

ACOP Development Guide



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CHAPTER 3: LEASE REQUIREMENTS



This document is part of the Admissions and Continued Occupancy Policy (ACOP) Development Guide. The full ACOP Guide includes nine chapters on different topics addressed in a typical ACOP.

To see the full ACOP Guide go to:

<https://www.hudexchange.info/programs/public-housing/admissions-and-continued-occupancy-policy-toolkit/>

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CHAPTER 3: LEASE REQUIREMENTS

OVERVIEW

The purpose of this chapter is to provide PHAs with guidance for drafting dwelling lease policies in an Admissions and Continued Occupancy Policy (ACOP). The Public Housing landlord-tenant relationship is governed by state and federal statute, common law, federal regulation, and the individual lease. HUD stipulates required and prohibited provisions for public housing leases. In addition, PHAs are permitted to add other provisions that are reasonable and in accordance with local, state and federal law. It is important to ensure that the occupancy policies and dwelling leases are consistent with HUD guidelines as well as local law.

This section will demonstrate options for incorporating the appropriate lease language and policies into an ACOP. While PHAs do not have to copy lease language verbatim into their ACOPs, it is important to include language that references the key requirements of the lease. The requirements for Public Housing leases are specified in 24 CFR Part 966 Subpart A.

Public Housing leases also must comply with fair housing laws (24 CFR § 100.65), which prohibit using a lease or lease terms or conditions to discriminate based on race, color, religion, sex, handicap, familial status, or national origin. Generally, PHAs must provide the same lease terms, conditions, and privileges to all tenants regardless of disability, except where an accommodation is necessary to ensure the family with a disability has full and equal enjoyment of the housing. A request for a reasonable accommodation may not be unreasonably denied or conditioned on payment of a fee or deposit or other terms and conditions, and a response may not be unreasonably delayed. Reasonable accommodations can include modifications of the rules, policies, practices, procedures, or physical modifications.

When drafting an ACOP, PHAs must consider the distinction between **Mandatory** (non-Discretionary) and **Discretionary** policies.



Mandatory Policies

Mandatory policies must comply with HUD and other regulations and must be included in the ACOP. Mandatory policies are those prescribed in statute and regulation that must be part of the ACOP and for which PHAs have no flexibility.



Discretionary Policies

Discretionary policies are areas where the PHA has flexibility to define policies, typically within a given set of parameters. They may be unique to the PHA and based on industry best practices. These policies must still comply with Federal, State and local laws as well as HUD guidance.

TOPICS COVERED IN THIS CHAPTER

The following are key components addressed in this chapter.

- 3.1 Pre-Leasing Activities and Leasing Orientation
- 3.2 Execution of Lease
- 3.3 Security Deposits
- 3.4 Rent Payments
- 3.5 Late Fees and Non-Payment of Rent
- 3.6 Excess Utility Charges
- 3.7 Maintenance and Damage Charges
- 3.8 Modifications to the Lease
- 3.9 Lease Terminations

Learn More About Lease Requirements in the Public Housing Occupancy Guidebook

This chapter outlines the U.S. Department of Housing and Urban Development's (HUD) requirements for establishing a lease for families in the Public Housing program and provides guidance to PHAs for initial and renewal terms, occupancy, and enforcement.



[LEASE REQUIREMENTS](#)

3.1 PRE-LEASING ACTIVITIES AND LEASING ORIENTATION



Helpful Tips

- ✓ It is a best practice to share information with new tenants during a leasing orientation. This is an opportunity to provide the household with the required documents and information about being a PHA resident.
- ✓ It is a best practice to include the agenda items for a leasing orientation in the ACOP.
- ✓ In addition to the required documents that must be posted and made available to tenants, PHAs may wish to share other useful materials during the orientation, such as flat rent schedules. Some PHAs, as a general practice, provide these schedules and reference documents to each tenant at move-in.



Mandatory Policies

- In addition to incorporating references to the lease in the ACOP, the following schedules and reference documents must be publicly posted in a conspicuous place in each development's office and provided to applicants and tenants upon their request (24 CFR Part 966.5):
 - Grievance procedures (24 CFR § 966.52(b)).
 - Rules adopted and implemented by the PHA for the benefit and well-being of the housing project and the tenants (24 CFR § 966.4(f)(4)).
 - Schedules of utilities, if used to determine charges to tenants (e.g., utility allowances, excess utility charges) (24 CFR § 966.4(b)(2)).
 - Schedules of repairs, if used to determine charges to tenants (e.g., maintenance charges) (24 CFR § 966.4(b)(2)).
 - Schedules of maintenance service charges, if used to determine charges to tenants (e.g., lockout charges) (24 CFR § 966.4(b)(2)).
 - Pet rules (if any) must be incorporated in leases for projects designated for elderly or disabled households (24 CFR § 5.321(a)(1)(ii)).
- The two HUD rules related to lead-based paint that affect public housing leases are the [Lead Disclosure Rule](#) and the Lead Safe Housing Rule (24 CFR Part 35). These rules apply to all housing that was constructed prior to 1978, except housing for the elderly, persons with disabilities, or any zero-bedroom dwelling, unless a child of less than 6 years of age resides or is expected to reside in such housing for the elderly, persons with disabilities, or zero-bedroom dwelling (24 CFR § 35.86 and 35.110).
- PHAs must ensure that the lease, lease addendum, or tenant addendum describes specific protections afforded to victims of domestic violence, dating violence, sexual assault, or stalking. This includes incorporating appropriate regulatory definitions, provisions regarding documenting Violence Against Women Act (VAWA) status and describing the remedies available to victims of domestic violence, dating violence, sexual assault,

or stalking as applicable to the Public Housing program, including emergency transfers. This includes providing tenants with the [HUD-5380](#) Notice of Occupancy Rights Under the Violence Against Women Act and [HUD-5382](#) Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation.



Discretionary Policy Considerations

- It is good practice to develop house rules for public housing properties. In house rules, the PHA can identify allowable and prohibited activities. House rules are related to the safety, care, and cleanliness of the building or the safety and comfort of the tenants.
- House rules are also a place for the PHA to offer additional clarity on certain expectations that may not be clearly defined in the lease.
- House rules also need to be reasonable, which means they are within the bounds of common sense, are not excessive or extreme, and most importantly, are fair. The following are examples of house rules that are common and reasonable:
 - Requesting that all visitors sign in when entering the building.
 - Asking tenants to turn sound equipment low after a certain time at night.
 - Asking all children under the age of 12 to be accompanied by an adult resident when using building facilities.
- House rules are generally listed in the lease as an attachment to the lease. It is important, however, to recognize that house rules do not replace the lease. The rules must not discriminate or create a disparate impact on tenants based on race, color, national origin, religion, sex, disability, or familial status.
- Any changes to the house rules are subject to the same notice and comment requirements for changes to the lease.

Sample ACOP Language

LEASING ORIENTATION

It is **USA HOUSING AGENCY**'s policy that all units must be occupied pursuant to a dwelling Lease Agreement that complies with HUD's regulations. This ACOP Chapter describes pre-leasing activities and **USA HOUSING AGENCY**'s policies pertaining to Lease execution, security deposits, other charges, and additions to the Lease.

After unit acceptance but prior to occupancy, a **USA HOUSING AGENCY** representative will conduct a lease orientation with the family. The head of household or spouse is required to attend.

Orientation Agenda

When families attend the lease orientation, they will be provided with:

- A copy of the lease
- A copy of the **USA HOUSING AGENCY**'s grievance procedure
- A copy of the house rules
- A copy of the **USA HOUSING AGENCY**'s schedule of maintenance charges
- A copy of the pamphlet [Protect Your Family from Lead in Your Home](#)
- A copy of "Is Fraud Worth It?" (form [HUD-1141-OIG](#)), which explains the types of actions a family must avoid and the penalties for program abuse
- A copy of "What You Should Know about EIV," a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-19
- Information and Notice of Occupancy Rights for the protections afforded by the Violence Against Women Act of 2013 (VAWA) to victims of domestic violence, dating violence, sexual assault, and stalking
- A copy of the form HUD-5380 Notice of Occupancy Rights Under the Violence Against Women Act
- A copy of form HUD-5382 Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation
- A copy of the PHA's smoke-free policy
- A notice that includes the procedures for requesting relief and the PHA's criteria for granting requests for relief for excess utility surcharges
- A copy of the Community Service and Self-Sufficiency Requirement and a copy of the acknowledgement form

Topics to be discussed and explained to all families include:

- Applicable deposits and all other charges
- Review and explanation of lease provisions
- Unit maintenance requests and work orders
- The **USA HOUSING AGENCY**'s interim reporting requirements
- Review and explanation of occupancy forms
- Community Service and Self-Sufficiency Requirements (CSSR)
- Family choice of rent including information on minimum rent and hardship requests
- VAWA protections
- Smoke-free policies

Sample ACOP Language

Public Posting of Information

USA HOUSING AGENCY will post a copy of the schedules of special charges and PHA rules and regulations. The documents will be posted in the central office and in in three conspicuous places within each structure or building. In addition, the documents will be posted on the **USA HOUSING AGENCY** website. The following schedules and reference documents will be posted by the **USA HOUSING AGENCY** for residents to access:

- Grievance procedures
- Rules adopted and implemented by the PHA for the benefit and well-being of the housing project and the tenants (e.g., house rules)
- Schedules of utilities, if used to determine charges to tenants (e.g., utility allowances, excess utility charges)
- Schedules of repairs, if used to determine charges to tenants (e.g., maintenance charges)
- Schedules of maintenance service charges, if used to determine charges to tenants (e.g., lockout charges)
- Pet ownership rules
- The Admissions and Continued Occupancy Policy (ACOP) document
- Any other documents provided at PHA discretion

3.2. EXECUTION OF LEASE



Helpful Tips

- ✓ The lease is a standalone document separate from the ACOP and PHAs cannot change the terms of the lease within the ACOP.
- ✓ When developing an ACOP, PHAs must incorporate by reference certain provisions in the lease text. The U.S. Housing Act of 1937 and HUD's implementing regulations at 24 CFR § 966 require PHAs to utilize leases that outline the provisions that apply to public housing tenancy.



Mandatory Policies

- PHAs must execute a lease with each tenant (24 CFR § 966.4) and there are certain mandatory provisions that must be incorporated into the lease.
- A lease is executed at the time of admission for all new residents. A new lease is also executed at the time of transfer from one unit to another.
- The lease must identify the following information (24 CFR § 966.4(a)(1)):
 - The names of the PHA and the tenant.
 - The unit rented (address, apartment number, and any other information needed to identify the dwelling unit).
 - The term of the initial lease and renewal terms (24 CFR § 966.4(a)(1)(iii)).
 - The lease term must be for twelve months and the lease term must be automatically renewed for the same period (24 CFR § 966.4(a)(2)(i)).
 - A statement of what utilities, services, and equipment are to be supplied by the PHA without additional cost, and what utilities and appliances are to be paid for by the tenant.
 - The composition of the household as approved by the PHA (family members and any PHA-approved live-in aide). The family must promptly inform the PHA of the birth, adoption, or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit.
 - HUD's regulations in 24 CFR part 5, subpart L about the Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking. This is also known as VAWA.
 - The PHA's smoke-free rules (24 CFR § 965.655).



Discretionary Policy Considerations

- The PHA has discretion about how the lease document is delivered and signed. This could be done in-person or electronically, as long as the lease is fully explained prior to execution. For example, some PHAs may require all adult household members to sign the lease.
- While HUD regulations state that the lease term must be for twelve months, the PHA has discretion about the terms under which a lease is renewed. This level of detail would be included in the lease itself.

Sample ACOP Language

EXECUTION OF LEASE

The initial term of the Lease will be for 12 months. The Lease will renew automatically for 12-month terms, except for noncompliance with any section of the Lease requirements.

The Lease shall be executed by the head of household, spouse, and by an authorized representative of the **USA HOUSING AGENCY**, prior to admission.

The head of household is the person who assumes legal and financial responsibility for the household and is listed on the application as head.

An appointment will be scheduled for the parties to execute the Lease. One executed copy of the Lease will be given to the tenant, and **USA HOUSING AGENCY** will retain one in the tenant's file. The Lease document will reflect current **USA HOUSING AGENCY** policies as well as applicable Federal, State, and local law.

Files for households that include a live-in aide will contain file documentation signed by the live-in aide, that the live-in aide is not a party to the lease and is not entitled to **USA HOUSING AGENCY** assistance. The live-in aide is only approved to live in the unit while serving as the care attendant for the family member who requires the care.

The Lease is incorporated into this policy by reference. The following provisions govern Lease execution and amendments:

- A Lease is executed at the time of admission for all new tenants.
- A new Lease is executed at the time of the transfer of a tenant from one housing development unit to another (with no change in anniversary date).
- If, for any reason, the head of household ceases to be a member of the household, **USA HOUSING AGENCY** will consider executing a Lease with the remaining adult family member(s).
- Lease signers must be persons legally eligible to execute contracts.
- The names, Social Security numbers, and date of birth of all household members are listed on the Lease at initial occupancy and on the Reexamination Form each subsequent year. Only those persons listed on the most recent certification shall be permitted to occupy a dwelling unit.
- Whenever there is a change in the family composition, a Lease amendment will be executed.
- Changes to tenant rents are made upon the preparation and execution of a "Notice of Rent Adjustment" by **USA HOUSING AGENCY**, which becomes an attachment to the Lease. Documentation will be included in the tenant file to support proper notice.
- Households that include a Live-In Aide will contain file documentation and a lease provision that the Live-In Aide is not a party to the Lease and is not entitled to **USA HOUSING AGENCY** assistance, except for occupancy while serving as the attendant for the tenant family member. Only one additional bedroom can be assigned to a Live-In Aide to accommodate the Live-In Aide only.

Sample ACOP Language

- The lease must include a Lead Disclosure Addendum that is signed and dated by the **USA HOUSING AGENCY**, any leasing agent of the **USA HOUSING AGENCY**, and the tenant(s). The Lead Disclosure Lease Addendum must:
 - Contain the required Lead Warning Statement;
 - Disclose the presence of known lead-based paint and lead-based paint hazards;
 - Disclose whether the **USA HOUSING AGENCY** has records or reports that are being provided or that there are no records or reports to disclose;
 - Document the receipt by the tenant of the EPA pamphlet and of records and reports on lead-based paint and lead-based paint hazards; and
 - Include a statement that acknowledges that the tenant received the lead disclosure statement, including any records or reports, and the pamphlet and certifies the accuracy of these statements.
- The lease, lease addendum, or tenant addendum must include the specific protections afforded to victims of domestic violence, dating violence, sexual assault, or stalking. This includes regulatory definitions, provisions regarding documenting Violence Against Women Act (VAWA) status and descriptions of the remedies available to victims of domestic violence, dating violence, sexual assault, or stalking as applicable to the Public Housing program, including emergency transfers.

Lease Amendments for Family Composition Modifications

The lease will be amended to reflect all changes in family composition. If, for any reason, any member of the household ceases to reside in the unit, the lease will be amended by drawing a line through the person's name. The head of household and **USA HOUSING AGENCY** will be required to initial and date the change.

If a new household member is approved by the **USA HOUSING AGENCY** to reside in the unit, the person's name and birth date will be added to the lease. The head of household and **USA HOUSING AGENCY** will be required to initial and date the change. If the new member of the household is an adult, s/he will also be required to sign and date the lease.

Policies governing when and how changes in family composition must be reported are contained in the Chapter on Reexaminations.

3.3. SECURITY DEPOSITS



Helpful Tips

- ✓ For PHAs that choose to charge a security deposit, it is a standard practice to set the amount as equal to one month's rent.
- ✓ PHAs may also choose to structure a payment plan option to allow the tenant to pay the security deposit over a period of time via installments.
- ✓ In some cases, a tenant may disagree with the amount withheld from the security deposit which is used to cover allowable damages or repairs. As a best practice, some PHAs offer to meet with the tenant to discuss the security deposit after moving out in addition to any final walk throughs the PHA conducts of the unit. This is offered outside of the formal grievance process because the former tenant is no longer living in a PHA property.



Mandatory Policies

- If the PHA requires a security deposit, the amount and parameters must be listed in the lease.
- Based on local and state law, any interest earned on security deposits must be returned to the tenants when they vacate the unit or, if there is money owed by the tenant to the PHA, it may be used for tenant services or activities (24 CFR § 966.4(b)(5)).



Discretionary Policy Considerations

- PHAs may choose to require a security deposit. If so, the deposit cannot exceed one month's rent, or a reasonable fixed amount set by the PHA.
- PHAs may also enact policies to allow tenants to gradually accumulate security deposits.

Sample ACOP Language

Tenants must pay a security deposit to the **USA HOUSING AGENCY** at the time of admission. The amount of the security deposit will be equal to one month's rent at the time of move-in and must be paid in full prior to occupancy. The dollar amount of the security deposit is noted in the Lease.

The **USA HOUSING AGENCY** reserves the right to allow a new resident to pay their security deposit in up to six (6) monthly payments, with one sixth being paid in advance and the remaining balance paid within the next five (5) consecutive months. This shall be at the sole discretion of **USA HOUSING AGENCY** and even in cases of hardship, the **USA HOUSING AGENCY** reserves the right to require a minimum security deposit amount, noted in the Lease, or extend the repayment period with prior approval. Any payment agreements for the Security Deposit are required to be approved by the **USA HOUSING AGENCY** prior to execution of the agreement.

The **USA HOUSING AGENCY** will hold the security deposit for the period the family occupies the unit. The **USA HOUSING AGENCY** will not use the security deposit for rent or other charges while the tenant is living in the unit.

Within 30 days of move-out, the **USA HOUSING AGENCY** will refund to the tenant the amount of the security deposit (including interest earned on the security deposit), less any amount needed to pay the cost of unpaid rent, damages listed on the move-out inspection report that exceed normal wear and tear, and other charges due under the lease.

The **USA HOUSING AGENCY** will provide the tenant with a written list of any charges against the security deposit within 10 business days of the move-out inspection. If the tenant disagrees with the amount charged, the **USA HOUSING AGENCY** will provide a meeting to discuss the charges. The meeting is offered outside of the agency's grievance process as the tenant is no longer considered a current tenant after they have moved out of the unit.

If the tenant transfers to another unit, the **USA HOUSING AGENCY** will transfer the security deposit to the new unit. The tenant will be billed for any maintenance or other charges due for the "old" unit.

3.4. RENT PAYMENTS



Helpful Tips

- ✓ It is a best practice for rent to be due on the first of the month.



Mandatory Policies

- The lease must specify the amount of rent due, both for a full month and the pro-rated amount for the initial or final partial month, if applicable.
- The PHA must also include a statement in the ACOP that the amount of the tenant rent is subject to change subject to a written notice in accordance with HUD requirements (24 CFR § 966.4(b)(1)(ii)).
- Tenants have the right to choose between income-based or flat rent annually (24 CFR § 960.253).



Discretionary Policy Considerations

- The PHA may indicate in the lease whether a tenant has opted to pay a flat rent, an income-based rent, or an alternative rent.

Sample ACOP Language

RENT PAYMENTS

Families must pay the amount of the monthly tenant rent determined by the **USA HOUSING AGENCY** in accordance with HUD regulations and other requirements. The amount of the tenant rent is subject to change in accordance with HUD requirements.

The lease must specify the initial amount of the tenant rent at the beginning of the initial lease term, and the **USA HOUSING AGENCY** must give written notice stating any change in the amount of tenant rent and when the change is effective.

The tenant rent is due and payable at the **USA HOUSING AGENCY**-designated location on the first of every month. If the first falls on a weekend or holiday, the rent is due and payable on the first business day thereafter.

If a family's tenant rent changes, the **USA HOUSING AGENCY** will notify the family of the new amount and the effective date by sending a "Notice of Rent Adjustment" which will become an attachment to the lease at least 30 days before the effective date.

3.5. LATE FEES AND NON-PAYMENT OF RENT



Helpful Tips

- ✓ In October 2021, HUD issued PIH Notice 2021-29, which temporarily increased the minimum notification of lease termination for nonpayment of rent to 30 days during the period for which HUD determines that a national emergency requires additional time for families to be able to secure available funding to prevent eviction. PHAs must inform tenants of the availability of such funding with the 30-day notification. If the PHA's ACOP references a lease termination process for nonpayment of rent of less than 30 days, the PHA must update the ACOP.
- ✓ In such instances, HUD strongly encourages PHAs to familiarize themselves with the information available on the Department of Treasury (or other relevant) website to be able to answer questions that affected families may have.



Mandatory Policies

- In the case of non-payment of rent, the PHA generally must give the tenant at least a 14-day written notice of lease termination (24 CFR § 966.4 (l)(3)(i)(A)).
- When there is a Presidential declaration of a national emergency and Federal funding for emergency rental assistance is available for tenants, HUD may determine that tenants need a longer notification period for lease termination in order to apply for and access assistance. When HUD issues a notice to that effect (as happened in 2021 with Notice PIH 2021-29), the PHA must provide at least a 30-day notification of lease termination for nonpayment of rent (24 CFR § 966.8). The expanded timeframe remains in effect until a subsequent HUD notice rescinds it.
- While the 30-day notification requirement is in effect, the PHA's notification must additionally provide information on the availability of emergency rental assistance and how to secure it. The HUD notice activating the 30-day requirement provides specific language that must be incorporated into this notification (see Notice PIH 2021-29).
- PHAs are not required to incorporate the minimum 30-day notification requirement into tenants' leases. Instead, when the 30-day notification requirement is activated, PHAs are required to

notify all public housing families of the expanded timeframe. PHAs may comply with this notification requirement by providing such notifications in writing or through electronic communications. If a PHA's ACOP references a lease termination process for nonpayment of rent of less than 30 days, the PHA must update the ACOP.

- Many state statutes draw a distinction between lease termination and eviction actions for non-payment of rent and lease termination actions for other good cause. When evicting for failure to pay non-rent charges, PHAs must follow state laws (if any) that apply to eviction for good cause (24 CFR § 966.4(l)(3)(i)(C)).



Discretionary Policy Considerations

- PHAs may charge a penalty fee for late payment of rent. A typical late fee amount is \$25. The PHA will need to indicate the amount in the ACOP.
- PHAs have flexibility as to whether and when to terminate the tenancy of a household for nonpayment of rent. PHAs may include nonpayment of rent as a serious and repeated lease violation in the lease.

Sample ACOP Language

LATE FEES AND NON-PAYMENT OF RENT

The tenant rent is due and payable on the first of every month. If the first falls on a weekend or holiday, the rent is due and payable on the first business day thereafter. Rent is considered delinquent after the fifth day of the month.

If the tenant fails to pay their rent by the fifth day of the month, and the **USA HOUSING AGENCY** has not agreed to accept payment at a later date, a Notice to Vacate will be issued to the tenant for failure to pay rent, demanding payment in full or the surrender of the premises. The Notice to Vacate will give the tenant at least 14 days before the PHA takes action to terminate the lease unless an extended time period is mandated by HUD. During periods of national emergency when Federal emergency assistance is available to tenants, the Notice to Vacate may give tenants at least 30 days. All tenants will be notified when the longer notification timeframe is adopted.

In addition, if the tenant fails to make payment by the end of office hours on the fifth day of the month, a late fee of \$25.00 will be charged. Notices of late fees will be in accordance with requirements regarding notices of adverse action. Charges are due and payable 14 calendar days after billing. If the family requests a grievance hearing within the required timeframe, the **USA HOUSING AGENCY** may not take action for nonpayment of the fee until the conclusion of the grievance process. If the tenant can document financial hardship, the late fee may be waived on a case-by-case basis.

When a check is returned for insufficient funds or is written on a closed account, the rent will be considered unpaid and a returned check fee of \$25.00 will be charged to the tenant. The fee will be due and payable 14 days after billing.

3.6. EXCESS UTILITY CHARGES



Helpful Tips

- ✓ The basis for calculating excess utility charges needs to be described in the PHA's schedule of allowances. It is a best practice for PHAs to maintain and update a separate schedule of allowances and simply refer to it in the ACOP, instead of including the schedule in the ACOP.
- ✓ Additional detail about utilities and utility charges can be found in the Public Housing Occupancy Guidebook chapter on [Utilities](#).



Mandatory Policies

- If the PHA chooses to charge for excess consumption of utilities, the lease must state how these charges will be determined and the amounts that will be charged (24 CFR § 966.4(b)(2)).
- PHAs must charge for excess consumption of PHA-furnished utilities if the excess consumption can be determined by an individual utility meter.
- PHAs must also surcharge even in the absence of individual meters (e.g., the building is on a master meter) where excess is tied to resident-owned major appliances (e.g., window A/C) or the residents have the option to control PHA-furnished equipment (e.g., they can control in-unit A/C).
- Remember that schedules of special charges for utilities that are required to be incorporated in the lease by reference must be publicly posted in a visible manner in the development office and must be furnished to applicants and tenants on request (24 CFR § 966.5).



Discretionary Policy Considerations

- PHAs can decide how excess utility charges are computed— either on a straight per unit of purchase basis (e.g., cents per kilowatt hour of electricity) or for stated blocks of excess consumption based on the PHA's average utility rate (24 CFR § 965.506).
- PHAs may choose to grant tenant requests for relief from surcharges for excess consumption of PHA-purchased utilities, or from payment of utility supplier billings in excess of the allowances for resident-purchased utilities. The requests need to be based on reasonable grounds, such as special needs of elderly, ill or residents with disabilities, or special factors affecting utility usage not within the control of the resident, as the PHA deems appropriate. The PHA criteria for granting such relief, and procedures for requesting such relief, need to be adopted at the time the PHA adopts the methods and procedures for determining utility allowances (24 CFR § 965.508).

Sample ACOP Language

EXCESS UTILITY CHARGES

When applicable, tenants will be charged for excess utility usage according to the **USA HOUSING AGENCY**'s current posted schedule. Notices of excess utility charges will be mailed monthly and will be in accordance with requirements regarding notices of adverse actions. Charges are due and payable 14 calendar days after billing. If the tenant requests a grievance hearing within the required timeframe, the **USA HOUSING AGENCY** may not take action for nonpayment of the charges until the conclusion of the grievance process.

Individual Resident Relief from Excess Electricity Utility Surcharges

The **USA HOUSING AGENCY** may grant requests for relief from surcharges for excess utility consumption of PHA-furnished utilities where the PHA deems an exception is appropriate. In determining whether to grant this request, the **USA HOUSING AGENCY** will consider special factors affecting utility usage that are not within the control of the resident, such as the need for medical equipment.

Residents wishing to request relief under this provision should contact the Property Manager of the development in which the resident resides. Residents must provide written documentation to support a request for relief. Requests will not normally be acted upon without this documentation. Exceptions will be considered on a case-by-case basis. **USA HOUSING AGENCY** has sole discretion to grant relief under this procedure without documentation. Adjustments to utility allowances will be effective beginning the month for which the request was made.

Notice of the availability of procedures for requesting relief (including the PHA representative with whom initial contact may be made by the resident) and the criteria for granting requests will be included in each notice to residents of changes in utility allowances or surcharges as well as to new residents as part of the lease orientation.

Reasonable Accommodations in Adjusting the Utility Allowance

On request from a family that includes a person with a disability **USA HOUSING AGENCY** must approve a utility allowance that is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed to make the program accessible to and usable by the family. The policy of the **USA HOUSING AGENCY** is to adjust the amount of tenant-paid utilities or PHA consumption levels for tenant allowances in documented situations when a qualified family is entitled to the adjustments.

Such adjustments shall be made based on the qualification of the individual's disability-related need, and the relief granted to the resident should be commensurate with the estimated value of the utility consumption necessitated by the equipment or condition causing the excess consumption. Residents wishing to request relief under this procedure should contact the Property Manager of the development in which the resident resides. Residents with disabilities may not be charged for the use of certain resident-supplied appliances if there is a verified need for special equipment because of a disability.

Residents who disagree with a **USA HOUSING AGENCY** decision may request an informal hearing in accordance with the Grievance Procedure, a copy of which is maintained in the management offices.

3.7. MAINTENANCE AND DAMAGE CHARGES



Helpful Tips

- ✓ As a reminder, if the schedule of repair charges is used to determine charges to tenants (e.g., maintenance charges) it must be publicly posted in a conspicuous place in each development's office and provided to applicants and tenants upon their request (24 CFR § 966.5).



Mandatory Policies

- PHAs cannot charge individuals with disabilities for any damage caused by the disability-related use of their assistive devices. For example, an individual cannot be required to put down a larger security deposit because their wheelchair may cause additional damage to walls, or a person cannot be charged a pet deposit or fee for an assistance animal.
- If the PHA does choose to assess charges for maintenance and damage, the lease must state how the charges are determined and must specify that the charges are not due until two weeks after the PHA gives written notice of the charges (24 CFR § 966.4(b)(4)).
- The notice of these charges is an adverse action; therefore, the written notice provided must meet the regulatory notification requirements including stating the specific grounds for the adverse action and stating that the tenant has a right to request a grievance hearing (24 CFR § 966.4(b)(4)).



Discretionary Policy Considerations

- PHAs have the choice to assess charges for maintenance and repair beyond normal wear and tear. These charges may include those for damage to units, common areas, or grounds caused by tenant action or neglect.
- Typically, common maintenance charges (e.g., broken windows, lock replacements) are listed on a schedule of charges that are in addition to rent. If this is done, the schedule of charges must be referenced in the lease or added to the lease as an addendum (24 CFR § 966.4(b)(2)).
- For example, a schedule of repair charges may include a statement that work not covered on the schedule will be charged to the tenant, based on the actual cost of labor and materials to make needed repairs (including overtime, if applicable).

Sample ACOP Language

MAINTENANCE AND DAMAGE CHARGES

When applicable, families will be charged for maintenance and/or damages beyond normal wear and tear according to the *USA HOUSING AGENCY*'s current schedule. Work that is not covered in the schedule will be charged based on the actual cost of labor and materials to make needed repairs (including overtime, if applicable).

Notices of maintenance and damage charges will be mailed monthly and will be in accordance with requirements regarding notices of adverse actions. Charges are due and payable 14 calendar days after billing. If the family requests a grievance hearing within the required timeframe, the *USA HOUSING AGENCY* may not take action for nonpayment of the charges until the conclusion of the grievance process.

Nonpayment of maintenance and damage charges is a violation of the lease and is grounds for termination.

3.8. MODIFICATIONS TO THE LEASE



Helpful Tips

- ✓ Remember that any lease provisions for a particular tenant can be modified (for example, because of a needed reasonable accommodation) at any time through a written agreement, also known as a rider or addendum, by the PHA and the tenant (24 CFR § 966.4(a)(3)).



Mandatory Policies

- Before adopting new lease modifications, PHAs must provide tenants, tenant organizations, and the Resident Advisory Board with at least a 30-day public notice period to review and comment on proposed changes to the lease form used by the PHA (24 CFR § 966.3).
- PHAs must provide a written notice to each affected tenant that describes the revision, explains the reason for it, and provides tenants an opportunity to make written comments. All comments submitted must be considered by the PHA before changes are made.
- A copy of the written notice needs to be delivered directly or mailed to each tenant; or posted in at least three (3) highly visible places within each structure or building in which the affected dwelling units are located, as well as in a visible place at the project office, if any, or if none, a similar central business location within the project (24 CFR § 966.5).



Discretionary Policy Considerations

- When developing policies for the lease modification process, PHAs have policy discretion over the following aspects:
 - The frequency with which the lease form is reviewed.
 - Setting the time and place for meeting with the Resident Advisory Board to discuss lease changes.
 - Details about how the lease modification is posted on the PHA website and how comments are received on the website.
 - Whether to have tenants sign a new lease with changes or to execute a lease addendum with changes to the existing lease.

Sample ACOP Language

MODIFICATIONS TO THE LEASE

The lease may be modified at any time by written agreement of the tenant and *USA HOUSING AGENCY* (24 CFR § 966.4(a)(3)).

MODIFICATIONS TO THE LEASE DOCUMENT

The *USA HOUSING AGENCY* may modify its lease from time to time. However, the *USA HOUSING AGENCY* must give tenants at least thirty (30) days advance notice of the proposed changes and an opportunity to comment on the changes. The *USA HOUSING AGENCY* must also consider any comments before formally adopting a new lease.

After proposed changes have been incorporated into the lease and approved by the Board, each family must be notified at least 60 days in advance of the effective date of the new lease or lease revision. A resident's refusal to accept permissible and reasonable lease modifications that are made in accordance with HUD requirements, or are required by HUD, is grounds for termination of tenancy (24 CFR § 966.4(l)(2)(iii)(E)).

The family will have 30 days to accept the revised lease. If the family does not accept the offer of the revised lease within that 30-day timeframe, the family's tenancy will be terminated for other good cause in accordance with the *USA HOUSING AGENCY* lease termination policies.

When the *USA HOUSING AGENCY* proposes to modify or revise schedules of special charges or rules and regulations, the *USA HOUSING AGENCY* will post a copy of the notice in the central office and will mail a copy of the notice to each resident family. Documentation of proper notice will be included in each resident file.

3.9. LEASE TERMINATIONS



Helpful Tips

- ✓ PHAs should avoid terminating assistance for families based on whether an individual is on probation or parole. Bald assertions based on generalizations or stereotypes that any individual with a conviction record poses a greater risk than any individual without such a record may have a discriminatory effect. Terminating assistance when a PHA discovers persons with a criminal history who may currently be on probation or parole can result in possible re-incarceration as individuals often must comply with a set of probation or parole conditions that typically require attaining and maintaining housing and employment.
- ✓ PHAs are encouraged to work with supportive service providers to establish discretionary termination and eviction policies best suited to the communities served and to develop partnerships that can implement effective eviction prevention strategies.
- ✓ Note that HOTMA will introduce changes for lease termination requirements for over-income families.



Mandatory Policies

- The lease must describe the grounds for termination, as well as the procedures used by the PHA and the tenant to terminate tenancy (24 CFR § 966.4(l)(1)).
- The lease must indicate that PHAs may terminate tenancy only for:
 - Serious or repeated violations of material terms of the lease, such as the failure to make payments due under the lease (24 CFR § 966.4(l)(2)(i)(A)), or failure to fulfill household obligations, as described in tenant obligations (24 CFR § 966.4(l)(2)(i)(B)).
 - Being over the income limits for the program (24 CFR § 966.4(l)(2)(ii); 24 CFR §960.261; Notice PIH 2019-11 (HA)).
- Other good cause such as discovering facts that make the tenant ineligible after admission (24 CFR § 966.4(l)(2)(iii)(B)), or discovery of material, false statements, or fraud by the tenant in connection with an application for assistance or with re-examination of income (24 CFR § 966.4(l)(2)(iii)(C)).
 - Failure to accept the PHA's offer of a lease revision to an existing lease (24 CFR § 966.4(l)(2)(iii)(E)).
 - Criminal activity or alcohol abuse as stated in the lease.
 - Required lifetime participation in a state sex offender registration program.
- The PHA must immediately initiate the lease termination process to terminate tenancy if the PHA determines that any household member has ever been convicted of drug-related criminal activity for the manufacture or production of methamphetamine on the premises of federally assisted housing (24 CFR § 966.4(l)(5)(i)(A)).
- When initiating the process for termination of tenancy for individuals who commit sexual crimes, note that current HUD regulations at 24 CFR § 960.204(a)(4) only require that persons subject to lifetime registration requirements under a state sex offender registration program be banned from admission, not be terminated from tenancy.



Mandatory Policies *(continued)*

- Lease provisions regarding grounds for termination must also address the circumstances of domestic violence, including:
 - Prohibiting construing incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking to be a serious or repeated violation of the lease or good cause for termination of the tenancy, occupancy rights of, or assistance to the victim or the threatened victim of domestic violence, dating violence, sexual assault, or stalking (24 CFR § 5.2005(c) (1)).
 - Prohibiting termination or denial of tenancy, occupancy rights, or assistance to the victim because of criminal activities directly related to domestic violence, dating violence, sexual assault, or stalking engaged in by a member of the tenant's household, or any guest, or other person under the tenant's control, if the tenant or affiliated individual of the tenant is the victim or threatened victim (24 CFR § 5.2005(b)(2)).
- The PHA may not have a general policy of holding tenants liable for rent through the remainder of the lease term if the tenant terminates before the end of the lease term and provides notice as required under the lease.



Discretionary Policy Considerations

- While HUD regulations do not specify a tenant's obligations upon early lease termination by the tenant, state and local landlord-tenant laws apply and, generally, are incorporated into the lease.
- Depending on the reason for the tenant terminating the lease, some form of damages (i.e., early termination fees) may be applicable as defined in the lease.
- Some states may require landlords to re-rent the unit as soon as possible rather than hold the tenant to the terms of the lease and collect rent from them while the unit passively sits vacant through the end of the lease term.
- A PHA may pursue termination of a sex offender (lifetime or otherwise) under current Public Housing regulations which allow for terminations based on violent criminal activity or other criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.

Sample ACOP Language

LEASE TERMINATIONS

Termination by Tenant

The tenant may terminate the Lease with the **USA HOUSING AGENCY**, by submitting a written 30-day advance notice as defined in the lease agreement. When a tenant must give less than 30 days' notice due to circumstances beyond their control the **USA HOUSING AGENCY**, at its discretion, may waive the 30-day requirement.

The notice of lease termination must be signed by the head of household, spouse, or co-head of household.

Termination by **USA HOUSING AGENCY**

Termination of tenancy will be in accordance with **USA HOUSING AGENCY**'s Lease. All **USA HOUSING AGENCY** eviction actions must be consistent with fair housing and equal opportunity provisions of 24 CFR § 5.105.

The Lease may be terminated by **USA HOUSING AGENCY** at any time by giving written notice for serious or repeated violation of material terms of the Lease, such as, but not limited to the following:

- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing;
- Violent criminal activity or other criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises;
- Nonpayment of rent or other charges due under the Lease, or repeated chronic late payment of rent;
- Failure to provide timely and accurate statements of income, assets, expenses and family composition as may be necessary for the **USA HOUSING AGENCY** to make determinations with respect to rent, eligibility, and the appropriateness of the dwelling unit size at Admission, Interim, Special or Annual Rent Reexaminations;
- Assignment or subleasing of the premises or providing accommodation for boarders or lodgers;
- Use of the premises for purposes other than solely as a dwelling unit for the Tenant and Tenant's household as identified in the Lease, or permitting its use for any other purposes;
- Failure to abide by necessary and reasonable rules made by **USA HOUSING AGENCY** for the benefit and well-being of the housing project and the Tenants;
- Failure to abide by applicable building and housing codes materially affecting health or safety;
- Repeated failure to dispose of garbage waste and rubbish in a safe and sanitary manner;
- Failure to use electrical, plumbing, sanitary, heating, ventilating, air conditioning and other equipment, including elevators, in a safe manner;
- Acts of destruction, defacement or removal of any part of the premises, or failure to cause guests to refrain from such acts;
- Failure to pay reasonable charges (other than for normal wear and tear) for the repair of damages to the premises, project buildings, facilities, equipment, or common areas;
- The tenant, any member of the tenant's household, or a guest or other person under the Tenant's control engaging in criminal activity including drug-related criminal activity, on or off public housing premises (as defined in the Lease and this policy);
- Alcohol and drug abuse that **USA HOUSING AGENCY** determines interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents;
- Failure to attend **USA HOUSING AGENCY** mandatory meetings;
- Failure of a non-exempt family member to comply with community service provisions, as grounds only for non-renewal of the Lease and termination of tenancy at the end of the 12-month lease term;

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- Discovery after admission of facts that make the tenant ineligible;
- Discovery of material false statements or fraud by the Tenant in connection with an application for assistance or with reexamination of income;
- Failure to accept **USA HOUSING AGENCY**'s offer of a Lease revision to an existing Lease that is on a form adopted by **USA HOUSING AGENCY** in accordance with HUD regulations, with written notice of the offer of the revision at least 30 calendar days before the lease revision is scheduled to take effect; and with the offer specifying a reasonable time limit within that period for acceptance by the family;
- Failure to transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by the **USA HOUSING AGENCY** that such a dwelling unit is available;
- Not giving prompt notice to **USA HOUSING AGENCY** of tenant's leaving dwelling unit unoccupied for 30 days;
- Maintaining unauthorized pets in violation of the Pet Ownership policies;
- Tenants of the household and guests engaging in any abusive or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at other residents, occupants, guests, invitees, or directed at management, its agents, its employees, or vendors. Failure to abide constitutes grounds for lease termination and eviction from the unit; or
- Any other good cause set forth by the Lease.

CRITERIA FOR TERMINATING THE LEASE

- The **USA HOUSING AGENCY** will use the preponderance of the evidence as the standard for making all termination decisions.
 - *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

CONSIDERATION OF CIRCUMSTANCES

Although it is required that certain lease provisions exist for criminal activity and alcohol abuse, **USA HOUSING AGENCY** may consider all circumstances relevant to a particular case in order to determine whether or not to terminate the lease. Such relevant circumstances can also be considered when terminating the lease for any other reason.

The **USA HOUSING AGENCY** will consider the following factors before deciding whether to terminate the lease for any of the HUD-required lease provisions or for any other reasons:

- The seriousness of the offending action, especially with respect to how it would affect other residents.
- The extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor, a person with disabilities, or a victim of domestic violence, dating violence, sexual assault, or stalking.
- The effects that the eviction will have on other family members who were not involved in the action or failure to act.
- The effect on the community of the termination, or of the **USA HOUSING AGENCY**'s failure to terminate the tenancy.
- The effect of the **USA HOUSING AGENCY**'s decision on the integrity of the Public Housing program.
- The extent to which the leaseholder has shown personal responsibility and whether they have taken all reasonable steps to prevent or mitigate the offending action.

Sample ACOP Language

- The length of time since the violation occurred, the family's recent history, and the likelihood of favorable conduct in the future.
- In the case of program abuse, the dollar amount of the underpaid rent and whether or not a false certification was signed by the family.
- The successful completion of a supervised drug or alcohol rehabilitation program for illegal drug use or a pattern of illegal drug use, or for abuse or a pattern of abuse of alcohol, by a household member who is no longer engaging in such use or abuse. For this purpose, the **USA HOUSING AGENCY** will require the tenant to submit evidence of the household member's successful completion of a supervised drug or alcohol rehabilitation program.
- If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of lease, in a manner compliant with resident medical privacy rights, the **USA HOUSING AGENCY** will determine whether the behavior is related to the disability. If so, upon the family's request, the **USA HOUSING AGENCY** will determine whether alternative measures are appropriate as a reasonable accommodation.
- Provisions of VAWA for victims of domestic violence, dating violence, sexual assault, or stalking.

ALTERNATIVES TO TERMINATION OF THE LEASE

Exclusion of Culpable Household Member

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

As a condition of the family's continued occupancy, the head of household must certify that the culpable household member has vacated the unit.

Repayment of Tenant Debt

Any amount owed to the **USA HOUSING AGENCY** by a public housing family must be repaid. If the family is unable to repay the debt within 30 days, the **USA HOUSING AGENCY** will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the **USA HOUSING AGENCY** will terminate the family's tenancy in accordance with the policies in this Chapter. The **USA HOUSING AGENCY** will also pursue other modes of collection.

General repayment guidelines include:

- Before executing a repayment agreement with a family, the **USA HOUSING AGENCY** will generally require a down payment of 10 percent of the total amount owed. If the family can provide evidence satisfactory to the **USA HOUSING AGENCY** that a down payment of 10 percent would impose an undue hardship, the **USA HOUSING AGENCY** may, in its sole discretion, require a lower percentage or waive the requirement.

Sample ACOP Language

- The minimum monthly payment amount will be the greater of: (1) the difference between 40 percent of the family's monthly adjusted income (MAI) and the TTP at the time the agreement is executed, or (2) twenty-five dollars (\$25).
- If a family can provide evidence satisfactory to the **USA HOUSING AGENCY** that a monthly payment amount of \$25 would impose an undue hardship, the **USA HOUSING AGENCY** may, in its sole discretion, require a lower monthly payment amount.
- If the family's income increases or decreases during the term of a repayment agreement, either the **USA HOUSING AGENCY** or the family may request that the monthly payment amount be adjusted accordingly.
- Any repayment agreement between the **USA HOUSING AGENCY** and a family must be signed and dated by the **USA HOUSING AGENCY** and by the head of household and spouse/co-head (if applicable).
- All payments are due by the close of business on the 15th day of the month. If the 15th does not fall on a business day, the due date is the close of business on the first business day after the 15th.
- If a payment is not received by the end of the business day on the date due, and prior approval for the missed payment has not been given by the **USA HOUSING AGENCY**, the **USA HOUSING AGENCY** will send the family a delinquency notice giving the family 10 business days to make the late payment. If the payment is not received by the due date of the delinquency notice, it will be considered a breach of the agreement and the **USA HOUSING AGENCY** will terminate tenancy in accordance with the policies herein.
- Late and missed payments constitute default of the repayment agreement. If a family receives three delinquency notices for non-payment in a 12-month period, the repayment agreement will be considered in default, and the **USA HOUSING AGENCY** will terminate tenancy in accordance with the policies herein.
- The **USA HOUSING AGENCY** generally will not enter into a repayment agreement with a family if there is already a repayment agreement in place with the family, or if the resident has committed fraud.