

Chapter 8

LEASING AND INSPECTIONS

[24 CFR 5, Subpart G; 24 CFR 966, Subpart A]

INTRODUCTION

This chapter describes HUD regulations and PHA policies related to leasing and unit inspections in two parts:

Part I: Leasing. This part describes pre-leasing activities and the PHA's policies pertaining to lease execution, lease modification, and payments under the lease.

Part II: Inspections. This part describes the PHA's policies for inspecting dwelling units and notifying families of HUD REAC NSPIRE inspections.

PART I: LEASING

8-I.A. OVERVIEW

This section provides an overview for Part I. **No policy decisions are required.**

8-I.B. LEASE ORIENTATION



Decision Point: How will the PHA orient new residents to the public housing program and to the development? (Model ACOP, p. 8-2)

Things to Consider

- Regulations do not require pre-occupancy orientation to the public housing program. However, most PHAs give orientation sessions for new residents that cover the basic information necessary to help the resident comply with the lease, become comfortable in the neighborhood, and be successful in their public housing tenancies. Most people perform better if they clearly understand what is expected up front [PH Occ GB, p. 79].
- Orientation may be conducted with individual family members or in groups. If the PHA conducts group briefing sessions, the process should not delay lease-up or occupancy. Delays in leasing impact the PHA's revenue and PHAS score.
- Information given at orientation should be standardized to ensure that all families are given the same information.
- The ACOP policy should state who is required to attend the orientation session (head, spouse, both, or any adult member). The default policy states that either the head of household or spouse may attend.

Instructions for Preparing Chapter 8: Leasing And Inspections

- ☐ *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

- ☐ *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA's policy.*

Orientation Agenda



Decision Point: What information will be given to families at lease orientation? (Model ACOP, p. 8-2)

Things to Consider

- The orientation agenda should be tailored to local conditions. Many PHAs include information about services available near the development, such as schools and transportation.
- The list of orientation materials and topics in the model ACOP is basic. It should be edited to reflect items discussed in your orientation.
- The OIG pamphlet “Is Fraud Worth It?” is listed in order to be consistent with model plan policies in Chapter 15, Program Integrity. If you decide not to include this pamphlet as part of the information given to families at orientation, the policies in Chapter 15 will also need to be amended.
- The same is true of “What You Should Know about EIV.” Notice PIH 2017-12 strongly encourages, but does not require, PHAs to educate applicants about the Enterprise Income Verification (EIV) system by providing them with a copy of this guide.
- Likewise, while HUD does not require PHAs to provide the HUD pamphlet on lead-based paint entitled “Protect Your Family for Lead in Your Home,” it is a best practice to include it regardless of whether any PHA-owned housing contains lead-based paint.
- As discussed in section 16-VII.C of the model ACOP, HUD requires PHAs to provide notice to public housing tenants of their rights under the Violence against Women Act (VAWA) and 24 CFR Part 5, Subpart L [24 CFR 5.2005(a)]. By providing VAWA information and discussing VAWA protections at lease orientation sessions, the PHA will fulfill this requirement. (Note: The policy here is cross-referenced in section 16-VII.C of the Model ACOP. So, if the references to VAWA are removed here, the cross-reference in section 16-VII.C will also need to be removed.)

Instructions for Preparing Chapter 8: Leasing And Inspections

- **NOTE: A model smoke-free policy is attached as Exhibit 8-1. The PHA must make policy decisions and edit the model policy accordingly. The public housing lease terms must also be revised to match the PHA's smoke-free policy. Failure to comply with smoke-free policies may result in termination of tenancy (see Chapter 13). Notice PIH 2017-03 requires that the public housing lease terms must describe graduated enforcement mechanisms for violators of the PHA's smoke-free policies.**
- The Public Housing Occupancy Guidebook suggests that topics covered might also include:
 - Care of the unit
 - Obtaining services in an emergency
 - Conserving utilities
 - Information about the resident council
 - Police and security services available
 - Tenant fair housing rights



Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.

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

A copy of the lease

A copy of the PHA's grievance procedure

A copy of the house rules

A copy of the PHA's schedule of maintenance charges

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 2017-12

A copy of the form HUD-5380, VAWA Notice of Occupancy Rights

A copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

A copy of the PHA's smoke-free policy

Instructions for Preparing Chapter 8: Leasing And Inspections

A notice that includes the procedures for requesting relief and the PHA's criteria for granting requests for relief for excess utility surcharges

The HUD pamphlet on lead-based paint entitled, "Protect Your Family from Lead in Your Home."

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 PHA's interim reporting requirements

Review and explanation of occupancy forms

Community service requirements

Family choice of rent

VAWA protections

Smoke-free policies



Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA's policy.

8-I.C. EXECUTION OF LEASE

The lease must be executed by the tenant and the PHA, except for automatic renewals of a lease [24 CFR 966.4(a)(3)].



Decision Point: Which family members will be required to sign the public housing lease? (Model ACOP, p. 8-3)

Things to Consider

- Regulations state that the lease must be signed by "the tenant and the PHA" [24 CFR 966.4(a)(3)].
- Many PHAs require all adult family members to sign the lease and state law may require this in case of eviction. Therefore, the model policy requires all adult members of the household to sign the lease.
- If you only require the head of household and spouse/cohead to sign the lease, select Option 2.

Instructions for Preparing Chapter 8: Leasing And Inspections

- ☐ *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The head of household, spouse or cohead, and all other adult members of the household will be required to sign the public housing lease prior to admission. An appointment will be scheduled for the parties to execute the lease. The head of household will be provided a copy of the executed lease and the PHA will retain a copy in the resident's file.

- ☐ *Option 2: Require only the head of household and spouse/cohead to execute the lease. Delete the model ACOP language and insert the following:*

The head of household and spouse or cohead will be required to sign the public housing lease prior to admission. An appointment will be scheduled for the parties to execute the lease. The head of household will be provided a copy of the executed lease and the PHA will retain a copy in the resident's file.

- ☐ *Option 3: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA's policy.*

Instructions for Preparing Chapter 8: Leasing And Inspections



Decision Point: Will the PHA require the live-in aide to sign documentation confirming that the live-in aide is not a party to the lease and is not entitled to PHA assistance? (Model ACOP, p. 8-3)

Things to Consider

- The live-in aide is not a member of the assisted family and does not sign the lease.
- HUD regulations do not require the live-in aide to sign the documentation suggested here.
- The purpose is to document the live-in aide's understanding that they are not entitled to assistance from the PHA.



Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.

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 PHA 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.



Option 2: Do not adopt a policy requiring the live-in aide to sign the documentation described here. Delete the model ACOP language.



Option 3: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA's policy.

8-I.D. MODIFICATIONS TO THE LEASE

The lease may be modified at any time by written agreement of the tenant and the PHA [24 CFR 966.4(a)(3)].

Modifications to the Lease Form



Decision Point: How long will a family have to accept the terms of a revised lease that was modified in accordance with HUD requirements? (Model ACOP, p. 8-4)

Things to Consider

- 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)].
- In order to be able to terminate for failure to accept the PHA's offer of a lease revision, the written notice of a revision must be offered at least 60 calendar days before the scheduled effective date, and must specify a reasonable time limit within that period for acceptance by the family.
- The model policy language uses 30 days as the "reasonable time limit" within which the family must accept the offer of a revised lease.



Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.

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 in accordance with the policies in Chapter 13.



Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA's policy.



Decision Point: How will the PHA notify residents of proposed changes to its schedules of special charges or rules and regulations? (Model ACOP, p. 8-4)

Things to Consider

- When the PHA proposes to modify schedules of special charges or rules and regulations (“house rules”), the regulations permit several alternative methods for notifying residents. The PHA may notify each family (by mail or by delivering a notice to each unit), or may post the notice in the project office and in at least 3 conspicuous places within each structure that contains dwelling units.
- Because the model policy states that the PHA will notify each family, the policy language clarifies that proper documentation of this notice will be kept in tenant files.



Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.

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



Option 2: Notify residents by posting a notice. Delete the model ACOP language and insert the following:

When the PHA proposes to modify or revise schedules of special charges or rules and regulations, the PHA will post copies of the notice in the central office, in each project office, and in at least 3 conspicuous places in each structure that contains dwelling units.



Option 3: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.

Instructions for Preparing Chapter 8: Leasing And Inspections

Other Modifications



Decision Point: How will the PHA modify the lease when changes in family composition occur? (Model ACOP, p. 8-5)

Things to Consider

- The lease must state the composition of the household as approved by the PHA (family members and any PHA-approved live-in aide) [24 CFR 966.4(a)(1)(v)].
- The policy states that it is the responsibility of the head of household to initial and date the changes, along with the PHA, rather than any other adult member of the household, including the member who is leaving or joining the household.
- In the case of a new adult member joining the household, although the head of household must initial and date the addition of the new member, the new member must also sign and date the lease.
- Policies related to reporting changes in family composition are contained in Chapter 9.



Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.

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 PHA will be required to initial and date the change.

If a new household member is approved by the PHA to reside in the unit, the person's name will be added to the lease. The head of household and PHA will be required to initial and date the change. If the new member of the household is an adult, they 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 Chapter 9, Reexaminations.



Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA's policy.

8-I.E. SECURITY DEPOSITS [24 CFR 966.4(b)(5)]



Decision Point: What policies will the PHA establish for security deposits?
(Model ACOP, p. 8-6)

Things to Consider

- HUD regulations permit, but do not require, the PHA to charge a security deposit. Regulations state that the deposit shall not exceed one month's rent or "such reasonable fixed amount as may be required by the PHA."
- Provisions for refunding or otherwise disposing of the security deposit after move-out are generally governed by state law.
- The regulation states that, subject to state law, interest earned on the security deposit may be refunded to the resident at move-out or used for resident services or activities.
- To ensure that the model policy does not conflict with any state law, the policy calls for the interest on the security deposit to be returned to the family upon move-out.
- If the security deposit is set at the amount of TTP at move-in, the amount remains fixed throughout occupancy and is not changed when income-based rent changes [PH Occ GB p. 193].
- PHAs that adopt a fixed security deposit may need to permit installment payments so that extremely low-income families are able to meet the requirement. Installment payments are permitted under the regulation.
- Allowing for security deposits to be paid in installments requires tracking and enforcement, adding an administrative burden to the PHA.
- The PHA's policy should contain a provision for residents that transfer to another unit. The policy could state that the security deposit will be transferred, or that a new security deposit will be required.
- The model policy commits the PHA to refund the security deposit (less any amount owed) to the family within 30 days of move-out. You need to ensure that this provision is consistent with local and state landlord/tenant laws.
- The model policy states that PHAs will provide the resident with a written list of any charges against the security deposit within 10 business days of the move-out inspection. This is the standard time frame used throughout much of the plan. This time frame is also used in Section 8-II.B., Move-Out Inspections, therefore, any changes made to the time frame here must also be made there.
- If a resident disagrees with the charges, the policy states that the PHA will offer a meeting to discuss the charges. This meeting is in place of the PHA's grievance process because the family will no longer be a tenant at the time these charges are made.
- If your security deposit requirements are different than those contained in the model policy, the policy should be replaced or edited accordingly.

Instructions for Preparing Chapter 8: Leasing And Inspections



Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.

Residents must pay a security deposit to the PHA at the time of admission. The amount of the security deposit will be equal to the family's total tenant payment at the time of move-in and must be paid in full prior to occupancy.

The PHA will hold the security deposit for the period the family occupies the unit. The PHA will not use the security deposit for rent or other charges while the resident is living in the unit.

Within 30 days of move-out, the PHA will refund to the resident 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 PHA will provide the resident with a written list of any charges against the security deposit within 10 business days of the move-out inspection. If the resident disagrees with the amount charged, the PHA will provide a meeting to discuss the charges.

If the resident transfers to another unit, the PHA 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.



Option 2: Use the policy specified in the PHA's current public housing lease. Delete the model ACOP language and insert the PHA's policy.

8-I.F. PAYMENTS UNDER THE LEASE

This section lists the PHA's policies for rent payments, late fees and nonpayment, excess utility charges (where applicable), and maintenance or damage charges.

Rent Payments [24 CFR 966.4(b)(1)]



Decision Point: What requirements will the PHA establish for the payment of tenant rent and how will changes in the tenant rent be recorded? (Model ACOP, p. 8-7)

Things to Consider

- State law may dictate when rent must be paid if the first of the month falls on a weekend or holiday.
- The policy makes clear that as tenant rent changes, the family will be notified by a "Notice of Rent Adjustment" which will become an attachment to the lease.
- The lease must contain a provision or addendum that tenants will receive notification at least 30 days before an eviction for nonpayment of rent is filed.



Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.

The tenant rent is due and payable at the PHA-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 PHA 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.



Option 2: Use the policy specified in the PHA's current public housing lease. Delete the model ACOP language and insert the PHA's policy.

Instructions for Preparing Chapter 8: Leasing And Inspections

Late Fees and Nonpayment [24 CFR 966.4(b)(3); 24 CFR 966.4(q) and (r)]



Decision Point: How will the PHA handle late rent payments or nonpayment of rent? (Model ACOP, p. 8-8)

Things to Consider

- The model policy gives the family a five-day grace period to pay rent without any penalty.
- Regulations provide that the PHA is allowed, but not required, to charge a penalty for late payment of rent. Any late fee that is charged should be reasonable. The model policy calls for a late fee of \$25.
- The regulations specify that late payment charges cannot be due and payable until 14 calendar days after written notice, and that the notice is considered an adverse action, and must meet the requirements governing a notice of adverse action [24 CFR 966.4(b)(4)]. Therefore, the model policy clarifies that notice and grievance hearing requirements are applicable.
- The model policy allows the PHA to waive the late fee in cases of documented financial hardship.
- The policy also clarifies that if a check is returned due to insufficient funds or because the account has been closed, the PHA will charge the family a fee to cover the costs associated with the returned check.
- In the case of nonpayment, while the regulations require a 30-day notice of lease termination for failure to pay rent.
- The PHA must not provide tenants with a termination notice prior to the day after the rent is due according to the lease.
- The PHA must not proceed with filing an eviction if the tenant pays the alleged amount of rent owed within the 30-day notification period.
- State law may impact the PHA's policies for late payments and nonpayment.

Instructions for Preparing Chapter 8: Leasing And Inspections



Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.

If the family fails to pay their rent by the fifth day of the month, and the PHA has not agreed to accept payment at a later date, a 30-day Notice to Vacate will be issued to the resident for failure to pay rent, demanding payment in full or the surrender of the premises. The PHA will not proceed with filing an eviction if the tenant pays the alleged amount of rent owed within the 30-day notification period.

In addition, if the resident 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 PHA may not take action for nonpayment of the fee until the conclusion of the grievance process. If the resident 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 family. The fee will be due and payable 14 days after billing.



Option 2: Use the policy specified in the PHA's current public housing lease. Delete the model ACOP language and insert the PHA's policy.

Instructions for Preparing Chapter 8: Leasing And Inspections

Excess Utility Charges

The imposition of charges for consumption of excess utilities is permissible only if such charges are determined by an individual check meter servicing the leased unit or result from the use of major tenant-supplied appliances [24 CFR 966.4(b)(2)]. **Delete this section if the PHA does not charge residents for excess utility usage.**



Decision Point: How will the PHA calculate and bill charges for excess utility usage? (Model ACOP, p. 8-9)

Things to Consider

- The regulations specify that charges cannot be due and payable until 14 calendar days after billing.
- The regulations clarify that charges for excess utility are considered an adverse action. Therefore, the model policy clarifies that notice and grievance hearing requirements are applicable.
- HUD guidance cautions that PHAs may not classify delinquent charges in addition to rent as “delinquent rent.” This is not permissible under the regulations. A lease termination for such delinquent charges is a termination for “other good cause,” not for nonpayment of rent [PH Occ GB p. 193].
- The regulations specify that residents may make 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 PHA may grant such requests provided they are made on reasonable grounds, such as special needs of elderly, ill, or disabled residents, or special factors affecting utility usage not within the control of the resident. The PHA must adopt criteria for granting relief, and procedures for requesting relief, at the time the PHA adopts the methods and procedures for determining utility allowances. The PHA must provide notice of the availability of procedures for making requests (including identification of the PHA representative with whom initial contact may be made by residents), and the PHA’s criteria for granting requests in each notice to residents about changes to utility allowances or surcharges, and in information given to new residents upon admission [24 CFR 965.508].

Instructions for Preparing Chapter 8: Leasing And Inspections



Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.

When applicable, families will be charged for excess utility usage according to the PHA'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 family requests a grievance hearing within the required timeframe, the PHA may not take action for nonpayment of the charges until the conclusion of the grievance process.

Nonpayment of excess utility charges is a violation of the lease and is grounds for eviction.

The PHA may grant requests for relief from surcharges from excess utility consumption of PHA-furnished utilities as a reasonable accommodation where the PHA deems an exception is appropriate to meet the needs of elderly, ill, or disabled residents. In determining whether to grant this request, the PHA will consider special factors affecting utility usage that are not within the control of the resident such as the need for medical equipment. Residents may request relief in accordance with Section 2-II.C. of this ACOP. The PHA will process such requests in accordance with Section 2-II.E. of this ACOP.

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 PHA's 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.



Option 2: Use the policy specified in the PHA's current public housing lease. Delete the model ACOP language and insert the PHA's policy.

Instructions for Preparing Chapter 8: Leasing And Inspections

Maintenance and Damage Charges



Decision Point: How will the PHA calculate and bill charges for resident-caused damages to the unit, and for the costs of maintenance beyond normal wear and tear? (Model ACOP, p. 8-10)

Things to Consider

- "Beyond normal wear and tear" is defined as damage that could be charged against the tenant's security deposit under state law or court practice.
- Regulations specify that charges cannot be due and payable until 14 calendar days after billing.
- Although typically charges will be made based on a schedule of charges, the policy clarifies how the PHA will determine the amount to charge if the work performed is not on the schedule.
- The regulations clarify that damage and maintenance charges are considered an adverse action. Therefore, the model policy clarifies that notice and grievance hearing requirements are applicable
- HUD guidance cautions that PHAs may not classify delinquent charges in addition to rent as "delinquent rent." This is not permissible under the regulations. A lease termination for such delinquent charges is a termination for "other good cause," not for nonpayment of rent [PH Occ GB, p. 193].



Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.

When applicable, families will be charged for maintenance and/or damages according to the PHA'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 PHA 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 eviction.



Option 2: Use the policy specified in the PHA's current public housing lease. Delete the model ACOP language and insert the PHA's policy.