

# **PART 3**

**HB-2 Excerpts**

## ATTACHMENT 3-C

### FREQUENTLY ASKED QUESTIONS (FAQ)

#### NONDISCRIMINATION POLICIES AND PRACTICES BORROWERS MUST ADDRESS

- How will applicants and tenants be made aware that the owner will provide reasonable accommodations?
- How will requests for reasonable accommodations be handled and who is authorized to approve or deny any such requests?
- Does the project have a Telecommunication Device for the Deaf (TDD) or an *equally effective communication system*? (Note: If the complex has Section 8 assistance from HUD, the complex is required to have a TDD)
- If the project has a TDD, is the public made aware that there is a TDD? For example, is the TDD telephone number given each time the project's telephone number is given?
- If the project relies on a relay service as an *equally effective communication system* (rather than having a TDD), who operates the relay service? Is the relay service available 24 hours a day and without any added cost to the disabled person?
- Have procedures been established to accommodate hearing- and sight-impaired applicants and tenants? Examples of methods the borrower might use include readers, sign language interpreters, Braille, etc.
- Does management give priority for fully accessible units to persons who are in need of the special design features of an accessible unit? Is priority given first to those living in the complex and then to persons on the waiting list?
- Before accessible units are temporarily rented to people who do not need the special design features, have there been diligent marketing efforts to market the units as accessible units? Have those efforts been documented? Are lease clauses used? Do marketing efforts continue after renting the unit to someone who does not need the special design features?
- Is management's policy for verifying a person's disability limited to only that which is needed to establish eligibility and is verification required only after a tenant or applicant has asked that their disability be considered by management?
- Does management provide their employees with civil rights training?
- When marketing an elderly project, has there been an effort to reach all eligible people? Persons with disabilities (of any age) are every bit as eligible as persons who are 62 or older. Marketing efforts should be designed to reach both population groups.

- Does the borrower/management agent notify the public that they do not discriminate on the basis of disability? Do materials published by the borrower contain such a notice? Use of the Equal Housing Opportunity logo is one means of doing so (the logo is the house with the equal sign and the words Equal Housing Opportunity underneath the house).
- Does management have a policy that permits persons with disabilities to have service and/or companion animals?
- Does management give persons with disabilities the same choices other applicants are given? For example, the choice to pick either first or second floor apartments.

SPECTRUM strongly suggests that the folioing memo be sent to all existing RD residents and given to applicants:

“Please be aware that under Federal Law, persons with disabilities have the right to request reasonable accommodations to rules and modifications to apartments at no cost to themselves.”

## CHAPTER 6: PROJECT OCCUPANCY

### 6.1 INTRODUCTION

The purpose of this chapter is to present the occupancy rules for multi-family housing projects and the Agency's procedures for determining borrower compliance. Agency procedures for ensuring borrower compliance are summarized at the end of the chapter.

### SECTION 1: TENANT ELIGIBILITY REQUIREMENTS [7 CFR 3560.152]

#### 6.2 GENERAL ELIGIBILITY—INCOME ELIGIBILITY

To be admitted to multi-family housing, applicants must meet basic requirements.

- Have income that does not exceed the limits defined by the Agency;
- Meet the program definition of an eligible household.

A borrower may determine an applicant ineligible for occupancy based on screening criteria other than those required by the Agency only if such criteria are included in the project's management plan. The screening criteria may not contain arbitrary or discriminatory rejection criteria, but may consider an applicant's past rental and credit history and relations with other tenants.

#### 6.3 INCOME REQUIREMENTS

Three different income limits are used to establish eligibility for Multi-Family Housing programs. The National Office determines the income limits and updates the limits whenever they are revised. Adjusted income should be compared with the below-listed income limits to determine the category in which each household falls:

- The very low-income limit is established at approximately 50 percent of the median income for the area, adjusted for household size;
- The low-income limit is established at approximately 80 percent of the median income for the area, adjusted for household size; and
- The moderate-income limit is established by adding \$5,500 to the low-income limit for each household size.

The borrower has the right to determine a minimum income level for households of various sizes for applicants who will not be receiving rental assistance. These guidelines must be administered consistently for all potential applicants.

#### 6.4 RESERVED

#### 6.5 DETERMINING AN ELIGIBLE HOUSEHOLD

Although it may seem obvious, deciding who is a part of an applicant's household is an important, but not always simple, task. The word "household" applies to individuals and family members who intend to live in a unit.

#### **A. Defining a Household**

Deciding who can be considered a household member affects many decisions the borrower must make, including:

- The number of bedrooms the family needs;
- The members' income that must be counted and the income limits that should be used;
- The extent to which the family qualifies for certain income deductions and certain preferences; and
- The household member who can sign legal documents.

#### **B. Who Can Be Counted as a Household Member?**

A household may be made up of a variety of members and may have a specific definition. The following are examples of members and types:

- **Elderly families:** A household where the tenant, co-tenant, member, or co-member is at least 62 years old, or disabled, as defined below. An elderly family may include a person younger than 62 years of age. (To receive an elderly family deduction, the person who is elderly, disabled must be the tenant, cotenant, member, or co-member.)
- **Individual with Disabilities:** The term disability is considered equivalent to the term handicap. Eligibility requirements for fully accessible units are contained in 7 CFR 3560.154(g)(1)(i) and 3560.155(b). A person is considered to have a disability if either of the following two situations occur:

(1) As defined in section 501(b) of the Housing Act of 1949. The person is the head of household (or his or her spouse) and is determined to have an impairment which:

- (i) Is expected to be of long-continued and indefinite duration;
- (ii) Substantially impedes his or her ability to live independently; and
- (iii) Is of such a nature that such ability could be improved by more suitable housing conditions, or if such person has a developmental disability as defined in section 102(7) of the Developmental Disability and Bill of Rights Act (42 U.S.C. 6001(7)).

(2) As defined in the Fair Housing Act; the Americans with Disabilities Act; and section 504 of the Rehabilitation Act of 1973. The person has a physical or mental

impairment which substantially limits one or more of such person's major life activities; a record of such impairment; or being regarded as having such an impairment. The term does not include current, illegal use of or addiction to a controlled substance. As used in this definition, physical or mental impairment includes:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine;

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

(iii) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(iv) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities;

(v) Is regarded as having an impairment means:

(A) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by the borrower or management agent as constituting such a limitation;

(B) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(C) Has none of the impairments described in this definition but is treated by another person as having such an impairment.

- **Household.** One or more persons who maintain or will maintain residency in one rental or cooperative unit, but not including a resident assistant or chore service worker.
- **Resident assistant.** A person residing in a tenant's housing unit who is essential to the well-being and care of the persons who are elderly or have handicaps or

disabilities residing in the unit, but is not obligated for the person's financial support and would not be living in the unit except to provide the needed support services. While the resident assistant may be a family member, the resident assistant may not be a dependent of the household for tax purposes and is not subject to the eligibility requirements of a tenant or member. A resident assistant is not a chore service worker. A resident assistant may function in any type of housing affected by this section.

- **Foster children.** Eligible families may include foster children, as long as the children do not cause overcrowding. However, foster children are not considered family members for the purposes of determining income or deductions from income, or to determine household size to compare with income limits.
- **Remaining family members.** Remaining members of resident families are family members who stay in a unit after other members of the household leave. These members will be reevaluated for eligibility in accordance with Section 7 of this chapter. Agency regulations may require remaining tenants to move to a unit of appropriate size or exit the project.
- **Students.** A student or other seemingly temporary resident of the community who may be considered an eligible tenant when all of the following conditions are met:
  - ◇ The student is of legal age in accordance with the applicable state law or is otherwise legally able to enter into a binding contract under state law;
  - ◇ The person seeking occupancy has established a household separate and distinct from the person's parents or legal guardians;
  - ◇ The person seeking occupancy is no longer claimed as a dependent by the person's parents or legal guardians pursuant to Internal Revenue Service regulations, and evidence is provided to this effect; and
  - ◇ The person seeking occupancy signs a written statement indicating whether or not the person's parents, legal guardians, or others provide any financial assistance and this financial assistance is considered as part of current annual income and is verified in writing by the borrower.

## 6.6 ADDITIONAL REQUIREMENTS FOR ELDERLY UNITS, CONGREGATE HOUSING, AND GROUP HOMES

In addition to the requirements listed in Paragraph 6.2, applicants for elderly units, congregate housing, or group homes must meet the additional requirements described below.

### A. Elderly Units and Congregate Housing

To be admitted to elderly units or congregate housing:

- Applicants and tenants must qualify as an elderly or disabled.

- Nonelderly persons are eligible for occupancy as long as they are members of an elderly household and live in the same unit.
- Priority can be given to tenants who agree to participate in the services provided by the facility.

### **B. Group Homes**

To be admitted to a group home:

- Applicants/tenants must be in need of the special services provided by the group home.
- Applicants must demonstrate a need for such housing and cannot be required to be a part of an ongoing training or rehabilitation program.
- Applicants must be selected from the market area prior to considering applicants from other areas.

A group home may limit occupancy to a specific group of tenants (e.g., eligible elderly tenants, developmentally disabled or mentally impaired tenants) if it is outlined in the borrower's management plan.

### **6.7 INELIGIBLE TENANT WAIVERS**

The Agency may authorize the borrower in writing, upon receiving the borrower's written request with the necessary documentation, to rent vacant units to ineligible persons for temporary periods to protect the financial interest of the Government. Likewise, this provision may extend to a cooperative. This authority will be for the entire project for periods not to exceed one year. Within the period of the lease, the tenant may not be required to move to allow an eligible applicant to obtain occupancy, should one become available. The Agency must make the following determinations. Age restrictions may not be waived.

- There are no eligible persons on a waiting list.
- The borrower provided documentation that a diligent but unsuccessful effort to rent any vacant units to an eligible tenant household has been made. Such documentation may consist of advertisements in appropriate publications, in several public places, and in other places where persons seeking rental housing would likely make contact; holding open houses; and making appropriate contacts with public housing agencies and organizations, Chambers of Commerce, and real estate agencies.
- The borrower agrees to publish a notice in the local newspaper to inform the public of the borrower's intent to temporarily rent apartments to all persons without regard to income restrictions.



- The borrower is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure and the Agency's approval of the waiver will be for a limited duration.
- That the lease agreement will not be more than 12 months and at its expiration will convert to a month-to-month lease. The monthly lease will require that the unit be vacated upon 30 days' notice when an eligible applicant is available.
- Tenants residing in Rural Rental Housing (RRH) units who are ineligible because their adjusted annual income exceeds the maximum for the RRH projects will be charged the RHS approved note rate rental rate for the size of unit occupied in a Plan II RRH project. In projects operated under Plan I, ineligible tenants will be charged rental surcharge of 25 percent of the approved note rate rental rate. Plan I and Plan II projects are defined in 7 CFR 3560.11.

## **SECTION 2: CALCULATING INCOME AND INITIAL CERTIFICATION**

### **6.8 BORROWER AND APPLICANT/TENANT RESPONSIBILITY**

Borrowers of all Rural Rental Housing properties must verify and document in the tenant's file all income, assets, expenses, deductions, family characteristics, and any other factors that affect family eligibility or level of assistance. This requirement excludes those residents of On Farm Labor Housing who are living in housing provided on a non-rental basis. With USDA guidance the borrower should develop verification and documentation procedures for the properties they manage and ensure that on-site property staff responsible for these functions are trained to understand and properly implement these procedures. Effective and efficient borrower, agent, and property staff performance in this area is fundamental to obtaining the correct information needed for accurate rent determinations and assistance payments. The following are essential procedures to reduce the incidence of improper reporting.

- Applicants/tenants and their adult family members must sign consent forms to authorize the borrower to collect information to verify eligibility, income, assets, expenses, and deductions. Applicants and tenants who do not sign required consent forms will not receive assistance.
- Family members 6 years of age and older must provide the borrower with a complete and accurate social security number. For any members of the family who do not have a social security number, the applicant or family member must certify that the individual has never received a social security number.
- Information received via third party verification should be reviewed and interpreted, and allowable deductions applied to determine the income used to calculate rent and rental assistance.
- The borrower must develop tracking and monitoring procedures to ensure that the required re-certifications are initiated and completed on time.
- The borrower must handle any information obtained to verify eligibility or income in accordance with the Privacy Act.

### **6.9 CALCULATION OF TENANT INCOME**

Borrowers use tenant income information to: (1) help determine whether an applicant is eligible to reside in multi-family housing; (2) calculate the applicant's ability to pay rent; and (3) determine the amount of rental assistance the household is eligible to receive. This section provides guidance for calculating and verifying income for each of these purposes.

#### **A. Key Concepts for Income Determinations**

##### ***1. Income Definitions***

Two income definitions are used: annual income and adjusted income. Whenever income determinations are made, it is essential that borrowers use the correct income definition and consider income from the appropriate household members.

- **Annual income.** Annual income is used as the base for computing adjusted income. Income of all household members should be considered when computing annual income. **Attachment 6-A**, Annual Income Inclusions and Exclusions can be used to determine which sources of income to count and which to exclude. *Form RD 3560-8, Tenant Certification* illustrates the calculation of annual income. Paragraph 6.8 B in this section provides additional information on calculating annual income.
- **Adjusted income.** Adjusted income is used to determine whether an applicant is income eligible to reside in multi-family rental housing or to receive rental subsidies. For guidance on calculating adjusted income, see Paragraph 6.8 C in this section.

## 2. Projecting Income for a 12-Month Period

Current income and family circumstances may be used to estimate the household's income over the next 12 months, unless there is verifiable evidence of a likely change in circumstances. Historical information may be used to estimate income that is anticipated to be received for less than 12 months. For example, if one of the household members is a seasonal worker, the income attributable to that worker should be based upon past history, rather than annualizing current income.

### Example—Annualizing Short-Term Income

Assume a family member who currently has no income historically has seasonal income during the summer months and earns on an average of \$4,000 during that time. Confirm with the applicant that the same seasonal pattern is expected and use historical data to project income for the coming 12 months.

## 3. Income of Temporarily Absent Household Members

Members may be temporarily absent from the household for a variety of reasons, such as temporary military duty activation, temporary employment, or students who live away from home during the school year. The income of these household members is considered when computing annual income.

Households with a member permanently confined to a hospital or nursing home may choose to either

include annual income attributable to such person, less deductions for which the person would qualify, or exclude the annual income attributable to such person and not take any deductions for which the person would qualify.

### Example—Temporarily Absent Member

James Brown and his wife have applied for a unit. At the moment, James is working on a construction job on the other side of the state and comes home every other weekend. He earns \$600 per week and uses approximately one-third of that amount for temporary living expenses. The full amount of the income earned would be counted for both repayment and annual income.

**4. Zero Income.**

It is the policy of Rural Development not to accept a tenant certification for an applicant or tenant with zero income unless all income is specifically exempted. If the tenant or applicant experiences regular lay-off, as part of his or her employment, the tenant or applicant will not be certified as a zero income tenant. The tenant will be certified based on their annual income. Third party verifications must be obtained from the employer. If the tenant or applicant typically receives unemployment during periods of layoff, the unemployment income is included in the income calculation. The tenant will not be re-certified when laid off unless the layoff is inconsistent the employment or income history of the tenant.

In cases where an applicant or tenant is claiming they have no household income, nor can the tenant or applicant anticipate a source of income, it will be necessary for the applicant or tenant to demonstrate financial capability to meet other basic living expenses and the rental charge. This amount must include income for essential living expenses such as, food, clothing, diapers, transportation and any nonessentials items being paid such as telephone, cable television, internet service etc. The basis for this income must be documented in the file. Guidance for the verification of zero income is found in Attachment 6-B.

The borrower must review the circumstances of the tenant quarterly to ascertain if circumstances have changed. The borrower must remind the tenant that the lease specifically states that it is the tenant’s responsibility to immediately report changes in income to management.

**B. Calculating Annual Income**

Attachment 6-A, Annual Income Inclusions and Exclusions provides a list of possible income and indicates whether the source is counted or excluded from annual income.

**C. Calculating Adjusted Income**

Adjusted income is used to determine eligibility for Multi-Family Housing programs, as well as eligibility for and the amount of payment subsidies under rental assistance.

Adjusted income is calculated by subtracting from annual income any of five deductions that apply to the household. Not all households are eligible for all deductions. Exhibit 6-1 summarizes these deductions. Attachment 6-C, Allowable Deductions, provides detail concerning allowable deductions. The remainder of this paragraph provides guidance on determining whether a family is eligible for each deduction and verifying and calculating these amounts.

<b>Exhibit 6-1</b>	
<b>Allowable Deductions from Annual Income</b>	
<b>Elderly</b>	<b>Nonelderly</b>

Deduction	Households	Households
Dependent deduction	Yes	Yes
Child care expenses	Yes	Yes
Elderly household	Yes	No
Disability assistance	Yes	Yes
Medical expenses	Yes	No

**1. Dependent Deduction**

A deduction from annual income of \$480 is made for each household member who qualifies as a dependent. Dependents are household members who are not the head or spouse and who are age 17 or younger, an individual with a disability, or a full-time student. If an applicant requests a deduction for dependents attending school full time, the applicant must provide documentation from the school that the dependent is enrolled as a full-time student.

**2. Child Care Expenses**

Reasonable unreimbursed child care expenses for the care of children under the age of 13 are deducted from annual income if: (1) the care enables a household member to work or go to school; (2) no other adult household member is available to care for the children; and (3) in the case of child care that enables a household member to work, the expenses deducted do not exceed the income generated by that household member. If the child care provider is a household member, the cost of the children’s care cannot be deducted.

To qualify for the deduction, the applicant must:

- Identify the children who are receiving the child care and the household member who can work or go to school as a result of the care;

**Verification of Child Care Expenses**

Child care hours must parallel the hours the household member works or goes to school. An acceptable format for verifying child care expenses is a letter on the child care provider’s letterhead or a copy of a signed child care contract.

- Demonstrate that there is no adult household member available or able to care for the children;
- Identify the child care provider, the hours of child care provided, and the costs; and
- If the expenses enable a household member to go to school, identify the educational institution. The household member need not be a full-time student.

**3. Elderly Household Deduction**

A single \$400 deduction is made from annual income for any elderly household. To be considered an elderly household, the head of household, spouse, or sole member of a

household who is party to the lease must be 62 years of age or older, or an individual with a disability.

In the case of a family where the deceased tenant or spouse was at least 62 years old or an individual with disabilities, the surviving household members may continue to reside in a housing project after the departure or death of the tenant or co-tenant, provided that:

- They are eligible with respect to adjusted income;
- The surviving household members occupied the dwelling with the deceased member at the time of death;
- They execute a tenant certification form establishing their own tenancy; and
- They have the legal ability to sign a lease for the rental unit, except where a legal guardian may sign when the tenant or member is otherwise eligible.

Nonelderly or nondisabled surviving members of an elderly or disabled household are not entitled to the elderly family adjustment to income.

**4. Deductions for Disability Expenses**

Reasonable expenses for the care of an individual with disabilities in excess of three percent of annual income may be deducted from annual income if the expenses:

- Enable the individual with disabilities or another household member to work;
- Are not reimbursable from insurance or any other source; and
- Do not exceed the amount of income earned by the person who is able to work as a result of the expenses.

<b>Typical Disability Assistance Expenses</b>
<ul style="list-style-type: none"> <li>• Care attendant to assist an individual with disabilities with activities of daily living directly related to permitting the individual or another household member to work.</li> <li>• Special apparatus, such as wheelchairs, ramps, and adaptations to vehicles or workplace equipment, if directly related to permitting the individual with disabilities or another household member to work.</li> </ul>

Along with other forms of documentation, to qualify for this deduction applicants must identify the individual with a disability on the application.

**5. Deduction for Medical Expenses (for elderly households only)**

Medical expenses may be deducted from annual income for elderly households if the expenses (1) will not be reimbursed by insurance or another source; and (2) when combined with any disability assistance expenses are in excess of three percent of annual income. See Attachment 6-C for eligible deductions

If the household qualifies for the medical expenses deduction, expenses of all members are considered. For example, if a household included the head (grandmother, age 64), her son (age 37), and her granddaughter (age 6), the medical expenses of all three household members would be considered.

One of the most challenging aspects of determining allowable medical expenses is estimating a household's medical expenses for the coming year. While some anticipated expenses can be documented easily (for example, Medicare or other health insurance premiums and ongoing prescriptions), others need to be estimated. The borrower should use historical information about medical bills to estimate future expenses. However, the estimates should be realistic. For example, if the household has a significant medical bill, the borrower would count only that portion of the bill that is likely to be paid during the coming year.

**Typical Medical Expenses**

- Services of physicians other healthcare providers;
- Services of hospitals other healthcare facilities;
- Medical premiums;
- Prescription and nonprescription medicine;
- Dental expenses;
- Eyeglasses and eye examinations;
- Medical or health products or apparatus (hearing aids, wheel chairs, etc.);
- Live-in or periodic medical care (e.g., visiting nurses or care attendants);
- Bandages, syringes, continence shields, and other nonprescription items recommended by a physician; and
- Periodic payments on accumulated medical bills.

**Example – Calculating the Medical Expense Deduction**

The Jensons are an elderly household with annual income of \$25,000 and anticipated medical expenses of \$3,000 that are not covered by insurance or another source. The allowable medical expenses would be:

Total medical expenses	\$3,000
(less) 3% annual income (\$25,000 x 0.03)	-\$ 750
Allowable medical expenses	\$2,250

**6.10 EVALUATING APPLICANTS' ASSETS**

Assets can affect an applicant's ability to be qualified as an eligible tenant. Many types of assets generate income that must be included in the calculations of annual income. Attachment 6-D, Net Family Assets presents a list of assets that must be considered when making these determinations and also identifies certain types of assets that are not considered.

**A. Reporting Assets**

Applicants must provide information about household assets at the time of application and whenever an income is reverified. Applicants must provide sufficient information to enable the borrower to verify the asset information and compute the market and cash value of the asset.

**B. Calculating Market and Cash Value**

The market value of an asset is simply its dollar value on the open market. For example, the market value of \$2,000 in a savings account is \$2,000 and the market value of real estate is its appraised value. The cash value of an asset is the market value, less reasonable expenses to convert the asset to cash. For example, the cash value of stock worth \$5,000 would be \$5,000 less any broker's fee.

**Example—Calculating Cash Value of an Asset**

Mr. Smith has \$10,000 in an IRA account. The account's market value is \$10,000. To withdraw funds from the account, Mr. Smith must both pay a withdrawal penalty and taxes on the amount withdrawn.

The cash value of the IRA account is:

Market value		\$10,000
Withdrawal penalty	<i>less</i>	200
<u>Tax</u>	<i>less</i>	<u>2,000</u>
Cash Value		\$7,800

**C. Retirement Assets**

Retirement assets are savings and investments that have been specifically designated as retirement funds. Not all retirement assets are considered. If the applicant can receive the retirement funds only by borrowing them, or upon retirement or termination of employment, the funds are not counted as assets for determining income. If the applicant can withdraw retirement funds without retiring or terminating employment, the funds are counted as assets, even though penalties may apply.

**D. Calculating Income from Assets**

For the purpose of computing annual income, the assets of all household members are considered. In addition, if any household member has disposed of assets for less than fair market value during the two years preceding the effective date of certification or recertification, the asset must be considered when calculating income from assets for annual income.

**1. Two Methods for Calculating Income from Assets**

Two different methods of calculating income from assets are used, depending upon the total cash value of household assets:

If the cash value of total assets is \$5,000 or less, the amount of asset income included in annual income is the actual income to be derived from these assets.



If the cash value of total assets is more than \$5,000, the amount of asset income included in annual income is the greater of (1) the actual income to be derived from the assets; or (2) an imputed income from assets that is calculated by multiplying the total cash value of assets by the current HUD passbook rate, which can be found in the HUD 4350.3 Occupancy Handbook, Chapter 5, available at <http://www.hudclips.org>. Generally, the imputed income from assets is larger than the actual income to be derived from the assets when an applicant owns non-income-producing assets of significant value.

**Example—Income from Assets for Annual Income Calculation**

Charles and Patty Brown, both age 40, have applied for a Section 515 unit. The Brown family has the following assets.

A certificate of deposit of \$6,500 they have been saving for a down payment. It earned 6.8 percent or \$442 of interest last year.

A savings account of \$4,000 earning four percent interest annually.

The six-month average balance in the checking account is \$300 (non interest-bearing account).

The cash value of the Browns' assets is \$10,800 (\$6,500 + \$4,000 + \$300). The assets are more than \$5,000. To compute income from assets, use the greater of actual income or imputed income.

	<b>Cash Value</b>	<b>Actual Income Earned</b>	<b>Imputed Income</b>
Checking Account 6 mo average balance	\$300	\$0	<b>\$216 (\$10,800 x 0.02)</b>
Certificate of Deposit	\$6,500	\$442 (\$6,500 x 0.068)	
Savings	\$4,000	\$160 (\$4,000x 0.04)	
<b>Total</b>	<b>\$10,800</b>	<b>\$602</b>	

**2. Assets Disposed of for Less than Fair Market Value**

Applicants who dispose of assets for less than fair market value have, in essence, voluntarily reduced their ability to afford housing. Therefore, assets disposed of for less than fair market value during the two years preceding a determination of annual income must be used in the annual income calculation. Assets disposed of for less than fair market value as a result of foreclosure, bankruptcy, divorce, or separation are not included in this calculation.

The amount of income to be included in annual income is the difference between the market value of the asset and the amount that was actually received (if any) in the disposition of the asset.

**Example—Valuing a Disposed Asset**

An applicant sold a property to a relative for \$15,000 on July 1, 1996. The property was valued at \$30,000 and had no loans against it.

Market value	\$30,000
(Less) Settlement costs	\$2,000
(Less) Sales price	<u>\$15,000</u>
Cash value	\$13,000

The \$13,000 would be counted as an asset for any annual income determination conducted until July 1, 1998. Even though there would be no actual income from this asset, the \$13,000 would be used to establish total assets to determine the amount to be counted as annual income.

**6.11 VERIFICATION PROCEDURES**

Each applicant must provide the income, expense, and household information needed to enable the borrower to make income determinations. Most of this information should be provided on the application, but some additional follow-up with the applicant may be required. The borrower must verify information provided by the applicant prior to admission.

**A. Verification Requirements**

Verification of employment income, as well as any household income from sources other than employment, must be verified by the borrower prior to submission of *Form RD 3560-8* to the Agency. Each applicant must sign a request for verification of employment at the time of application. Copies of this form must accompany any request for verification from third-party sources. Written verifications provided by third-party sources or documents prepared by third-party sources are generally preferred. Oral verifications, if accepted, must be documented carefully.

Written income-related verifications are valid for 90 days and may be valid for an additional 90 days with oral reverification at the end of the 90-day period. In no case may information that is older than 180 days be used.

When it is not immediately possible to obtain the written verification from the income source, the income may be temporarily verified by actually examining the income checks, check stubs, or other reliable data the person possesses which indicates gross income. Income verification is required for tenants of Off-Farm Labor Housing—domestic

laborers including migrant farmworkers. Income verification is not required for tenants of On-Farm Labor Housing.

Farm labor employment verification is required for all domestic farm laborers, whether they are year-round, seasonal, or migrant farmworkers, or farmworkers living in On-Farm Labor Housing.

Third-party verification of income and employment, as applicable, is required whenever it is possible or available.

When third-party verification of income and employment is not possible or available, the applicant or tenant may provide the borrower with an award and benefit letter, cost of living adjustment notice, benefit statement, bank statement, or actual benefit check. Using this documentation, the borrower may “self-certify” the farmworker’s application using any available documents or records the applicant may have or information the applicant can provide. In the absence of available income and employment records, the borrower may forecast income expected to be received by the tenant during occupancy for determining eligibility and rental assistance.

**B. Verification Procedure**

The borrower must establish a verification procedure to review applicant information. The procedure must ensure accurate determinations of eligibility and respect the confidentiality of all information on applicants and residents. See Attachment 6-I, Eligibility, Income, and Deduction Checklist, for a sample eligibility, income, and deduction checklist.

**1. Information to Verify**

The borrower must verify the following information:

- **Disability:** Disabilities are verified only if necessary to qualify the household as an elderly family, or if a disability affects the household's eligibility for deductions from income. Verification may be provided by a physician, a clinic, welfare agency, the Social Security Administration, or other knowledgeable service.
- **Household composition:** Verification of household composition can be accomplished through a variety of sources and documents. For example, a birth certificate or custody agreement verifies that a minor child is part of the household. Also, divorce or separation agreements can verify that an individual is no longer a member of the household.
- **Income:** Acceptable Income Verification Sources for verifying income are described below in Exhibit 6-3.

<p><b>Exhibit 6-3</b></p> <p><b>Acceptable Income Verification Sources</b></p>
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- **Verification of Employment:** After the applicant/tenant submits a form authorizing the borrower to verify employment, the borrower must send this form to each employer for verification of employment of each household member.
- **Zero Income Persons:** For Verification Guidance, see Attachment 6-B.
- **Self-Employed Persons:** Self-employed applicants/ tenants must provide current documentation of income and expenses, which cannot be older than the previous fiscal year. The borrower must compare the income and expenses information provided by the applicant with the latest income tax return and clarify any discrepancies.
- **Unemployment and Unemployment Benefits:** Unemployed applicants/tenant must complete a form, which provides their current employment status and requires them to agree to inform the Borrower immediately, in writing, if their employment status changes. Applicants/tenants receiving unemployment benefits must provide the most recent award or benefit letter prepared and signed by the authorizing agency to verify the unemployment income.
- **Regular, Unearned Income (e.g., Social Security, pensions, workers compensation):** Applicants/tenants must provide a copy of the most recent award or benefit letter prepared and signed by the authorizing agency. Information must be updated every 12 months to account for cost-of-living increases or changes in benefits.
- **Public Assistance:** Applicants/tenants must provide a copy of the most recent award or benefits letter prepared and signed by the authorizing agency to verify the amount of public assistance received.
- **Alimony or Child Support Payments:** The applicant/tenant must provide a copy of the divorce decree, separation agreement, or other document indicating the amount of the required support payments. The applicant/tenant must also report the amount received during the past twelve months. If the applicant/tenant reports that the amount required by the agreement is not being received, the applicant/tenant must document that assistance has been requested from the state or local entity responsible for enforcing payment.
- **Support for Foster Children or Adults:** Payments received for the care of foster children or foster adults may be considered when calculating repayment income. Documentation must be provided indicating the amount of money received for the care of foster children or adults, and the anticipated period of time the support will be provided.
- **Income Tax Return:** For self employment, a complete, legible copy of the most recently filed Federal income tax form may be submitted for each applicant/tenant, unless the person was exempted from filing a return.
- **Verification of Assets and Income from Assets:** The borrower requests that financial institutions verify account balances. For some assets such as mutual funds or 401(k) accounts, copies of year-end statements can provide information about annual income. Applicants/tenants must certify whether any asset has been disposed of for less than fair market value.

## ***2. Release and Consent Form***

A form verifying employment (developed by the borrower) gives applicant or resident permission for the borrower to ask questions about and verify information related to the household income and other circumstances that affect eligibility and the amount the household must pay. Applicants must sign the form as a condition of admission and continued occupancy.

The form must be signed by the household head and all other household members whose income, assets, or other circumstances require verification. As long as the

borrower retains the form with original signatures in its file, a photocopy of the authorization may be provided to verification sources.

The borrower must ask applicants/residents to execute the form even in cases where the person has not reported any income.

### ***3. Social Security Numbers***

Prospective tenants must provide the borrower with Social Security Numbers for every tenant or co-tenant in the household. The borrower may use Social Security Numbers to verify income information that is provided. Social Security Numbers must be verified only once for each resident.

Documentation of the Social Security Number will be provided with a valid Social Security card or other evidence of the Social Security Number, such as a driver's license. If the documentation is sent by mail, the applicant may submit a photocopy.

If the applicant does not have the documentation, the applicant should submit a signed certification stating his/her Social Security Number. The applicant then has 60 days to submit acceptable documentation of the Social Security Number. This 60-day period can be extended for another 60 days for elderly applicants.

### ***4. Wage Matching Requirement***

If permitted by State law, states are required to fully implement and utilize income matching of tenants. See Chapter 9 of the HB-2-3560 for more information.

### ***5. Tenant File Documentation***

Borrowers must retain executed tenant certification forms and any supporting documentation in the tenant file for at least 3 years or until the next Agency monitoring visit or compliance review, whichever is longer. See Attachment 6-J, Required Tenant File Documentation, for a list of required documentation that must be retained in each tenant file.

## **6.12 THE SOLDIERS AND SAILORS' RELIEF CIVIL ACT**

Rural Housing Service is required to provide tenants the benefits of the Soldiers and Sailors' Civil Relief Act of 1940, as amended

The Soldiers' and Sailors' Relief Act of 1940 was established to protect those who serve the United States in the Armed Forces. The Act applies to all persons on active duty including reserve component service members called to active duty.

A tenant, co-tenant or spouse may terminate a lease covering premises occupied as a dwelling at any time following the date of the beginning of the period of the military service. The termination will be in writing and delivered to the property manager or the management firm in person or by mail; following the date of the beginning of the military service (a set of appropriate

military orders should accompany the termination letter). However, the lease termination will not be effective until 30 days after the first date on which the next rental payment is due. Example: next rent payment date is March 1; termination will be effective March 30.

Guardians who were not originally listed as tenants, but are so designated by the tenant or co-tenant, will be permitted to reside in the unit to care for minors while the tenant or co-tenant is absent due to military service. The term "guardian" means immediate family member, relative or friend.

The Act does not relieve the recently activated military person or that persons' household from meeting financial obligations. However, the Act does protect the soldier's dependent(s) left behind (occupying family dwellings) from undue eviction or distress.

A. Should eviction be necessary for violation of lease requirements, the Act provides opportunity for a stay of eviction for up to three consecutive months. Under no circumstance are borrowers entitled to take eviction matters into their own hands or to inform tenants that they must move because they no longer can afford the rent. The borrower may give the tenant notice of lease violation and termination for repeated late payment or nonpayment of rent in normal fashion, but evictions require court action. Evictions, three-month stays and relief actions are within the discretion of the court. Borrowers may not evict affected tenants without prior court approval.

B. All tenants affected by the Soldiers' and Sailors' Civil Relief act are to be recertified (upon receipt of their military orders) in accordance with RD Instruction 1930-C, in order to reflect their true rent contribution. Recertification should include all income such as severance pay, salary, reservist pay, housing allowance, etc. Hazard duty pay is not counted. Upon completion of tenant recertification, rents will be increased or decreased. Tenant recertification may be processed by the co-tenant, spouse or guardian during the period of military service.

Example: If a tenant was contributing \$275.00 (basic rent) per month towards rent, and their salary has decreased or increased due to leaving a previous position for military service, the new contribution towards rent may be significantly decreased or increased. If a tenant's salary decreased so low that their rent contribution falls below basic rent, the Rental Assistance (RA) allowance will increase. If no RA is available for the unit, the tenant, like other tenants without RA, will pay the basic rent.

C. Single soldiers should be encouraged to place their personal belongings and furnishings in storage for safekeeping. Monthly rents would be due as scheduled. However, if a single tenant elects to leave their belongings in the apartment, they should be encouraged to grant a power of attorney to a competent person, and provide the manager with pertinent information concerning this person. If a single person does leave their furniture on the premises and rent is delinquent, the borrower should make application to the court for authorization to act.

**SECTION 3: OCCUPANCY POLICIES AND  
OCCUPANCY RULES [7 CFR 3560.157]**

**6.13 OCCUPANCY POLICIES**

The purpose of the occupancy policy in a multi-family property is to establish:

- Unit density standards; and
- Procedures for assigning units.

**A. Unit Density Standards**

Occupancy policies set standards regarding the number of people that can be adequately housed in a unit of a particular size. In developing the occupancy policy for each unit, the borrower must take into account the following:

- State and local codes regarding the number of persons permitted to dwell in a unit of a particular size;
- The size of the rooms in the particular unit;
- Procedures for sizing households for different unit types (how to consider temporarily absent household members); and
- The order in which the property will house eligible applicants and rehouse existing tenants.
- A tenant who is disabled will not be considered over housed if the tenant requests an additional room for a live-in aide or an apparatus related to the tenant's disability.

For some properties, state and local codes regarding occupancy standards may not exist. In these cases, the borrower should make a judgment as to how many people may be adequately housed, basing it on the square foot size and layout of the unit. For example, some properties may have several types of two-bedroom units. If one is 600 square feet and the second type is 900 square feet, the borrower may have different occupancy policies for the different unit types. An example of what an occupancy policy might look like for the above example is detailed below:

Unit Type	Minimum Density	Maximum Density
2 Bedroom (600 sq. feet)	1 person	3 persons
2 Bedroom (900 sq. feet)	2 persons	4 persons

The following is an ideal range of persons per housing unit:

Number of Bedrooms	Occupancy Density Range	
	Minimum	Maximum
0	1	1
1	1	2
2	2	4
3	3	6
4	4	8
5	5	10

**B. Procedures for Assigning Units**

Occupancy policies also establish the order in which eligible applicants and existing tenants will be housed or rehoused.

Borrowers are required to comply with Section 5 of this chapter in selecting and assigning applicants to new units or relocating over- or under housed existing tenants. However, it is important that these requirements are detailed in the borrower’s occupancy policies, so that it is clear to new applicants and existing tenants how a vacant unit will be assigned.

**6.14 AGENCY REVIEW AND MONITORING OF OCCUPANCY POLICIES**

The Agency must concur with the borrower’s occupancy policies prior to initial occupancy of the project and in all future modifications. In reviewing the policies, the Agency must assure that the standards are in compliance with state and local laws and that they appear reasonable based on the unit size and type. The Agency should review compliance with the policies during the compliance review. If a household is residing in the property and is out of compliance with the occupancy policy, the borrower must follow procedures outlined in Paragraph 6.29 for tenants in violation of occupancy rules.

**6.15 OCCUPANCY RULES**

The purpose of the occupancy rules is to establish the basis for the tenant and management relationship.

**A. Basic Rules**

Exhibit 6-4 lists the basic items that borrowers must address in the occupancy rules for their projects.

Occupancy rules for each project will be in writing, attached to each tenant’s lease upon initial occupancy, and posted in a central location (such as a central mail location) so that tenants may easily access the information. Modifications to these rules will be provided to the tenant at least 30 days prior to implementation and in accordance with the requirements of Section 8 of this chapter.



## **B. Pets**

For each elderly designated multi-family housing project the borrower must have established project rules permitting elderly or disabled tenants to keep commonly accepted household pets.

Borrowers must not prohibit elderly households from keeping domestic animals in their unit; however the borrower may require the household to pay a pet deposit.

Pet rules must not:

- Prohibit, prevent, restrict, or discriminate against any tenant who owns or keeps a pet in their apartment unit, with respect to continued occupancy in the project unless the approved project pet rules are violated;
- Prohibit, prevent, restrict, or discriminate against any applicant who owns a pet with respect to obtaining occupancy in the project; and
- Charge an extra monthly rental charge for pets.

Borrowers with existing projects must consult with the tenants of the project when revising pet rules and retain documentation on how the consultation process was conducted.

Borrowers with new projects will establish pet rules prior to occupancy, but may revise those rules based on tenant comments and suggestions received after rent-up begins.

Pet rules will be reasonable and will be written to consider at least the following factors:

- Density of project units;
- Pet size;
- Type of pet;
- Potential financial obligations of tenants who own or keep pets;
- Standards of pet care;
- Pet exercise areas;
- State and local animal laws or ordinances; and
- Liability insurance.

Pet rules must allow the borrower or project manager authorization to remove from the project any pet whose conduct or condition is duly determined to constitute a nuisance or threat to the health or safety of other tenants or members in the project or persons in the surrounding community.

**Exhibit 6-4**

**Required Items for Multi-Family Housing Occupancy Rules**

At minimum, the occupancy rules should include:

- An explanation of the tenant's rights and responsibilities under the lease or occupancy agreement;
- The rent payment or occupancy charge policies;
- The policies regarding periodic inspection of units;
- The system for responding to tenant complaints;
- The maintenance request and work-order procedures;
- The project services and facilities available to tenants or members;
- The office locations, hours, and emergency telephone numbers;
- The restrictions on storage and prohibitions on abandoning vehicles in the project area;
- The way to obtain community and public transportation schedules;
- The policies regarding guests that become household members;
- Other requirements related to the subsidy provided to the tenant from non-Agency sources; and
- The procedures tenants must follow to request reasonable accommodations.

Regardless of the occupancy rules established for the project, the borrower must adhere to the following:

- Borrowers must not prohibit animals that provide assistance to the handicapped or disabled from residing in the unit with the person to whom the animal is providing assistance.
- Borrower may not require the household to pay a pet deposit for a service/assistance/companion animal.

**C. Tenant Organizations**

In developing and implementing the occupancy rules, borrowers must not infringe on the rights of tenants to organize an association of tenants. The project manager (or designated management representative) should be available and willing to work with a tenant organization.

Borrowers may not unreasonably withhold the use of community rooms or other available space within the project when requested by:

- A resident organization in connection with the representational functions of the organization; or
- Residents seeking to organize or to collectively consider any matter pertaining to the operation of the project.

#### **D. Community Rooms**

In developing the occupancy rules, borrowers must not place unreasonable restrictions on tenants that desire to use Federally financed community rooms for their enjoyment. While a schedule of fees may be developed for the use of the community space, fees should be reasonable and meant only to cover the costs of cleaning and maintenance of the facility being used.

### **6.16 AGENCY REVIEW AND MONITORING OF OCCUPANCY RULES**

Borrowers must obtain concurrence from the Agency prior to the implementation of the occupancy rules, and must obtain Agency concurrence before making any modifications to the rules.

If tenants believe the borrower is in violation of occupancy rules, they must be directed to follow the tenant grievance process outlined in Section 8 of this chapter.

The Loan Servicer will review adherence to the occupancy rules during the compliance review. In a situation where the Loan Servicer believes management is in violation of the occupancy rules, the Agency must state the violation as a finding and require the borrower to resolve the problem in a specified time frame.

In situations where the tenant is in violation of the occupancy rules and the tenant fails to correct the problem, the borrower should proceed to evict the tenant for material noncompliance with the lease. In the event that an eviction action is filed with the court, the tenant should set up an escrow account for the rent.

## **SECTION 4: MARKETING AND APPLICATION PROCESSING** *[7 CFR 3560.104 and 7 CFR 3560.154]*

### **6.17 REQUIREMENTS FOR AFFIRMATIVE FAIR HOUSING MARKETING PLANS**

Borrowers with four or more units are required to prepare and maintain an Affirmative Fair Housing Marketing Plan (AFHMP) using *Form HUD 935.2, Affirmative Fair Housing Marketing Plan*. The purpose of this plan is to set forth how the borrower will meet their Fair Housing responsibilities. This plan will be submitted to the Agency for approval prior to loan closing. The Agency may also require periodic modifications to the plan if implementation is not reaching the population groups targeted by the plan. At a minimum, the AFHMP will address the following:

- Outreach efforts of the property;
- Marketing strategies; and
- Education and training of all staff on Civil Rights laws (e.g., Title VI, Fair Housing, Section 504, Title IX).

The approved plan must be posted by the borrower in a prominent location for public inspection. This could include the project site, the rental office, or other location where applications are received for the property.

The borrower must develop and maintain a system for conducting self-assessments of the property staff's performance in implementing an approved AFHMP.

### **6.18 APPLICATION REQUIREMENTS AND PROCESSING**

The purpose of the tenant application process is to collect enough information regarding the household status to determine applicant eligibility for the specific property. This information should also be comprehensive enough for the borrower to make a determination about waiting list placement.

#### **A. Application Forms**

Borrowers may develop their own application form in accordance with the requirements of Exhibit 6-5. The borrower must retain application forms for at least three years or until the next compliance review is conducted by the Agency.

**Exhibit 6-5**

**Minimum Requirements for a Tenant Application**

- Name and present address;
- Household income information, including all information from sources that would be counted in calculating annual income, adjusted income, and net assets; and consent to release wage matching data to RHS and the borrower
- Number of household members, including all members who would live in the dwelling unit, even those who would only live there on a part-time basis, and their birthdates;
- Indication of a need for a handicap accessible unit and/or handicap or disability adjustments to income;
- Applicant certification that the unit will serve as the household's primary residence;
- Social Security Number for all member of the household;
- Adjustments to income for which the household may qualify, which should be verified;
- Signature and date;
- Race, ethnicity, and gender designation; and
- Disclosure notice.

Borrowers using application forms must establish a section at the end of the form, below the signature and date block, to collect race/national origin/gender information. To meet the requirements of Federal Register Vol. 62 No. 210, Revision to the Standards for the Classification of Federal Data on Race and Ethnicity, the data collection needs to appear as follows:

“The information regarding race, ethnicity, and sex designation solicited on this application is requested in order to assure the Federal Government, acting through the Rural Housing Service that the Federal laws prohibiting discrimination against tenant applications on the basis of race, color, national origin, religion, sex, familial status, age, and disability are complied with. You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. However, if you choose not to furnish it, the owner is required to note the race, ethnicity, and sex of individual applicants on the basis of visual observation or surname.

Ethnicity:

Hispanic or Latino \_\_\_\_\_

Not Hispanic or Latino \_\_\_\_\_

Race: (Mark one or more)

- 1 American Indian/Alaska Native\_\_\_\_\_
- 2 Asian\_\_\_\_\_
- 3 Black or African American\_\_\_\_\_
- 4 Native Hawaiian or Other Pacific Islander\_\_\_\_\_
- 5 White\_\_\_\_\_

Gender: Male\_\_\_\_\_ Female\_\_\_\_\_”

The race and the ethnicity of each applicant shall be recorded on the waiting list. This information shall be collected for statistical purposes only and must not be used when making eligibility determinations or in any other discriminatory manner. The information shall be recorded using the race and ethnicity codes that are utilized on the Agency tenant certification form available in the Servicing Office.

Borrowers must establish and maintain a specific place and time where applications will be accepted. This information should be posted in a central location on the property. It must also be documented in the Management Plan and the AFHMP and to the greatest extent possible communicated through outreach and marketing efforts.

Applicants are to be provided a list of any additional information that must be submitted with the application for the application to be considered complete (an application will be considered complete without verification of the applicant information). The list of information must be restricted to the same items for all Agency-assisted properties of a particular type, such as a family or elderly complex.

**B. Application Fees**

Application fees are discouraged, but when used, any fee charged to an applicant must be limited to the cost of actual services incurred for obtaining necessary information associated with completing a tenant certification.

**C. Maintaining Waiting Lists**

When an applicant has submitted an application form the borrower must place the applicant on the waiting list. All applications, whether complete, eligible, or ineligible, will be placed on the list. The waiting list will document the final disposition of all applications (rejected, withdrawn, or placed in a unit).

The date and time a complete application was submitted will be recorded on the waiting list and will establish priority for selection from the list. If an applicant submits an incomplete application they must be notified in writing within 10 days of the items that are

needed for the application to be considered complete and that priority will not be established until the additional items are received.

The race and the ethnicity of each applicant shall be recorded on the waiting list. This information shall be collected for statistical purposes only and must not be used when making eligibility determinations or in any other discriminatory manner. The information shall be recorded using the race and ethnicity codes that are utilized on the Agency tenant certification form.

***1. Electronic Waiting Lists***

Electronic waiting lists must have a mechanism for maintaining the date and time of each applicant's placement on or selection from the waiting list and a way to document changes made to the list. The following are examples of methods that borrowers might use to track inputs to the electronic waiting list and changes to it:

- Use a data backup function to record the time and date of entry of new applications and changes to existing records in the electronic waiting list.
- Print a record of the appearance of the waiting list as often as necessary (at least monthly) to show each applicant's placement on and selection from the list. The time and the date of the printout should appear on the report. The owner can file this information in the tenant file and in a central waiting list file.
- Whenever status changes occur, such as changes in family composition and unit size, record the change with an explanation, and print the re-sorted list.

To the extent possible, the borrower should use electronic safeguards, such as assigning waiting list password access only to individuals responsible for maintaining the system. Ideally, a system should record the user name and the time, date, and action entered whenever a record is changed or entered in the electronic waiting list.

***2. Selecting Applications from the Waiting List***

Once an applicant has submitted a complete application and signed a form authorizing the borrower to verify employment, the date and time must be recorded on the waiting list to establish priority for selection. Selection from the waiting list will be made according to date and time in the following order:

- Very low-income applicants;
- Low-income applicants; and
- Moderate-income applicants.

See Paragraph 6.3 for information regarding how to determine the specific income level of an applicant.

Within 10 calendar days of receipt of a complete application, the borrower must notify the applicant in writing that he has been selected for immediate occupancy, placed on a waiting list, or rejected.

The procedures used by the borrower to purge the project's waiting list must be described in the project's management plan. These procedures must be based on the length of the waiting list or the extent of time the applicant will be expected to wait for housing.

## **6.19 REJECTION OF APPLICATIONS**

Borrowers may deny admission for criminal activity or alcohol abuse by household members.

Borrowers are required to notify all applicants in writing of their ineligibility. If applicants are determined to be ineligible, the rejection letter must outline the reason for rejection of the application and their right to appeal such a decision in accordance with 7 CFR 3560.154 and 7 CFR 3560.160. The rejection letter must advise the applicants of their right to appeal the decision within 10 calendar days, as well as the right to a hearing. If the project is located in an area with a high concentration of non-English-speaking individuals, the letter must be in English and the non-English language that is prevalent in the area. When an applicant is rejected due to credit bureau reporting information, the source of the credit bureau must be revealed to the applicant in accordance with the Fair Credit Reporting Act.

## **6.20 AGENCY REVIEW AND MONITORING OF APPLICATION PROCESSING**

In reviewing the application process employed by the borrower, the Agency should review the following:

- Is adequate documentation available to determine compliance with applicant processing requirements?
- Are applicants properly informed of where and when applications may be obtained and submitted?
- Does the application provide the borrower with adequate information to determine the applicant's place on the waiting list?
- Is there an element in the application process that discourages targeted populations from submitting an application? If so, will modifying the application process encourage targeted, but underserved populations to apply?
- Are applications processed in a timely manner?
- Are ineligible applicants adequately notified of their appeal rights under Section 8 of this chapter?



Loan Servicers should review the application during the compliance review to ensure that adequate information is being obtained and that the above-listed questions are answered to the satisfaction of the Agency.

## **SECTION 5: TENANT SELECTION AND UNIT ASSIGNMENT** **[7 CFR 3560.154 AND 7 CFR 3560.155]**

### **6.21 ASSIGNING AN AVAILABLE UNIT**

Once a unit becomes available, the borrower must decide who is entitled to that unit based on a variety of factors.

Eligible tenants residing in the property who are either under- or over-housed receive priority over new applicants if relocating them into the newly vacant unit would bring the household into compliance with the occupancy policy for the property. If there are no such over- or under-housed existing tenants, the borrower must select a new applicant from the waiting list to fill the newly vacant unit. The borrower must use the project's occupancy policy to look at applicants on the waiting list who are eligible based on the unit size. From that universe, the borrower must then determine, based on income levels and priorities, which applicant is entitled to the unit. The order in which applicant households are entitled to housing depends on two factors:

- The income level of the household; and
- The priorities for which the household may qualify.

When an applicant first submitted an application, the borrower made an initial determination as to whether the household was very low-, low-, or moderate-income. Based on this assessment, the applicant was assigned to the very low-, low-, or moderate-income waiting list. When looking for the next eligible tenant for the vacant unit, the borrower must first go to the very-low income waiting list. If there are no applicants on the very low-income waiting list who qualify for the vacant unit based on the property's occupancy policy, then the borrower may go to the low-income waiting list. Only if there are no eligible applicants for the unit on the low-income waiting list may the borrower select an eligible applicant from the moderate-income waiting list.

### **6.22 PRIORITIES FOR UNITS**

#### **A. Exceptions to Income Standard Assignment Policies**

While the basic standard is to house all very low-income applicants prior to low- and then moderate-income applicants, there are situations where this process may be bypassed. However, an individual in one of the situations identified below would not be eligible for housing before applicants on the waiting list for a lower income category.

- If the unit is a handicapped accessible unit, then an eligible household that needs the features of that unit will receive priority over all other applicants, regardless of income. If more than one applicant needs the features of the handicapped accessible unit, then applicants who are very low-income would have priority, followed by low- and then moderate-income households.

- In congregate housing facilities, applicants who qualify for and agree to utilize the services provided by the facility will be housed over all other applicants on the waiting list. Where there is more than one applicant that meets this criterion, the applicants meeting this condition will be ranked by very low-, low-, and moderate-income and housed in accordance with the occupancy policies established at the property.
- Borrowers with projects receiving low-income housing tax credits (LIHTCs), may leave a housing unit vacant if they are required to rent the available unit to an LIHTC-eligible applicant, and none of the applicants on the waiting list meet the applicable LIHTC eligibility requirements.

**Example— Exceptions**

Project B has two handicap-accessible units. There are three handicapped individuals who need the features of the handicap-accessible units on the waiting list: one moderate income and two low-income. The property has a waiting list of 20 very low-income applicants. The borrower must rent the two handicap-accessible units to the two low-income applicants.

Project Z is a congregate housing facility and has a vacant one-bedroom unit. There are three individuals eligible for a one-bedroom unit on the waiting list: two very low-income applicants and one low-income applicant. All qualify for congregate care services. Only one of the very low-income applicants, however, would agree to use the congregate care facilities. The borrower would have to offer one of the vacant units to the very low-income applicant who agrees to use the services and the other unit to the low-income applicant who agrees to use the services.

- Letter of Priority Entitlement (LOPE), *Handbook Letter 201*. A letter issued by the Agency providing a tenant with priority entitlement to rental units in other Agency-financed housing projects for 120 days from the date of the LOPE. Persons displaced by Agency action, or displaced persons in a Federally declared disaster area have priority over all other applicants of the individual applicant's income group

**Example**

Project C has a vacant three-bedroom apartment. There are no applicants eligible for a three-bedroom unit on the very low-income waiting list. There are 20 applicants eligible for a three-bedroom unit on the low-income waiting list. A holder of a LOPE applies for occupancy at the project. The applicant is low-income and qualifies for a two-bedroom unit. Despite the number of applicants on the waiting list, the borrower must offer the available unit to the LOPE holder, and the LOPE holder agrees to move to the appropriate-size unit when one becomes available.

## **B. Assignment of Rental Units Accessible to Individuals with Disabilities**

If a rental unit accessible to individuals with disabilities is available and there are no applicants that require the features of the unit, the borrower may rent the unit to a non-disabled tenant under the following conditions:

- The borrower must include a provision in the lease requiring the tenant to vacate the unit within 30 days of notification to an appropriate sized vacant unit within the project, if one is available from management that an eligible individual with disabilities requires the unit;
- The unit has been marketed as an accessible unit;
- Outreach has been made to organizations representing the disabled; and
- Marketing of the unit as an accessible unit continues after it is rented to a tenant who is not in need of the special design features.

Borrowers receiving HUD Section 8 project-based assistance may establish preferences in accordance with HUD regulations. The use of such preferences must be documented in the project's management plan.

### **6.23 AGENCY MONITORING AND REVIEW OF UNIT ASSIGNMENT**

The selection and assignment of units is one of the most important aspects to managing a property. Borrowers and management agents must assure onsite management staff are well versed in Agency policy and guidance regarding this subject or require the borrower to modify the management plan to reflect increased training in this area. The Loan Servicers will review the waiting lists and completed applications to ensure that:

- Units which are not needed to relocate existing tenants are first offered to eligible very low-income families; and
- Units are offered to households in accordance with the borrower's occupancy policy.

If Loan Servicers find that the borrower or the agent is failing to follow Agency policy in assigning available units, Loan Servicers may require the borrower modify the management plan to clearly reflect Agency policy and/or enhance the training of management staff responsible for assigning units.

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## **SECTION 6: DWELLING LEASES [7 CFR 3560.156]**

### **6.24 OVERVIEW OF DWELLING LEASES**

A lease between the borrower and the tenant is required to be executed before any tenant occupies a unit in a multi-family housing project. This section will provide information regarding how the borrower will develop that lease and what action is needed by the Agency before the lease may be used. The Agency must approve the lease before the borrower enters into a lease agreement with any tenant.

### **6.25 DEVELOPMENT OF A LEASE**

The borrower is responsible for the development of the tenant lease that will be used at the property. This lease must contain the required items, provisions and clauses outlined in **Attachment 6-E** and must be free of prohibited clauses listed in **Attachment 6-F**. It must also be in compliance with state and local laws. If there are conflicting requirements between Federal, state, and local laws, the borrower must notify the Agency of the conflict and request guidance. Once a lease is developed by the borrower, the borrower's attorney must certify that the lease is in compliance with the requirements of 7 CFR 3560.156 and **Attachments 6-E** and **6-F** prior to submission of the lease to the Agency for approval. The Agency must approve with all leases proposed for use at an Agency-related property, prior to the use of that lease.

### **6.26 EXECUTION OF THE LEASE WITH THE TENANT**

Prior to the occupancy of any unit by an applicant, the applicant and the borrower must execute a lease that has been approved by the Agency. Once a lease has been executed with the applicant, they are entitled to occupy the unit so long as they remain eligible and comply with lease renewal requirements. Expiration of the lease is not of itself grounds for a termination of tenancy.

### **6.27 AGENCY REVIEW AND MONITORING OF LEASE REQUIREMENTS**

The management agent must review and monitor the implementation of the lease with the applicant/tenant to ensure that they are properly informed of their rights and responsibilities under the lease. During the compliance review process, the Agency should look to assure:

- The occupancy rules are attached to the initial lease;
- The applicant understands their rights to the tenant grievance process under HUD Section 8 and 7 CFR 3560.160; and
- The applicant understands the process for relaying information such as maintenance requests and income information to management and the responsibility to do so in a timely manner.

If the Loan Servicer finds the borrower is failing to provide adequate information regarding the rights and responsibilities of the tenant and the management agent, the Loan Servicers should require the borrower to improve the management plan and training of onsite staff.

## **SECTION 7: TENANT RECERTIFICATION AND CHANGES IN ELIGIBILITY [7 CFR 3560.152 and 7 CFR 3560.158]**

The recertification process developed in this section is designed to ensure a tenant remains eligible to reside in multi-family housing. As household status changes, the size of the unit needed by the household or the amount of rent that they are obligated to pay may change. This section discusses when a recertification is required and what action the borrower will be required to take if a household is determined ineligible to continue residing at the property.

### **6.28 REQUIREMENTS TO RECERTIFY TENANTS**

#### **A. The Annual Recertification Process**

Each time a resident is recertified, the certification is good for one year, unless subpart 2 of this paragraph requires a recertification to be completed more frequently. At the end of the year the certification will expire and the borrower is required to recertify the household. The effective date of the tenant's recertification is the first day of the month following the expiration of the current certification. Using the procedures outlined in Section 1 of this chapter, the borrower will complete a new certification. The key steps to this process include:

##### ***1. Notifying the Tenant of the Recertification Requirement***

At least 75 to 90 days prior to the date that the certification expires, the borrower must notify the tenant in writing that they must be recertified to remain eligible to continue residence at the property. This letter will also include what information the borrower needs from the household in order to complete the certification.

If the household still fails to respond to the letter, the borrower should issue a second letter 30 days prior to the date which the certification expires informing the tenant of the:

- Information needed to recertify;
- The time frame in which the new certification must be submitted to the Agency; and
- The consequences for failure to comply with the recertification process.

##### ***2. Execution of the New Certification***

Upon receiving the information regarding household size and income from the tenant, the borrower will verify the information and the borrower and the tenant will complete a new *Form RD 3560-8*. This form will document the calculation of annual income and adjusted income (in accordance with Section 1 of this chapter) and the calculation of the tenant payment (in accordance with Chapters 7 and 8).



## **B. Interim Recertification Process**

Tenants and borrowers must execute an Agency-approved tenant certification form establishing the tenant's eligibility prior to occupancy. In addition, tenant households must be recertified and must execute a tenant certification form at least annually or whenever a change in household income of \$100 or more per month occurs. Borrowers must recertify for changes of \$50 per month, if the tenant requests that such a change be made.

### **1. Tenant Requirements**

- Tenants must provide borrowers with the necessary income and other household information required by the Agency to determine eligibility.
- Tenants must authorize borrowers to verify information provided to establish their eligibility or determination of tenant contribution.
- Tenants must report all changes in household status that may affect their eligibility to borrowers.
- Tenants who fail to comply with tenant certification and recertification requirements will be considered ineligible for occupancy and will be subject to unauthorized assistance claims, if applicable, as specified in 7 CFR part 3560, subpart O.

### **2. Borrower Requirements**

- Borrowers must verify household income and other information necessary to establish tenant eligibility for the requested rental unit type, in a format approved by the Agency, prior to a tenant's initial occupancy and prior to annual or other recertifications.
- Borrowers must review all reported changes in household status and assess the impact of these changes on the tenant's eligibility or net tenant contribution.
- Borrowers must submit initial or updated tenant certification forms to the Agency within 10 days of the effective date of an initial certification or any changes in a tenant's status. The effective date of an initial or updated tenant certification form will always be a first day of the month.
- Since tenant certifications are used to document interest credit and rental assistance eligibility and are a basic responsibility of the borrower under the loan documents, borrowers who fail to submit annual or updated tenant certification forms within the time period specified in Paragraph 6.27 B of this section will be charged overage, as specified in 7 CFR 3560 203(c). Unauthorized assistance, if any, will be handled in accordance with 7 CFR part 3560, subpart O.

- Borrowers must submit tenant certification forms to the Agency using a format approved by the Agency.
- Borrowers must retain executed tenant certification forms and any supporting documentation in the tenant file for at least 3 years or until the next Agency supervisory visit, whichever is longer.
- The Agency maintains the right to independently verify tenant eligibility information.

### **C. Submission of the Certification to the Agency**

Once the borrower and the tenant execute a certification, it must be submitted to the Agency within 10 days of the effective date of the certification. In order for a certification to be valid, it must be signed and dated by all parties on or before the effective date and maintained in the tenant file. If a borrower fails to submit a certification by the effective date, it will result in monetary penalties to the borrower as established in Chapter 7.

## **6.29 AGENCY REVIEW AND MONITORING OF THE RECERTIFICATION PROCESS**

### **A. Agency Review**

The recertification process is designed to ensure that Agency programs are serving income-eligible households on an ongoing basis. Loan Servicers review of the recertification process should be designed to ensure that recertifications are executed in a timely manner. The Loan Servicers should make the following assessments:

- Are tenants receiving the proper notice—at least 90 days in advance of the expiration of the current certification?
- Does the notice provide the tenant with a list of the information needed for the completion of the recertification process?
- Are borrowers accurately determining when an interim recertification is needed?
- Are interim recertifications being executed on a timely basis (i.e., no later than 30 days from the time the information is provided to the borrower)?
- Does the certification form provide the information needed by the Agency to determine that the tenant payment and rental subsidy have been calculated correctly?
- Is the borrower completing the verification of information on a timely basis?

If the Loan Servicer concludes that the borrower is deficient in recertifying existing tenants, the Agency must require the borrower and the management agent to modify existing practices and procedures to ensure a more timely delivery of recertifications to the Agency. This could include:

- Modification of the management plan to incorporate stronger or more specific procedures with regard to recertifications;
- Enhanced training for onsite staff in processing Agency certifications; and
- Stronger enforcement of the penalties for tenants who fail to comply with the recertification process.

#### **B. Management Agent Interactive Network Connection (MINC)**

MINC is the mechanism by which borrowers submit tenant certifications to the Agency electronically on a monthly basis.

Within twelve months of the date of publication of the interim final regulation, for projects with eight units or more, all borrowers will be required to submit tenant certifications through MINC. The Agency may make an exception to this requirement if the borrower submits documentation that the costs associated with electronic submission of tenant certifications would pose a financial hardship to the project.

If the borrower is using MINC, certifications must be submitted by the tenth of the month for which they are due. For instance, if the borrower is submitting certification due in May with an effective date of May 1, the certifications must be electronically transmitted to the Agency by May 10. If for any reason the borrower is unable to transmit the certifications electronically during a given month, the borrower must submit the hard copies of the certifications to the Agency for receipt by the tenth of the month.

Borrowers who are not using MINC must either submit certifications by diskette or hard copies to the Agency for receipt by the tenth of the month.

Regardless of the transmission method used—MINC or hard copies—if the Agency does not receive certifications by the tenth of the month in which they are due and the borrower has not notified the Agency that the transmission will be late, the borrower will be subject to overage penalty.

**Attachment 6-G** provides guidance on the allowable sources of funds for obtaining automation capabilities.

#### **6.30 INELIGIBLE TENANTS**

Ineligible tenants are those who, upon recertification, fail to meet either the income or the occupancy requirements for the unit and property that they currently occupy. Regulations require that tenants who are no longer eligible to reside at the property be given notice that they must vacate the property within 30 days or at the end of their lease, whichever is longer.

**A. Continuation of Tenancy—Tenants Who Fail to Comply with the Occupancy Policy**

In some situations, a tenant may be ineligible based on the size of the unit currently occupied, but could become eligible if shifted to a unit of a different size (either larger or smaller) within the property. In this situation, a tenant may continue tenancy as an ineligible tenant, but the borrower should relocate the household to the proper unit size as soon as a unit of that size becomes available.

In some cases, a household may require a unit size that is unavailable at the property. In this situation the tenant would be considered ineligible and required to vacate the property within 30 days or at the end of their lease, whichever is longer.

**B. Continuation of Tenancy—Tenants Who Fail to Comply with the Income Requirements for the Property**

In most cases, if tenant certifications indicate that they no longer comply with the income limits set for the property, tenants must be notified about vacating the property in 30 days or at the end of their lease, whichever is longer.

In two specific situations, borrowers may permit ineligible households to reside at the project with prior Agency approval:

- The waiting list for the specific unit type has no eligible tenants; or
- The required time period for vacating the unit would create a hardship on the household.

Elderly households with incomes above the moderate-income level may occupy projects with an Agency loan approved prior to 1968 with a loan agreement that does not restrict occupancy by income.

**C. Cooperative Members**

Any persons who are eligible members of a cooperative will not be considered ineligible or subsequently deprived of their membership by reason of no longer meeting the income-eligibility requirements as defined in 7 CFR 3560.152.

**D. Remaining Household Members**

Members of a household residing in a multi-family housing project may continue to occupy the unit after the departure of the original tenant, regardless of age, provided that:

- They are eligible with respect to income;
- They were either a cotenant or member of the household, have the legal capacity to sign the lease, and are U.S. citizens or qualified aliens;

- They occupied the unit with the original tenant at the time the original tenant died or departed;
- They sign a new tenant certification establishing their own tenancy; and
- They have the legal ability to sign a lease for the rental unit, except where a legal guardian may sign when the tenant or member is otherwise eligible.

Remaining household members that are over housed must move to a suitably sized rental unit within 30 days of its availability. If a suitably sized unit does not exist at the property, the tenant will be required to vacate the property in accordance with Paragraph 6.32 A.

#### **E. Surviving Household Members**

Members of an elderly household residing in an elderly project may continue to occupy the unit after the death of the original tenant, regardless of age, provided that:

- They are eligible with respect to income;
- They were either a co-tenant or member of the household and have the legal capacity to sign the lease;
- They occupied the unit with the original tenant at the time the original tenant died or departed;
- They sign a new tenant certification establishing their own tenancy; and
- They have the legal ability to sign a lease for the rental unit, except where a legal guardian may sign when the tenant or member is otherwise eligible.

Surviving household members who are over housed may remain in the unit, but must move to a suitably sized rental unit within 30 days of its availability. If a suitably sized unit is not available, surviving household members may remain in the rental unit according to the housing project's occupancy rules as follows:

- Continued occupancy of the rental unit will not be allowed when:
  - ◊ The rental unit has accessibility features for individuals with disabilities;
  - ◊ The household no longer has a need for such accessibility features; and
  - ◊ The housing project has a tenant application from an individual with a need for the accessibility features.
- If the housing project does not have a tenant application from an individual with a need for the accessibility features, the household may remain in the rental unit until the housing project receives an application from an individual in need of the accessibility features, at which point, the household will be required to move within 30 days; and

- If a suitably sized unit is not available in the project within 30 days, the tenant may remain in the unit with accessibility features until a unit becomes available, and must then move within 30 days.

#### **F. Agency Review and Monitoring of Ineligible Tenants**

For an ineligible tenant to remain at the property beyond the allowable time frame of 30 days or the end of the lease, whichever is longer, the borrower must obtain written permission from the Agency. In granting such permission, the Agency should assure that one of two criteria exist:

- The waiting list for the specific unit type has no eligible tenants; or
- The required time period for vacating the unit would create a hardship for the household.

In reviewing whether the borrower is in compliance with the requirements to remove ineligible tenants the Agency should check to ensure:

- The borrower is requesting approval for ineligible tenants to remain on the property in a timely manner.
- The borrower is properly documenting any reason for which an ineligible tenant is being allowed to continue to reside in the property. Some of these reasons may include:
  - ◇ Permission has been granted by the Agency for the tenant to remain temporarily;
  - ◇ The tenant is a surviving member of an elderly household; or
  - ◇ The household is still income eligible and will be moved to an appropriate-size unit when one becomes available at the property.
- The borrower is providing proper notice to tenants regarding the time frames for vacating the property.

### **6.31 LEASE VIOLATIONS**

Borrowers may require tenants in violation of occupancy rules or the terms of their lease to vacate the property in accordance with the terms of their lease agreement. However, borrowers must provide notice to such tenant in a format that is in compliance with state and local laws and is approved by the Agency.

### **6.32 TERMINATION OF OCCUPANCY**

#### **A. Tenants in Violation of the Lease**

In accordance with the lease, a borrower may terminate or refuse to renew a tenant's lease for material noncompliance with the lease or occupancy rules or for other good cause. Material noncompliance with lease provisions or occupancy rules includes actions such as:

- Violations of lease provisions or occupancy rules that are substantial and repeated;
- Nonpayment or repeated late payment of rent or other financial obligations due to the borrower; and
- Admission to or conviction for use, attempted use, possession, manufacture, sale or distribution of an illegal controlled substance. Such activity must have occurred on the project's premises by the tenant, a member of the tenant household, or any other person under the tenant's control at the time of the activity.

For purposes of terminating a tenant's occupancy, good cause includes actions by the tenant or member of the tenant's household that:

- Threaten the health and safety of other persons or the right of other persons to peaceful enjoyment of their dwelling;
- Result in substantial physical damage causing an adverse financial effect on the housing or other persons' property; and
- Are actions prohibited by state or local law.

If the borrower terminates the tenant's lease, the borrower must document in writing in the tenant's file:

- The incidences related to the lease; and
- That the tenant was given notice prior to the termination that the tenant's activities would result in occupancy termination.

Prior to terminating a lease, the borrower must give the tenant written notice of the violation and give the tenant an opportunity to correct the violation. Subsequently, termination may only occur when the incidences related to the termination are

documented and there is documentation that the tenant was given notice prior to the initiation of the termination action that their activities would result in occupancy termination.

### **B. Other Lease Terminations**

A landlord may terminate occupancy for conditions beyond the tenant's control, such as:

- Required repair or rehabilitation of the building; or
- Natural disaster.

Under these circumstances, the affected tenants may request a LOPE from the Agency. The LOPE will provide the tenant with priority entitlement to rental units in other Agency-financed projects for 120 days from the date of the LOPE. If tenants need additional time to secure replacement housing, the Agency may, at the tenant's request, extend the LOPE entitlement period. Tenants that are displaced due to circumstances beyond their control are entitled to benefits under the Uniform Relocation Act.

## **SECTION 8: TENANT GRIEVANCE PROCEDURES [7 CFR 3560.160]**

This section presents the process for resolving tenant grievances. Every step of the process will be explained with the responsibilities of each party involved. Topics covered in this section include when to file a complaint, the hearing process, requirements governing the hearing, and the hearing decision. It is important to note that a resolution that is in the best interest of everyone should have gone through the entire grievance process before a final decision was made.

Tenants or prospective tenants may file a grievance in writing with the borrower in response to a borrower action, or failure to act, in accordance with the lease or Agency regulations that results in a denial, significant reduction, or termination of benefits or when a tenant or prospective tenant contests a borrower's notice of proposed adverse action as provided in Paragraphs 6.31 and 6.32.

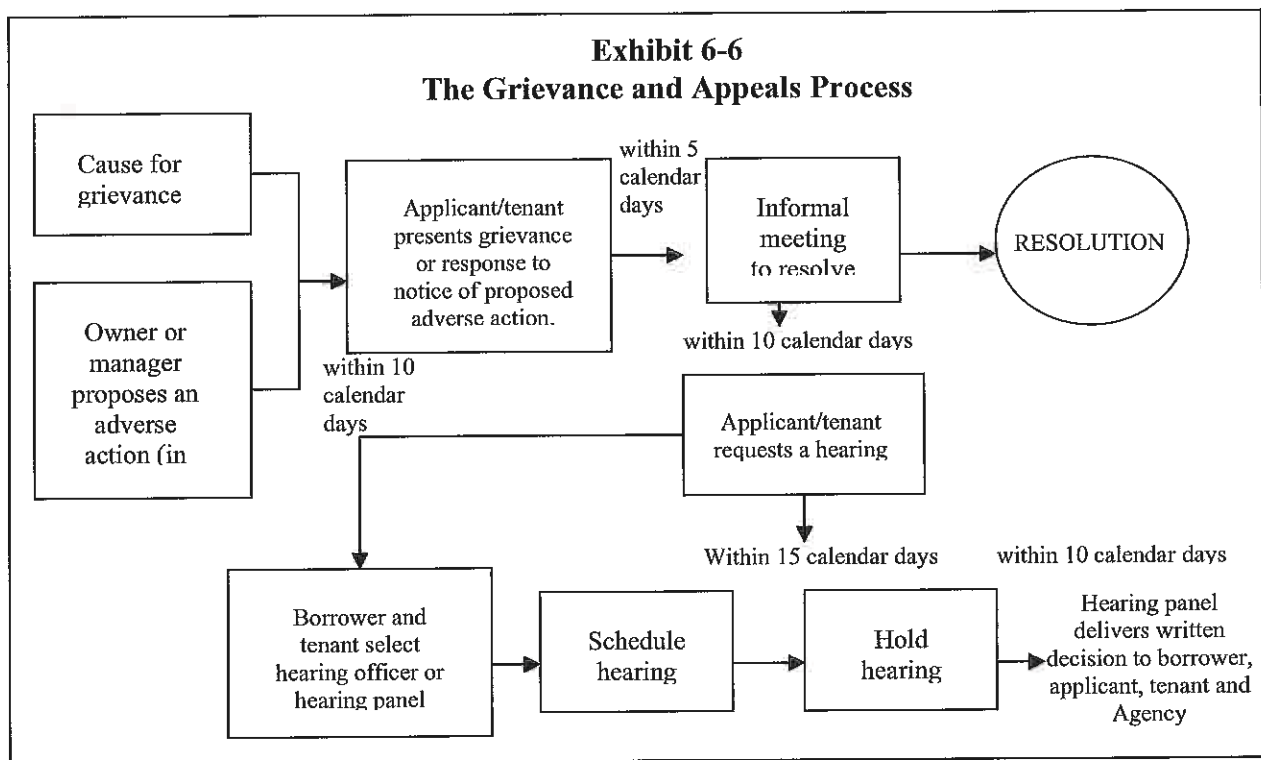
### **6.33 NOTICE OF ADVERSE ACTION**

In the case of a proposed action that may have adverse consequences for tenants or prospective tenants such as denial of admission to occupancy and changes in the occupancy rules or lease, the borrower must notify the tenant or prospective tenant in writing. The notice must give specific reasons for the proposed action. The notice must also advise the tenant or prospective tenant of "the right to respond to the notice within 10 calendar days after date of the notice" and of "the right to a hearing in accordance with 7 CFR 3560.160 (f), which is available upon request." The notice must contain the information specified in 7 CFR 3560.160 (a)(2). For housing projects in areas with a concentration of non-English-speaking individuals, the notice must be in English and the non-English language.



### 6.34 OVERVIEW OF THE PROCESS

The grievance process should always begin with an informal meeting between the grieved party and the borrower/management agent. It is the Agency's belief that the best way to resolve grievances is through an informal meeting between the two parties. Borrowers must offer to meet with tenants to discuss the grievance within 5 calendar days of receiving the grievance. If an informal meeting is held, the borrower must provide a summary of the meeting to the tenant within 10 calendar days of the meeting date. The Agency encourages borrowers and tenants or prospective tenants to make an effort to reach a mutually satisfactory resolution to the grievance at the meeting.



The parties will select a hearing panel or hearing officer to govern the hearing. Within 10 calendar days after the hearing, all parties are informed of the decision. Exhibit 6-6 provides an example of the grievance process.

### 6.35 WHEN IS A TENANT GRIEVANCE LEGITIMATE?

It is important for the management agent to determine if a tenant or prospective tenant's grievance is within the requirements established for the program. For example, "I want to file a complaint because the manager does not speak to me," is not a legitimate complaint. On the other hand, a complaint that the building manager fails to maintain the property according to the Agency guidelines is a legitimate complaint. Exhibit 6-7 lists the circumstances in which a tenant may or may not be able to file a complaint.

<b>Exhibit 6-7</b>	
<b>Tenant Complaints—Allowable Circumstances</b>	
<i>A complaint may NOT be filed if:</i>	<i>A complaint MAY be filed if:</i>
<ul style="list-style-type: none"> <li>• There is a proposed rent change that is authorized by the Agency.</li> <li>• A tenant or prospective tenant believes that they have been discriminated against. If a person believes that discrimination has occurred, they should file a complaint with the USDA’s Office of Civil Rights or the Secretary of HUD.</li> <li>• A project has formed a tenant’s association and all parties involved have agreed to use this association as a method of settling grievances.</li> <li>• There are changes in the rules that are required by the Agency and proper notice has been given.</li> <li>• The tenant is in violation of the lease and those violations result in termination of tenancy.</li> <li>• Disputes between tenants that do not involve the borrower/management agent.</li> <li>• Displacement or other effects as a result of prepayment.</li> </ul>	<ul style="list-style-type: none"> <li>• There is a modification of the lease, change in the rules, or changes in the rent that are not authorized by the Agency.</li> <li>• The borrower/management agent fails to maintain the property in a manner that is decent, safe, and sanitary.</li> <li>• The borrower violates a lease provision or occupancy rule.</li> <li>• Denial of admission to the project by a prospective tenant.</li> </ul>

**6.36 BORROWER/MANAGEMENT AGENT RESPONSIBILITIES**

The borrower/management agent is responsible for providing all tenants and prospective tenants with decent, safe, and sanitary housing. The following is a list of all of the responsibilities of the borrower/agent:

- Post all regulations, summary of regulations, or tenant information, including the equal housing opportunity poster, “and justice for all” poster, tenant grievance and appeals procedures, the AFHMP, occupancy rules, and office and emergency hours and phone numbers in a conspicuous place.
- Provide all tenants with a summary of their rights at the time the lease is signed and at each lease renewal. For tenants that are currently living in the project, a summary must be submitted once the summary is created.
- If the project has a large population of non-English-speaking tenants, the borrower/agent must provide the summary and any other documents that pertain to the tenant’s rights, in the non-English language.

## **6.37 THE HEARING PROCESS**

### **A. Request for a Hearing**

- Each hearing process must begin with the request for a hearing. The tenant or prospective tenant must present their request within 10 days after the receipt of the summary of the informal meeting. The request must contain the following information:
  - ◇ The reason for the grievance or contest of the borrower/management agent's proposed action;
  - ◇ The action relief sought; and
  - ◇ Additional information.
- If the tenant or prospective tenant's request for a hearing is not received within the given time, the borrower or management agent's decision will become final.

### **B. Scheduling the Hearing**

The hearing must be scheduled within 15 days after the receipt of the tenant's request for a hearing. If a hearing officer or hearing panel must be selected, the hearing will be scheduled within 15 days after the selection or appointment of a hearing officer or hearing panel. It is the responsibility of the two parties to agree upon a place and time that is mutually convenient to hold the hearing. If the two parties cannot agree on a place and time, it will become the responsibility of the hearing officer or hearing panel to make the decision.

### **C. Selection of the Hearing Officer or Hearing Panel**

The two parties must select a hearing officer. If the hearing officer cannot be agreed upon, the two parties will choose members to serve on the hearing panel. The hearing panel should consist of three members. The tenant and the borrower/management agent will each elect one person to the panel. It is then the responsibility of the two chosen members to elect a third member to the panel. If within 30 days from the time the request for the hearing was submitted a hearing panel has not been formed, the borrower/management agent must inform the Agency. Within 10 days of reviewing the facts, the Agency must appoint a hearing officer. Once a hearing officer or panel is selected the Agency must inform them in writing of their responsibilities for conducting the hearing.

Some helpful information that should be remembered by all parties involved in the process when selecting a hearing officer or hearing panel includes:

- Hearing panel members should be impartial, disinterested persons;
- The hearing officer cannot be a person previously considered by the tenant or borrower/management agent; and
- The hearing officer cannot be an Agency staff member.

#### Potential Hearing Panel Members

1. Legal aid counsel;
2. Someone with knowledge of the program; or
3. A Minister.

- The hearing officer may not receive any payment unless that payment is made by the Agency.

To minimize time and the level of effort, a management agent may elect to have a standing hearing panel for each project that they manage. If a standing panel is chosen, the above-listed process will have to be forfeited in lieu of the following process.

- A hearing panel consists of three members: one tenant panelist, one borrower/management agent panelist, and a chair.
- Tenants will get to nominate and vote for their panel members. A meeting must be held to allow the tenants the opportunity to choose two members to serve on the standing panel; one member will serve as the alternate. All residents should be notified of the time, date, and place where the election is going to take place. The borrower is responsible for ensuring that the notice is placed in a conspicuous place, within 2 weeks of the time the person is expected to start serving as a panel member. The meeting must also be held in a place that is convenient and accessible to the tenants.
- The borrower/management agent is responsible for selecting one or two members to serve on the standing panel. If two members are chosen, one will serve as the alternate.
- The third and “mutual” member of the panel will serve as the chair for the panel. The other two interested parties will elect the chairperson. Each party will only have the opportunity to give one vote, even if two people were elected to serve on the panel.
- Each member will serve on the panel for one year, with the opportunity for reelection. All members of the standing panel must be willing to render their services without compensation.

#### D. Examination of Records

At a reasonable time before the hearing, the borrower/agent must allow the tenant the opportunity to examine all files that are going to be used during the hearing. Documents can be examined and copied if:

- The tenant is willing to cover any expenses that may be incurred;
- The document, record, or policy is one that will be used during the hearing process; and
- The document, record, or policy is not subject to any laws or confidentiality agreements that prohibit reproductions.

**Documents That May Not Be Copied**

1. Credit reports;
2. Project budgets; and
3. Supervisory findings.

**E. Escrow Deposits**

Tenants may establish escrow accounts if a grievance involves a rent increase not authorized by the Agency or if the borrower/agent is not maintaining the property in a decent and sanitary manner. The escrow account will allow the tenant the opportunity to make timely rent payments without having the borrower/agent receive the payment until the grievance has been settled. To maintain an escrow account, tenants must adhere to the following rules:

- All deposits must continue until the grievance is resolved;
- The institution that the escrow account is established in must be a Federally insured institution;
- All deposits must be made on time—failure to do so will terminate the entire process and all sums will be due immediately; and
- Tenants must make all receipts of deposit available for examination by the borrower/agent.

**6.38 REQUIREMENTS GOVERNING THE HEARING**

The hearing is an informal proceeding at which evidence is presented to a hearing officer or hearing panel. The hearing must be designed to ensure that the rights of all parties involved are protected. The hearing must protect:

- The right of both parties to be represented by counsel or another person(s) chosen as their representative;
- The right of the tenant or prospective tenant to a private hearing unless a public one is requested;

- The right of the tenant or prospective tenant to present oral and written evidence and arguments in support of their grievance or appeal, and to refute the evidence and cross-examine all witnesses on whose testimony or information the borrower or management agent relies; and
- The right of the borrower or management agent to present oral and written evidence and arguments in support of the decision, to refute evidence relied upon by the tenant or prospective tenant, and to confront and cross-examine all witnesses on whose testimony or information the tenant or prospective tenant relies.

During the hearing, each party must present evidence to support their position. All participants at the hearing must conduct themselves in an orderly manner. Participants that cannot conduct themselves in an orderly manner will be excluded from the proceedings or will cause the hearing panel or hearing officer to make a decision that is not in favor of the disorderly party.

#### **Remember**

The Agency approval is only to make sure that the decision is in compliance with other Agency programs.

If the tenant or prospective tenant or management agent fails to appear at a scheduled hearing, the hearing officer or hearing panel may choose to postpone the hearing for no more than 5 days or may determine that the party has waived their right to a hearing under this subpart. If the determination is made that the absent party has waived their rights, the hearing officer or hearing panel will make a decision on the grievance. All parties involved in the hearing must be informed of the hearing panel's decision.

### **6.39 THE HEARING DECISION**

It is the responsibility of the hearing officer or hearing panel to prepare and submit a written decision to both parties within 10 calendar days of the hearing. The hearing officer or hearing panel must inform the Agency of the decision and the reasons for making that decision. The decision should be based on the facts that were presented during the hearing. The decision is not final until it has been approved by the Agency for compliance. This contingent form of approval should be noted in the decision letter. Upon receipt of the letter, the borrower and the tenant must comply with the directives specified in the decision.

## **SECTION 9: SPECIAL REQUIREMENTS FOR LABOR HOUSING** *[7 CFR 3560.575 AND 7 CFR 3560.624]*

While the Agency-sponsored Labor Housing programs have similar requirements in many respects to the Rural Rental Housing programs, because the target populations that these programs serve vary, there are some differences in program rules.

This section is designed to highlight these differences with regard to the occupancy rules. Unless otherwise noted below, the requirements throughout this chapter also apply to Labor Housing projects.

#### 6.40 OFF-FARM LABOR HOUSING

##### A. Eligible Tenants

Labor Housing tenants must meet all of the following criteria in order to be defined as an eligible tenant for the purposes of residing in labor housing:

- **Occupational.** An eligible household must include a tenant or co-tenant who is a domestic farm laborer, a retired or disabled domestic farm laborer, or must be a surviving household of a deceased domestic farm laborer.
- **Income.** The household must meet the definition of income eligibility as defined in Section 1 of this chapter. The current income limits for off-farm labor housing may be found in **Attachment 6-H**.
- **Occupancy.** The household must remain in compliance with the borrower's occupancy policy as established in Section 3 of this chapter.

If a household, upon recertification, is not in compliance with any of the above criteria, then it will be defined as an ineligible tenant and will be covered by Section 6.

##### B. Occupancy Priorities

When a borrower of a labor housing project is selecting the appropriate applicant for a vacant unit from the waiting list, the selection will be regulated by the following priorities:

- **First priority** must be given to eligible active farm laborer households, with first priority going to very low-income households, next to low-income households, and last to moderate-income households.
- **Second priority** must be given to retired or disabled domestic farm laborer households who were active in the local farm labor market area at the time of retirement or becoming disabled, with first priority going to very low-income households, next to low-income households, and last to moderate-income households.
- **Third priority** must be given to other retired or disabled domestic farm laborer households who were not active in the local farm labor market at the time of retiring or becoming disabled. Occupancy priority will be given first to very low-income households, next to low-income households, and last to moderate-income households.

Within each of the above priorities, occupancy priority within each ranking category is according to the household's income: very low, low, and then moderate.

**Example**

Project D has a vacant two-bedroom unit. On the waiting list, there are seven applicants eligible for a two-bedroom unit.

1. One applicant is a very low-income disabled farm laborer household from the local farm market area;
2. One applicant is a low-income active farm labor household;
3. One applicant is a low-income retired farm laborer household from another state;
4. One applicant is a very low-income retired farm laborer household from the local farm market area;
5. One applicant is a very low-income disabled farm laborer household from another county; and
6. One applicant is a very low-income active farm labor household.

The borrower must offer the vacant unit to these applicants in the following order.

1. First to the very low-income active farm labor applicant;
2. Second to the low-income active farm labor applicant;
3. Third to the very low-income disabled farm laborer household from the local farm market area;
4. Fourth to the low-income retired farm laborer household from the local farm market area; and
5. Fifth to the very low-income disabled farm laborer household from outside the local farm market area.
6. Sixth to the low-income retired farm laborer household from another state.

**C. Projects with Diminished Need**

When there is a diminished need for housing by persons or families who are eligible to reside in labor housing, units may be made available to persons or families eligible for occupancy under Section 1 of this chapter. Tenants admitted under this exception may occupy the labor housing until such time the units are again needed by persons or families eligible under Paragraph 6.40 A of this section. As the basis for Agency approval or disapproval of the borrower's determination of diminished need, the borrower must submit a current analysis of need and demand to the Agency, identical to the market analysis that is required of loan applicants in the loan origination process. The borrower's determination and the State Director's recommendation should be forwarded to the National Office for concurrence.



## **6.41 ON-FARM LABOR HOUSING**

### **A. Eligible Tenants**

The income restrictions and occupancy priorities listed throughout this chapter do not affect the occupancy of on-farm labor housing. This housing is owned by farm borrowers and is for the purpose of providing decent, safe, and sanitary housing to the specific farmer's employees. Occupancy of on-farm labor housing owned by farm borrowers is restricted to employees of the farmer or is governed by an employment contract with the farmer.

### **B. Ineligible Tenants**

For on-farm labor housing, ineligible occupants will include:

- The immediate relatives of the borrower(s); and
- Anyone who is not employed in domestic farm labor.

Ineligible tenants may occupy housing owned by farm borrowers with the permission of the Agency.

## ATTACHMENT 6-A

### ANNUAL INCOME INCLUSIONS AND EXCLUSIONS

Annual income is defined in 7 CFR 3560.153, calculating income in accordance with 24 CFR 5.609 as amended. Public Housing Authority denotes the certifying entity for Rural Development it is usually the Borrower or the Management Agent.

*(a) Annual Income Means All Amounts, Monetary or Not, Which:*

- (1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
- (2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
- (3) Are not specifically excluded in Paragraph (c) of this attachment.

Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

*(b) Annual Income Includes, But Is Not Limited To:*

- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services.
- (2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.
- (3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in Paragraph (b)(2) of this attachment. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD.

(4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in Paragraph (c)(14) of this attachment).

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in Paragraph (c)(3) of this attachment).

(6) Welfare assistance payments.

(i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:

(A) Qualify as assistance under the TANF program definition at 45 CFR 260.31; and

(B) Are not otherwise excluded under Paragraph (c) of this Attachment.

(ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling.

(8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in Paragraph (c)(7) of this attachment).

(9) For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph

is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.

*(c) Annual Income Does Not Include The Following:*

- (1) Income from employment of children (including foster children) under the age of 18 years;
- (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
- (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in Paragraph (b)(5) of this attachment).
- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (5) Income of a live-in aide, as defined in 24 CFR 5.403;
- (6) Subject to Paragraph (b)(9) of this attachment, the full amount of student financial assistance paid directly to the student or to the educational institution;
- (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
- (8) Amounts received for training programs and stipends.
  - (i) Amounts received under training programs funded by HUD;
  - (ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);
  - (iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
  - (iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance,

resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;

(v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of \$480 per adopted child;

(13) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts;

(14) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(15) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(16) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply.

*(d) Annualization Of Income.* If it is not feasible to anticipate a level of income over a 12-month period (*e.g.*, seasonal or cyclic income), or the PHA believes that past income is the best available indicator of expected future income, the PHA may annualize the income anticipated for a shorter period, subject to a redetermination at the end of the shorter period.

ATTACHMENT 6-B

ZERO INCOME VERIFICATION CHECKLIST

(A) EXPENSE	(B) RECURRING EXPENSE?	(C) PAYMENT SOURCE	(D) EXEMPT (If no, Col. E)	(E) AMOUNT
<b>FOOD</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No			
		Food Stamps		
		WIC		
		Food Bank		
		Cash Contributions	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		In Kind Donations	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		Other	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>SHELTER COSTS</b>				
Housing	<input type="checkbox"/> Yes <input type="checkbox"/> No			
		Cash Contributions	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		Other	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Electricity	<input type="checkbox"/> Yes <input type="checkbox"/> No			
		Cash Contributions	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		Other	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Gas	<input type="checkbox"/> Yes <input type="checkbox"/> No			
		Cash Contributions	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		Other	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Water	<input type="checkbox"/> Yes <input type="checkbox"/> No			
		Cash Contributions	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		Other	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>CLEANING/GROOMING</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No			
		In kind Donation	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		Cash Contribution	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		Other	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>TRANSPORTATION</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No			
		In kind Donation	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		Cash Contribution	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		Other	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Automobile Payment	<input type="checkbox"/> Yes <input type="checkbox"/> No			

(A) EXPENSE	(B) RECURRING EXPENSE?	(C) PAYMENT SOURCE	(D) EXEMPT {If no, Col. E}	(E) AMOUNT
		In kind Donation	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		Cash Contribution	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		Other	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Automobile Insurance	<input type="checkbox"/> Yes <input type="checkbox"/> No			
		Cash Contribution	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		Other	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Gas	<input type="checkbox"/> Yes <input type="checkbox"/> No			
		Cash Contribution	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		Other	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Automobile Maintenance	<input type="checkbox"/> Yes <input type="checkbox"/> No			
		Cash Contribution	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		Other	<input type="checkbox"/> Yes <input type="checkbox"/> No	
ENTERTAINMENT	<input type="checkbox"/> Yes <input type="checkbox"/> No			
Cable/Satellite		Cash Contribution	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		Other	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Video Rentals	<input type="checkbox"/> Yes <input type="checkbox"/> No			
		Cash Contribution	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		Other	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Sporting Events	<input type="checkbox"/> Yes <input type="checkbox"/> No			
		Cash Contribution	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		Other	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Other Entertainment	<input type="checkbox"/> Yes <input type="checkbox"/> No			
		Cash Contribution	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		Other	<input type="checkbox"/> Yes <input type="checkbox"/> No	
CLOTHING EXPENSES				
Clothes/Shoes	<input type="checkbox"/> Yes <input type="checkbox"/> No	Cash Contributions	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		In Kind Donations		
		Other	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Laundry	<input type="checkbox"/> Yes <input type="checkbox"/> No			
		Cash Contributions	<input type="checkbox"/> Yes <input type="checkbox"/> No	

(A) EXPENSE	(B) RECURRING EXPENSE?	(C) PAYMENT SOURCE	(D) EXEMPT {If no, Col E}	(E) AMOUNT
		In Kind Donations	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		Other	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>COMMUNICATIONS</b>				
Telephone	<input type="checkbox"/> Yes <input type="checkbox"/> No			
		Cash Contributions	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		In Kind Donations	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		Other	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Cellular Telephone	<input type="checkbox"/> Yes <input type="checkbox"/> No			
		Cash Contributions	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		In Kind Donations	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		Other	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Pager/Beeper	<input type="checkbox"/> Yes <input type="checkbox"/> No			
		Cash Contributions	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		In Kind Donations	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		Other	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Internet	<input type="checkbox"/> Yes <input type="checkbox"/> No			
		Cash Contributions	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		In Kind Donations	<input type="checkbox"/> Yes <input type="checkbox"/> No	
		Other	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>MEDICAL EXPENSES</b>				
		Cash Contributions		
		Other		
<b>MISCELLANEOUS EXPENSES</b>				
Non-reimbursable Education	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No	
Non-reimbursable Childcare	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No	
Non-reimbursable Job Expenses	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No	



**Part II**

(A) BENEFIT SOURCE	(B) ELIGIBLE {If yes, Col. C}	(C) APPLIED {If yes, Col. D}	(D) STATUS
SOCIAL SECURITY	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
UNEMPLOYMENT	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
HEALTH AND WELFARE	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
VETERANS ADMINISTRATION	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
OTHER	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Attach receipts, applications and other documentation to the completed checklist and retain in application or tenant file.

## ATTACHMENT 6-C

### Allowable Deductions

Allowable deductions or allowances are:

- \$480 for each member of the family residing in the household (other than the tenant, co-tenant, member, or co-member or spouse of either, or foster children) who is under 18 years of age, or who is 18 years of age or older and is disabled, handicapped or a full-time student. The student must carry a subject load considered full-time by the educational institution attended. This deduction does not apply to an unborn child in the household.
- \$400 for any elderly family.
- In the case of an elderly family, the total of actual medical and/or handicap assistance expenses paid in excess of 3 percent of annual income must first be deducted from handicap assistance any remainder then deducted from medical expenses.
- Total medical expense includes medical expenses not covered by insurance that the tenant or member anticipates incurring over the 12 months following the effective date of the certification, using past experience as a guide.

Examples of medical expenses are dental expenses, prescription and non-prescription medicines, medical insurance premiums including Medicare, eyeglasses, hearing aids and batteries, medical related travel cost, the cost of attendant care including a live-in-resident assistant, monthly payments required on accumulated major medical bills including that portion of a household member's nursing home care paid from household incomes).

Note: Premiums paid for nursing home insurance are not an allowable deduction unless a household member is housed at a nursing home and that person's income is included in the household income.)

- Handicap assistance includes reasonable attendant care and auxiliary apparatus expense described as follows for each member with handicaps of the family to the extent needed to enable any family member (including such member with handicaps) to be employed. That portion of attendant care attributable to specialized medical reasons (the portion attributable to companionship is not counted).
  - Auxiliary apparatus including but not limited to wheelchairs, oxygen equipment, reading devices for the visually impaired, and the cost of equipment added to cars and vans to permit their use by the handicapped or disabled family member proportionate to the amount of use by such persons.
- In the case of any non-elderly family, total handicap assistance expense in excess of 3 percent of annual family income may be deducted:
  - For any handicap assistance expense above that is anticipated to occur over the 12 months following the effective date of the certification, using past experience as a

guide, to the extent needed to enable any family member (including the handicapped or disabled family member) to be employed.

- The amount of deduction may not exceed the LESSER of the amount by which total expenses for handicap assistance exceed 3 percent of annual family income, or the amount of income received by adult members from such employment.

- The amounts paid by the family for the care of minors under 13 years of age may be deducted only to the extent such expenses are not reimbursed. In the case of families assisted by American Indian housing authorities, the amount will be the greater of child care expenses; or excessive travel expenses, the to exceed \$25 per family per week. Deductions for these expenses are permitted only when such care is necessary to enable a family member to further his or her education or to be gainfully employed, including the gainful employment of the disabled or handicapped family member. When the deduction is to enable gainful employment the amount may not exceed the amount of income received from such employment. When the deduction is to facilitate further education, the amount must not exceed a sum reasonably expected to cover class time and travel time to and from classes. The tenant file must contain justifying documentation. (Child support payments made on behalf of a minor child who does not reside in the unit may not be deducted as a child care expense).

## ATTACHMENT 6-D

### FAMILY ASSETS

- Net family assets include cash on hand and the value of savings, certificates of deposit, and dollars in checking accounts reported as "cash on hand." It will be such amounts reported on the day of third party verification. This definition also includes:
- The net cash value of real property.
  - The cash value of whole life insurance policies.
  - Individual Retirement Accounts (IRAs).
  - Market value of bonds or other forms of capital.
  - Personal property held as investments, irrespective of location, minus debts against them, minus cost of converting such assets to cash. Examples of conversion costs are penalties for early withdrawal, broker/legal fees assessed to sell an asset, and real estate settlement costs for transactions.
- Net family assets also include the value of equity of any business or household assets disposed of by a member of the household for less than fair market value (including disposition in trust, but not in a foreclosure or bankruptcy sale) in excess of the consideration received therefrom during the 2 years preceding the effective date of certification/re-certification. In the case of a disposition as part of a divorce settlement, the disposition shall not be considered to be for less than fair market value if the household member received important consideration not measurable in dollar terms.
- Income from net family assets which is included in annual income is determined as follows:
- If net family assets equal \$5,000 or less, annual income includes the actual income derived from the net family assets.
  - If net family assets exceed \$5,000, annual income includes the greater of:
  - Actual income derived from all net family assets, or
  - A percentage of the cash value of such assets based on the bank passbook annual savings rate.
- Net family assets exclude:
- Interests in Indian trust land.
  - The value of necessary items of personal property such as furniture and automobiles(s), and the debts against them.
  - The assets that are part of the business, trade, or farming operation in the case of any member of the household who is actively engaged in such operation.

- The value of a trust fund (i.e., for a minor or legally incompetent household member) that has been established and the trust is not revocable by, or under the control of, any member of the household, so long as the fund continues to be held in trust.
- A vehicle specially equipped for the handicapped.
- Face value of life insurance policies.
- A cooperative member's patronage capital in the housing cooperative unit in which the family resides.
- Prepaid funerary arrangements and expenses.
- Retirement funds not accessible for withdrawal by a household member.
- Assets legally owned but not accessible or that accrue income to someone else.
- Savings accounts of dependent minors when such accounts are under the minor's social security number.

## ATTACHMENT 6-E LEASE REQUIREMENTS

### A. Lease Structure

- All leases must be in writing.
- Initial leases must cover a one-year period.
- If the tenant is not subject to occupancy termination according to 7 CFR 3560.158 and 7 CFR 3560.159, a renewal lease or lease extension addendum must cover a one-year period.
- In areas with a concentration of non-English speaking tenants, leases must be available to tenants in both English and the appropriate additional language.
- Leases must give address (es) to which to direct complaints.
- Leases must include statement terms and conditions for modifying the lease.

### B. Required Lease Clauses

Leases for all multi-family housing must include a number of specific clauses as listed below:

- The requirement to move or pay an increased rent if household income increases above moderate income. (This clause does not apply to leases for persons who are elderly, disabled, or handicapped and living in a full-profit plan development.)
- The requirement that tenants move out of the project within 30 days of being notified by the borrower that they are no longer eligible for occupancy unless the conditions cited in 7 CFR 3560.158(c) exist.
- The requirement that tenants notify borrowers regarding changes in income, citizenship, or number of persons living in the unit.
- The requirement for tenants to notify borrowers in a situation of extended tenant absences.
- The requirements for making restitution when a household receives benefits to which it is not entitled and a statement advising tenants that the submission of false information could result in the initiation of legal action by the Agency.
- The requirement that tenants agree to income certification.
- The requirement that the household's tenancy is subject to compliance with the terms of all applicable assistance programs covering the unit and/or project.
- The requirement that during acceleration and foreclosure proceedings:
  - ◊ The tenant contribution must remain as if interest credit and/or rental subsidy were still in place and available had acceleration not occurred; and
  - ◊ The terms of the lease will remain in effect until the date acceleration and/or foreclosure is resolved.

Leases for tenants who have a *Handbook Letter 201, Letter of Priority Entitlement (LOPE)* and are temporarily occupying a unit for which they are not eligible must include a clause establishing the tenant's responsibility to move when a suitable unit becomes available.

Leases must contain an escalation clause permitting changes in basic/note rate rents before the lease expires. Changes must be approved by the Agency.

Leases must specify no escalation in tenant contribution due to loan prepayment or when rental assistance or interest credit is terminated due to the fault of management or the owner, or due to liquidation and acceleration of the note.

Leases must include statement that tenant's payment will not change if Federal subsidies paid to borrower on behalf of tenants are suspended or canceled, for the term of the lease.

Leases must include statement that the project is financed by the Agency and that the Agency has the right to further verify information provided by the applicant.

Leases must say that project is subject to:

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Fair Housing Act
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- The Americans with Disabilities Act

Leases must specify requirements (and exceptions) to move to the next available appropriately sized unit, if the unit becomes overcrowded, underused, or should the tenant no longer meet eligibility requirements.

Leases must include a provision that establishes when a guest will be considered a member of the household and be required to be added to the tenant certification.

Leases must include a provision that tenancy remains in place as long as the tenant's possessions remain in the apartment, even after tenant has left. This is the case until possessions are removed voluntarily or by legal means, subject to state and local law.

Leases for rental assistance units must include specific clauses. These clauses must be signed by the lessor and lessee, and specify:

- The tenant's gross monthly contribution, and under what circumstances it may change; and that
- The tenant contribution will not increase if rental assistance is terminated due to actions by borrowers.

For tenants living in Plan II interest credit units, leases must include a provision on gross monthly contribution.

All leases, including renewals, must include the following language:

"It is understood that the use, or possession, manufacture, sale, or distribution of an illegal controlled substance (as defined by local, state, or Federal law) while in or on any part of this apartment complex or cooperative is an illegal act. It is further

understood that such action is a material lease violation. Such violations (hereinafter called 'drug violation[s]') may be evidenced upon the admission to or conviction of a drug violation. It is further understood that domestic violence will not be tolerated on Rural Housing properties, and that such action is a material lease violation. All perpetrators will be evicted, while the victim and other household occupants may remain in the unit in accordance with eligibility requirements.

The landlord may require any lessee or other adult member of the tenant household occupying the unit (or other adult or non-adult person outside the tenant household who is using the unit) who commits a drug violation or domestic violence to vacate the leased unit permanently, within time frames set by the landlord, and not thereafter enter upon the landlord's premises or the lessee's unit without the landlord's prior consent as a condition for continued occupancy by members of the tenant household. The landlord may deny consent for entry unless the person agrees not to commit a drug violation or domestic violence in the future and is either actively participating in a counseling or recovery program, complying with court orders related to a drug violation or domestic violence, or has completed a counseling or recovery program.

The landlord may require any lessee to show evidence that any non-adult member of the tenant household occupying the unit, who committed a drug violation or domestic violence, agrees to not commit a drug violation or domestic violence in the future, and to show evidence that the person is either actively seeking or receiving assistance through a counseling or recovery program, complying with court orders related to a drug violation or domestic violence, completed a counseling or recovery program within time frames specified by the landlord as a condition for continued occupancy in the unit. Should a further drug violation or domestic violence be committed by any non-adult person occupying the unit, the landlord may require the person to be severed from tenancy as a condition for continued occupancy by the lessee.

If a person vacating the unit, as a result of the above policies, is one of the lessees, the person shall be severed from the tenancy and the lease shall continue among any other remaining lessees and the landlord. The landlord may also, at the option of the landlord, permit another adult member of the household to be a lessee.

Should any of the above provisions governing a drug violation be found to violate any of the laws of the land, the remaining enforceable provisions shall remain in effect. The provisions set out above do not supplant any rights of tenants afforded by law."

For handicapped-accessible units occupied by those not needing its special features, a lease must discuss situations where management has made a temporary unit assignment, and specify who bears the cost of moving the tenant to another unit. Additionally, the lease clause must require the management to provide the tenant written notification when they must move within 30 days of notification from management that an eligible applicant with disabilities requires the unit.

The household in the unit with accessibility features will be required to move within 30 days of the housing project's receipt of a tenant application requiring accessibility features if another suitably sized unit without accessibility features is available in the project. If a suitably sized unit is not available in the project within 30 days, the tenant



may remain in the unit with accessibility features until the first available unit in the project becomes available and then must move within 30 days.

Prepayment is subject to restrictive-use covenants. If prepayment occurs, leases and renewals must be amended to include a clause specifying tenant protections.

### **C. Required Information**

All leases must contain the following information and provisions:

- The name of the tenant, any co-tenants, and all members of the household residing in the unit.
- The identification of the unit.
- The amount and due date of monthly tenant contributions and late payment penalties.
- The utilities, services, and equipment to be provided for tenants.
- The tenant's utility payment responsibility.
- The certification process for determining tenant occupancy eligibility and contribution.
- The limitations of the tenant's right to use or occupancy of the dwelling.
- The tenant's responsibilities regarding maintenance and obligations if tenant fails to fulfill these responsibilities.
- The agreement of management to accept tenant payment regardless of other charges that the tenant owes, and management's agreement to seek legal remedy for collecting other charges accrued by the tenant.
- The maintenance responsibilities of management in buildings and common areas, according to state and local codes, Agency rules, and fair housing requirements.
- The responsibility of management at move-in and move-out to provide tenants with a written statement of the unit's condition, and provisions for tenant participation in inspection.
- The provision for periodic inspections by the borrower or management, and other circumstances under which management may enter the premises while a tenant is renting.
- The tenant's responsibility to notify management of an extended absence, as defined in the lease.
- The agreement that tenants may not sublet the property without management or Agency consent.
- The provision regarding transfer of the lease if the project is sold to an Agency-approved buyer.
- The procedures that must be followed by management and the tenant in giving notice required under terms of the lease.

- The good-cause circumstances under which management may terminate the lease and length of notice required.
- The disposition of the lease if the housing becomes uninhabitable due to fire or other disaster, including the borrower's rights to repair the building or terminate the lease.
- The procedures for resolution of tenant grievances consistent with the requirements of 7 CFR 3560.160.
- The terms under which a tenant may, for good cause, terminate a lease with 30 days' notice prior to lease expiration.
- The signature clause indicating that the lease has been executed by the borrower and the tenant.

#### **D. Projects and Units Receiving HUD Assistance**

In multi-family projects receiving project-based assistance under Section 8 of the Housing Act of 1937, borrowers may use the HUD model lease. The provisions of the HUD model lease will prevail, unless they conflict with Agency lease requirements in accordance with this section. If there is conflict between HUD requirements and Agency requirements, the provision that will be enforced will be the one that is most favorable to the tenant.

A clause must be inserted into the lease requiring that tenants ineligible at recertification must leave the property unless allowed to stay under their HUD lease.

For HUD Section 8 certificate and voucher holders, borrowers may use:

- A standard HUD-approved lease;
- A HUD-approved lease that includes a number of modifications; or
- An Agency-approved lease if acceptable to HUD or the local housing authority.

#### **E. State and Local Requirements**

Borrowers must use a lease that is consistent with state and local requirements.

- If any lease provision is in violation of state or local law, the lease may be modified to the extent needed to comply with the law, but any changes must be consistent, to the greatest extent possible, with the required provisions established in 7 CFR 3560.156(c).
- Leases must include procedure for handling tenant's abandoned property, as provided by state law.

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## ATTACHMENT 6-F

### PROHIBITED LEASE CLAUSES

Borrowers are prohibited from including any of the following clauses in the lease:

- Clauses prohibiting families with children under 18.
- Clauses prohibiting occupancy by a handicapped person willing and able to modify the unit at their own expense.
- Clauses requiring prior consent by tenant to any lawsuit that borrowers may bring against the tenant in connection with the lease.
- Clauses authorizing borrowers to hold any of a tenant's property until the tenant fulfills an obligation.
- Clauses in which tenants agree not to hold borrowers liable for anything they may do or fail to do.
- Clauses in which tenants agree that borrowers may bring suit against the tenant without notice.
- Clauses in which tenants agree that borrowers may evict the tenant or sell their possessions whenever they determine that a breach or default has occurred.
- Clauses authorizing the borrower's attorney to appear in court on behalf of the tenant, and to waive their right to a trial by jury.
- Clauses authorizing the borrower's attorney to waive the tenant's right to appeal or to file suit.
- Clauses requiring the tenant to agree to pay legal fees and court costs whenever the borrower takes action against the tenant, even though court may find in favor of the tenant.