or (2) the specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation. Breed, size, and weight limitations may not be applied to an assistance animal. A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal’s actual conduct – not on mere speculation or fear about the types of harm or damage an animal may cause and not on evidence about harm or damage that other animals have caused. Conditions and restrictions that housing providers apply to pets may not be applied to assistance animals. For example, while housing providers may require applicants or residents to pay a pet deposit, they may not require applicants and residents to pay a deposit for an assistance animal.⁶

A housing provider may not deny a reasonable accommodation request because he or she is uncertain whether or not the person seeking the accommodation has a disability or a disability-related need for an assistance animal. Housing providers may ask individuals who have disabilities that are not readily apparent or known to the provider to submit reliable documentation of a disability and their disability-related need for an assistance animal. If the disability is readily apparent or known but the disability-related need for the assistance animal is not, the housing provider may ask the individual to provide documentation of the disability-related need for an assistance animal. For example, the housing provider may ask persons who are seeking a reasonable accommodation for an assistance animal that provides emotional

⁶ A housing provider may require a tenant to cover the costs of repairs for damage the animal causes to the tenant’s dwelling unit or the common areas, reasonable wear and tear excepted, if it is the provider’s practice to assess tenants for any damage they cause to the premises. For more information on reasonable accommodations, see the Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act*, <http://www.hud.gov/offices/fheo/library/hud DOJstatement.pdf>.

support to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides emotional support that alleviates one or more of the identified symptoms or effects of an existing disability. Such documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support.

However, a housing provider may not ask a tenant or applicant to provide documentation showing the disability or disability-related need for an assistance animal if the disability or disability-related need is readily apparent or already known to the provider. For example, persons who are blind or have low vision may not be asked to provide documentation of their disability or their disability-related need for a guide dog. A housing provider also may not ask an applicant or tenant to provide access to medical records or medical providers or provide detailed or extensive information or documentation of a person's physical or mental impairments. Like all reasonable accommodation requests, the determination of whether a person has a disability-related need for an assistance animal involves an individualized assessment. A request for a reasonable accommodation may not be unreasonably denied, or conditioned on payment of a fee or deposit or other terms and conditions applied to applicants or residents with pets, and a response may not be unreasonably delayed. Persons with disabilities who believe a request for a reasonable accommodation has been improperly denied may file a complaint with HUD.⁷

Section II: The ADA Definition of "Service Animal"

In addition to their reasonable accommodation obligations under the FHAct and Section 504, housing providers may also have separate obligations under the ADA. DOJ's revised ADA regulations define "service animal" narrowly as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The revised regulations specify that "the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition."⁸ Thus, trained dogs are the only species of animal that may qualify as service animals under the ADA (there is a separate provision regarding trained miniature horses⁹), and emotional support animals are expressly precluded from qualifying as service animals under the ADA.

The ADA definition of "service animal" applies to state and local government programs, services activities, and facilities and to public accommodations, such as leasing offices, social service center establishments, universities, and other places of education. Because the ADA requirements relating to service animals are different from the requirements relating to assistance animals under the FHAct and Section 504, an individual's use of a service animal in an ADA-covered facility must not be handled as a request for a reasonable accommodation under the FHAct or Section 504. Rather, in ADA-covered facilities, an animal need only meet the definition of "service animal" to be allowed into a covered facility.

⁷ Ibid.

⁸ 28 C.F.R. § 35.104; 28 C.F.R. § 36.104.

⁹ 28 C.F.R. § 35.136(i); 28 C.F.R. § 36.302(c)(9).

To determine if an animal is a service animal, a covered entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A covered entity may ask: (1) Is this a service animal that is required because of a disability? and (2) What work or tasks has the animal been trained to perform? A covered entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. These are the only two inquiries that an ADA-covered facility may make even when an individual's disability and the work or tasks performed by the service animal are not readily apparent (*e.g.*, individual with a seizure disability using a seizure alert service animal, individual with a psychiatric disability using psychiatric service animal, individual with an autism-related disability using an autism service animal).

A covered entity may not make the two permissible inquiries set out above when it is readily apparent that the animal is trained to do work or perform tasks for an individual with a disability (*e.g.*, the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability). The animal may not be denied access to the ADA-covered facility unless: (1) the animal is out of control and its handler does not take effective action to control it; (2) the animal is not housebroken (*i.e.*, trained so that, absent illness or accident, the animal controls its waste elimination); or (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures.¹⁰ A determination that a service animal poses a direct threat must be based on an individualized assessment of the specific service animal's actual conduct – not on fears, stereotypes, or generalizations. The service animal must be permitted to accompany the individual with a disability to all areas of the facility where members of the public are normally allowed to go.¹¹

Section III. Applying Multiple Laws

Certain entities will be subject to both the service animal requirements of the ADA and the reasonable accommodation provisions of the FHAct and/or Section 504. These entities include, but are not limited to, public housing agencies and some places of public accommodation, such as rental offices, shelters, residential homes, some types of multifamily housing, assisted living facilities, and housing at places of education. Covered entities must ensure compliance with all relevant civil rights laws. As noted above, compliance with the FHAct and Section 504 does not ensure compliance with the ADA. Similarly, compliance with the ADA's regulations does not ensure compliance with the FHAct or Section 504. The preambles to DOJ's 2010 Title II and Title III ADA regulations state that public entities or public accommodations that operate housing facilities "may not use the ADA definition [of "service animal"] as a justification for reducing their FHAct obligations."¹²

¹⁰ 28 C.F.R. § 35.136; 28 C.F.R. § 36.302(c).

¹¹ For more information on ADA requirements relating to service animals, visit DOJ's website at www.ada.gov.

¹² 75 Fed. Reg. at 56166, 56240 (Sept. 15, 2010).

The revised ADA regulations also do not change the reasonable accommodation analysis under the FHAct or Section 504. The preambles to the 2010 ADA regulations specifically note that under the FHAct, "an individual with a disability may have the right to have an animal other than a dog in his or her home if the animal qualifies as a 'reasonable accommodation' that is necessary to afford the individual equal opportunity to use and enjoy a dwelling, assuming that the use of the animal does not pose a direct threat."¹³ In addition, the preambles state that emotional support animals that do not qualify as service animals under the ADA may "nevertheless qualify as permitted reasonable accommodations for persons with disabilities under the FHAct."¹⁴ While the preambles expressly mention only the FHAct, the same analysis applies to Section 504.

In cases where all three statutes apply, to avoid possible ADA violations the housing provider should apply the ADA service animal test first. This is because the covered entity may ask only whether the animal is a service animal that is required because of a disability, and if so, what work or tasks the animal has been trained to perform. If the animal meets the test for "service animal," the animal must be permitted to accompany the individual with a disability to all areas of the facility where persons are normally allowed to go, unless (1) the animal is out of control and its handler does not take effective action to control it; (2) the animal is not housebroken (i.e., trained so that, absent illness or accident, the animal controls its waste elimination); or (3) the animal poses a direct threat to the health or safety of others that cannot be eliminated or reduced to an acceptable level by a reasonable modification to other policies, practices and procedures.¹⁵

If the animal does not meet the ADA service animal test, then the housing provider must evaluate the request in accordance with the guidance provided in Section I of this notice.

It is the housing provider's responsibility to know the applicable laws and comply with each of them.

Section IV. Conclusion

The definition of "service animal" contained in ADA regulations does not limit housing providers' obligations to grant reasonable accommodation requests for assistance animals in housing under either the FHAct or Section 504. Under these laws, rules, policies, or practices must be modified to permit the use of an assistance animal as a reasonable accommodation in housing when its use may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling and/or the common areas of a dwelling, or may be necessary to allow a qualified individual with a disability to participate in, or benefit from, any housing program or activity receiving financial assistance from HUD.

¹³ 75 Fed. Reg. at 56194, 56268.

¹⁴ 75 Fed. Reg. at 56166, 56240.

¹⁵ 28 C.F.R. § 35.136; 28 C.F.R. § 36.302(c).

Questions regarding this notice may be directed to the HUD Office of Fair Housing and Equal Opportunity, Office of the Deputy Assistant Secretary for Enforcement and Programs, telephone 202-619-8046.

A handwritten signature in black ink, appearing to read "John Trasviña". The signature is written in a cursive style with a large initial "J".

John Trasviña, Assistant Secretary for
Fair Housing and Equal Opportunity

STUDENTS

HANDBOOK REFERENCE – Pages 6-4

- NOTES:**
- (1) RD 515 housing is for independent students so that the apartment is not a substitute for a dormitory.**
 - (2) The rule about “dependent” students only applies in a 515 with project-based Section 8.**
 - (3) To determine a student’s independence from parents or guardians, the owner/manager should require a copy of Page 1 of the parents’ IRS tax return.**
 - (4) Students who meet the RD requirements are eligible to receive rental assistance.**

RENTING TO INELIGIBLES

HANDBOOK REFERENCE: Page 6-5

3560 page 85

NOTE: Permission or a waiver must be obtained from RD prior to renting to ineligible applicants. In family housing waivers may be requested for income ineligible households. The change in regulations does not provide for waivers due to occupancy circumstances since the Owner now sets the Occupancy Standards and further must meet local ordinances, if any. The largest change in regulation is in regard to elderly housing. Waivers may be requested for income ineligible households who meet the definition of "elderly" where the applicant is 62 or older or disabled. Waivers may not be given for persons not meeting this definition; in other words, no waivers may be granted for "near elderly" persons such as an income eligible household who is 55 and not disabled. The Agency can authorize a designation change from Elderly to Multi-Family in cases where the waiver will not work. Check with your state office in this regard. RD can also implement an SMR for prolonged vacancies where the note rate rent can be lowered proximate to the basic rent.

CONTINUING ELIGIBILITY
3560 page 98

A. GRANDFATHERED SITUATIONS - *THIS RULED HAS BEEN DELETED FROM THE 3560 REGULATION*

B. 60-DAY RULE – THIS RULE HAS BEEN DELETED FROM THE 3560

NOTE: Be aware that this provision deal with 60 consecutive days, but does NOT include time away due to health or other emergency circumstances.

C. FORMERLY ELIGIBLE TENANTS
HANDBOOK REFERENCE: Page 6-41

- NOTES:**
- (1) For all formerly eligible tenants, the regulation deals with vacating the unit within 30 days or at the end of the lease term, which is longer.
 - (2) For income ineligible households, if that household remains longer than 30 days, the rent for the duration of the lease would go to Note Rate rent.
 - (3) If there are no eligible households on the Waiting List for the perspective unit, that household may remain until an eligible household applies.

D. REMAINING MEMBERS
HANDBOOK REFERENCE: Page 6-41

NOTE: In both elderly and family housing, remaining members can stay in the rental unit so long as the household meets income and occupancy requirements. If the remaining household member(s) is still income and occupancy eligible, then that member(s) may stay in the same unit. In cases where the remaining member(s) is either income or occupancy ineligible, then the regulations regarding “Formerly Eligible Tenants” would apply.

E. SURVIVING MEMBERS OF ELDERLY HOUSEHOLDS
HANDBOOK REFERENCE: Page 6-11, 6-42

NOTE: This rule pertains to Elderly Housing. When you see the word “Elderly” it refers to households where the tenant or co-tenant is 62 or older, or disabled.

APPLICATIONS

HANDBOOK REFERENCE: Page 6-26, 6-27

3560 page 87

- NOTES:**
- (1) Managers should develop a clear policy in regard to applications inclusive of when an application will be considered complete. It is strongly suggested that these policies be in writing.**
 - (2) Application fees may be charged at RD properties but only for the exact cost of processing the application.**
 - (3) While written verifications are good for 90 days with another 90 days acceptable if orally one, unless there is an immediate opening at your complex, there is no point in bringing every applicant in for an interview and verifying information. Have a detailed application including allowances so you can guesstimate the household income.**

WAITING LISTS

HANDBOOK REFERENCE: Page 6-27, 6-31

3560 page 89

- NOTES:**
- (1) Waiting lists should be kept according to dates and time of complete application submittal.**
 - (2) All applications, whether complete or not must now be placed on the waiting list.***
 - (3) Remember that a Rural Development waiting list is based on adjusted annual income!**
 - (4) Management should have a clear policy in regard to unit transfers and keep an in-house transfer list in this regard.**

***RD requires that management contact the applicant with an incomplete application within 10 days. It is management policy as to how long the applicant has to make the application complete or face application rejection. No one should be processed for an apartment until the application is complete.**

TENANT SELECTION

HANDBOOK REFERENCES: Priorities - Page 6-31, 6-32

Selection from Waiting List - Page 6-28

Tax Credit Compliance - Page 6-32

Assigning Rental Assistance - Page 8-16

3560 pages 87, 112-116

- NOTES:
- (1) When selecting applicants from the Waiting List, managers need to be aware of priorities and requirements. The two national priorities for RD are very low income and those persons recognized as being displaced either by a natural disaster or due to a project leaving the portfolio. These displaced individuals would receive a Letter of Priority Entitlement (LOPE) which entitles them to go to the top of the waiting list by unit size and income level.
 - (2) It is important to remember that very low income supersedes other income levels when selecting from the waiting list.
 - (3) In assigning Rental Assistance (RA), the handbook clearly outlines the criteria for eligible household selection both in-house and from the Waiting List as well as when to assign RA and procedures that apply when RA is assigned to the wrong household.
 - (4) For Rural Development projects that also have Tax Credits, there is an important regulation whereby you may skip over RD eligible but Tax Credit ineligible on the waiting list.

REJECTION OF APPLICANTS

HANDBOOK REFERENCES: Required Notification – Page 6-29

Grievance & Appeal Procedures 6-45

3560 pages 90, 100

- NOTES:
- (1) It is strongly suggested that managers develop a clear Tenant Selection and Rejection Policy in writing. This policy should contain language where an applicant may be rejected solely based on negative references. There are websites on the internet that can check convicted felons nationwide with a social security number; on your home page under search type “federal database on convicted felons.”
 - (2) It is imperative that managers be familiar with HB-2 3560 Section 8: Tenant Grievance procedures. Please note that notice of Appeal Rights should be sent certified mail or hand-delivered and that the rejected applicant has 10 calendar, NOT business days to respond to the rejection letter.

LEASING & SECURITY DEPOSITS

HANDBOOK REFERENCES: Lease Requirements - Attachment 6-E, Page 6-71

Security Deposits - Pages 7-13

Section 8 Leases - Pages 6-75

Late Fees – Page 7-15

3560 pages 91, 107, 110

NOTES

- (1) Managers need to be aware of all required Lease clauses according to regulations along with all rules and regulations contained in the lease. Be aware that the owner/manager now sets the visitation policy.
- (2) There is a major requirement for offering payment plans to households eligible for RA or Section 9 where a hardship exists for paying the entire upfront in full.
- (3) The Handbook clarifies use of HUD Model Leases for Section 8 tenants.
- (4) In regard to late fees, managers need to be aware of Handbook requirements and, most importantly, State Law.
- (5) In developing rules and regulations for RD 515 projects, be aware of the Reasonable Accommodation rule from Fair Housing and Section 504 laws.

TERMINATION OF TENNANCY

HANDBOOK REFERENCES: Pages 6-44

3560 page 99

NOTES:

- (1) In RD housing, management must have good cause to terminate tenancy. There first must be an intent to terminate. It is up to the owner/manager as to how and when tenants may give notice to vacate.
- (2) managers need to review State Law (Tenant/Landlord Statues) before proceeding with evictions along with being familiar with RD requirements involving Intention to Terminate.
- (3) Be aware that Appeal Rights do not apply once the eviction notice has been issued. The tenant has the legal right to counter the eviction in court.

**PETS IN ELDERLY PROPERTIES
REASONBALE ACCOMODATION FOR THE DISABLED**

HANDBOOK REFERENCES: Pet Rules - Pages 6-22, 23
3560 page 97

- NOTES:**
- (1) Federal Law requires that in elderly projects financed by RD, HUD programs and Public Housing, pets must be allowed to the residents. This is a project rule, not a household rule. Example: A 32 year old disabled resident in an elderly project is allowed to have a pet. An 89 year old resident in a non-elderly project is not allowed to have a pet unless that project allows pet ownership.**
 - (2) The Handbook offers guidance on developing pet rules. These should clearly define the types of pets allowable at various properties. Managers should follow pet deposit requirements which are listed under the Security Deposit portion of the Handbook. Realize that pet rules must be part of the Lease Agreement.**
 - (3) Borrowers/managers may develop their own rules for housing pets in non-elderly projects; Federal Law does not require allowing pet ownership in non-elderly projects.**
 - (4) However, be aware of Reasonable Accommodation under Fair Housing & Section 504.**
 - (5) Borrowers/managers may NEVER refuse admission to households with seeing eye, hearing ear or other assistance animals. These are NOT considered pets and no pet deposit may be charged.**
 - (6) Verification that the animal will benefit the person with the disability is acceptable. If the professional uses one of the following four descriptive terms for the animal, support, service, therapy, or assistance, it is an assistance animal. However, if a person with an obvious disability such as blindness requests a seeing eye dog, no third party verification is required.**