

Asst. Secy., for Public and Indian Housing, HUD

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part 5, subpart G. For each PHA, HUD will perform an independent physical inspection of a statistically valid sample of such housing based upon the physical condition standards in 24 CFR part 5, subpart G.

[63 FR 46580, Sept. 1, 1998]

Subpart G [Reserved]

Subpart H—Lead-Based Paint Poisoning Prevention

§ 965.701 Lead-based paint poisoning prevention.

The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, L, and R of this title apply to this program.

[64 FR 50229, Sept. 15, 1999]

Subpart I—Fire Safety

SOURCE: 57 FR 33853, July 30, 1992, unless otherwise noted.

§ 965.800 Applicability.

This subpart applies to all PHA-owned or -leased housing housing, including Mutual Help and Turnkey III.

§ 965.805 Smoke detectors.

(a) *Performance requirement.* (1) After October 30, 1992, each unit covered by this subpart must be equipped with at least one battery-operated or hardwired smoke detector, or such greater number as may be required by state or local codes, in working condition, on each level of the unit. In units occupied by hearing-impaired residents, smoke detectors must be hard-wired.

(2) After October 30, 1992, the public areas of all housing covered by this subpart must be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors to serve as adequate warning of fire. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

(b) *Acceptability criteria.* (1) The smoke detector for each individual unit must be located, to the extent practicable, in a hallway adjacent to the bedroom or bedrooms. In units occupied by hearing-impaired residents, hard-wired smoke detectors must be connected to an alarm system designed for hearing-impaired persons and installed in the bedroom or bedrooms occupied by the hearing-impaired residents. Individual units that are jointly occupied by both hearing and hearing-impaired residents must be equipped with both audible and visual types of alarm devices.

(2) If needed, battery-operated smoke detectors, except in units occupied by hearing-impaired residents, may be installed as a temporary measure where no detectors are present in a unit. Temporary battery-operated smoke detectors must be replaced with hardwired electric smoke detectors in the normal course of a PHA's planned CIAP or CGP program to meet the required HUD Modernization Standards or state or local codes, whichever standard is stricter. Smoke detectors for units occupied by hearing-impaired residents must be installed in accordance with the acceptability criteria in paragraph (b)(1) of this section.

() *Funding.* PHAs shall use operating funds to provide battery-operated smoke detectors in units that do not have any smoke detector in place. If operating funds or reserves are insufficient to accomplish this, PHAs may apply for emergency CIAP funding. The PHAs may apply for CIAP or CGP funds to replace battery-operated smoke detectors with hard-wired smoke detectors in the normal course of a planned modernization program.

PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE

Subpart A—Dwelling Leases, Procedures and Requirements

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Subpart B—Grievance Procedures and Requirements

[56 FR 51576, Oct. 11, 1991]

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AUTHORITY: 42 U.S.C. 1437d and 3535(d).

Subpart A—Dwelling Leases, Procedures and Requirements

SOURCE: 40 FR 33402, Aug. 7, 1975, unless otherwise noted. Redesignated at 49 FR 6714, Feb. 23, 1984.

§ 966.1 Purpose and applicability.

- (a) This part is applicable to public housing.
- (b) Subpart A of this part prescribes the provisions that must be incorporated in leases for public housing dwelling units.
- (c) Subpart B of this part prescribes public housing grievance hearing requirements.

[66 FR 28802, May 24, 2001]

§ 966.2 Definitions.

The following terms are defined in part 5, subpart A of this title: *1937 Act, covered person, drug, drug-related criminal activity, federally assisted housing, guest, household, HUD, other person under the tenant’s control, public housing, premises, public housing agency, Section 8, violent criminal activity.*

[66 FR 28802, May 24, 2001]

§ 966.3 Tenants’ opportunity for comment.

Each PHA shall provide at least 30 days notice to tenants and resident organizations setting forth proposed changes in the lease form used by the PHA, and providing an opportunity to present written comments. Subject to requirements of this rule, comments submitted shall be considered by the

§ 966.4 Lease requirements.

A lease shall be entered into between the PHA and each tenant of a dwelling unit which shall contain the provisions described hereinafter.

(a) *Parties, dwelling unit and term.* (1) The lease shall state:

- (i) The names of the PHA and the tenant;
- (ii) The unit rented (address, apartment number, and any other information needed to identify the dwelling unit);

(iii) The term of the lease (lease term and renewal in accordance with paragraph (a)(2) of this section);

(iv) 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;

(v) 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;

(vi) HUD’s regulations in 24 CFR part 5, subpart L, apply, if a current or future tenant is or becomes a victim of domestic violence, dating violence, or stalking, as provided in 24 CFR part 5, subpart L.

(2) *Lease term and renewal.* (i) The lease shall have a twelve month term. Except as provided in paragraph (a)(2)(ii) of this section, the lease term must be automatically renewed for the same period.

(ii) The PHA may not renew the lease if the family has violated the requirement for resident performance of community service or participation in an economic self-sufficiency program in accordance with part 960, subpart F of this chapter.

(iii) At any time, the PHA may terminate the tenancy in accordance with § 966.4(1).

(3) *Execution and modification.* The lease must be executed by the tenant

and the PHA, except for automatic renewals of a lease. The lease may be modified at any time by written agreement of the tenant and the PHA.

(b) *Payments due under the lease*—(1) *Tenant rent.* (i) The tenant shall pay the amount of the monthly tenant rent determined by the PHA in accordance with HUD regulations and other requirements. The amount of the tenant rent is subject to change in accordance with HUD requirements.

(ii) The lease shall specify the initial amount of the tenant rent at the beginning of the initial lease term. The PHA shall give the tenant written notice stating any change in the amount of tenant rent, and when the change is effective.

(2) *PHA charges.* The lease shall provide for charges to the tenant for maintenance and repair beyond normal wear and tear and for consumption of excess utilities. The lease shall state the basis for the determination of such charges (e.g., by a posted schedule of charges for repair, amounts charged for utility consumption in excess of the allowance stated in the lease, etc.). 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.

(3) *Late payment penalties.* At the option of the PHA, the lease may provide for payment of penalties for late payment.

(4) *When charges are due.* The lease shall provide that charges assessed under paragraph (b) (2) and (3) of this section shall not be due and collectible until two weeks after the PHA gives written notice of the charges. Such notice constitutes a notice of adverse action, and must meet the requirements governing a notice of adverse action (see § 966.4(e)(8)).

(5) *Security deposits.* At the option of the PHA, the lease may provide for security deposits which shall not exceed one month's rent or such reasonable fixed amount as may be required by the PHA. Provision may be made for gradual accumulation of the security deposit by the tenant. Subject to applicable laws, interest earned on security deposits may be refunded to the tenant

on vacation of the dwelling unit or used for tenant services or activities.

(c) *Redetermination of rent and family composition.* The lease shall provide for redetermination of rent and family composition which shall include:

(1) The frequency of regular rental redetermination and the basis for interim redetermination.

(2) An agreement by the tenant to furnish such information and certifications regarding family composition and income as may be necessary for the PHA to make determinations with respect to rent, eligibility, and the appropriateness of dwelling size.

(3) An agreement by the tenant to transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by the PHA that such a dwelling unit is available.

(4) When the PHA redetermines the amount of rent (Total Tenant Payment or Tenant Rent) payable by the tenant, not including determination of the PHA's schedule of Utility Allowances for families in the PHA's Public Housing Program, or determines that the tenant must transfer to another unit based on family composition, the PHA shall notify the tenant that the tenant may ask for an explanation stating the specific grounds of the PHA determination, and that if the tenant does not agree with the determination, the tenant shall have the right to request a hearing under the PHA grievance procedure.

(d) *Tenant's right to use and occupancy.* (1) The lease shall provide that the tenant shall have the right to exclusive use and occupancy of the leased unit by the members of the household authorized to reside in the unit in accordance with the lease, including reasonable accommodation of their guests. The term *guest* is defined in 24 CFR 5.100.

(2) With the consent of the PHA, members of the household may engage in legal profitmaking activities in the dwelling unit, where the PHA determines that such activities are incidental to primary use of the leased unit for residence by members of the household.

(3)(i) With the consent of the PHA, a foster child or a live-in aide may reside

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in the unit. The PHA may adopt reasonable policies concerning residence by a foster child or a live-in-aide, and defining the circumstances in which PHA consent will be given or denied. Under such policies, the factors considered by the PHA may include:

(A) Whether the addition of a new occupant may necessitate a transfer of the family to another unit, and whether such units are available.

(B) The PHA's obligation to make reasonable accommodation for handicapped persons.

(ii) *Live-in aide* means a person who resides with an elderly, disabled or handicapped person and who:

(A) Is determined to be essential to the care and well-being of the person;

(B) Is not obligated for the support of the person; and

(C) Would not be living in the unit except to provide the necessary supportive services.

(e) *The PHA's obligations.* The lease shall set forth the PHA's obligations under the lease, which shall include the following:

(1) To maintain the dwelling unit and the project in decent, safe, and sanitary condition;

(2) To comply with requirements of applicable building codes, housing codes, and HUD regulations materially affecting health and safety;

(3) To make necessary repairs to the dwelling unit;

(4) To keep project buildings, facilities, and common areas, not otherwise assigned to the tenant for maintenance and upkeep, in a clean and safe condition;

(5) To maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, and other facilities and appliances, including elevators, supplied or required to be supplied by the PHA;

(6) To provide and maintain appropriate receptacles and facilities (except containers for the exclusive use of an individual tenant family) for the deposit of ashes, garbage, rubbish, and other waste removed from the dwelling unit by the tenant in accordance with paragraph (f)(7) of this section;

(7) To supply running water and reasonable amounts of hot water and reasonable amounts of heat at appropriate

times of the year (according to local custom and usage), except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or where heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct utility connection; and

(8)(i) To notify the tenant of the specific grounds for any proposed adverse action by the PHA. (Such adverse action includes, but is not limited to, a proposed lease termination, transfer of the tenant to another unit, or imposition of charges for maintenance and repair, or for excess consumption of utilities.)

(ii) When the PHA is required to afford the tenant the opportunity for a hearing under the PHA grievance procedure for a grievance concerning a proposed adverse action:

(A) The notice of proposed adverse action shall inform the tenant of the right to request such hearing. In the case of a lease termination, a notice of lease termination, in accordance with paragraph (1)(3) of this section, shall constitute adequate notice of proposed adverse action.

(B) In the case of a proposed adverse action other than a proposed lease termination, the PHA shall not take the proposed action until the time for the tenant to request a grievance hearing has expired, and (if a hearing was timely requested by the tenant) the grievance process has been completed.

(9) To consider lease bifurcation, as provided in 24 CFR 5.2009, in circumstances involving domestic violence, dating violence, or stalking addressed in 24 CFR part 5, subpart L.

(f) *Tenant's obligations.* The lease shall provide that the tenant shall be obligated:

(1) Not to assign the lease or to sublease the dwelling unit;

(2) Not to provide accommodations for boarders or lodgers;

(3) To use the dwelling unit solely as a private dwelling for the tenant and the tenant's household as identified in the lease, and not to use or permit its use for any other purpose;

(4) To abide by necessary and reasonable regulations promulgated by the PHA for the benefit and well-being of

the housing project and the tenants which shall be posted in the project office and incorporated by reference in the lease;

(5) To comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(6) To keep the dwelling unit and such other areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition;

(7) To dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner;

(8) To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appurtenances including elevators;

(9) To refrain from, and to cause the household and guests to refrain from destroying, defacing, damaging, or removing any part of the dwelling unit or project;

(10) To pay reasonable charges (other than for wear and tear) for the repair of damages to the dwelling unit, or to the project (including damages to project buildings, facilities or common areas) caused by the tenant, a member of the household or a guest.

(11) To act, and cause household members or guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe and sanitary condition;

(12)(i) To assure that no tenant, member of the tenant's household, or guest engages in:

(A) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents; or

(C) Any drug-related criminal activity on or off the premises;

(ii) To assure that no other person under the tenant's control engages in:

(A) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents; or

(D) Any drug-related criminal activity on the premises;

(iii) To assure that no member of the household engages in an abuse or pattern of abuse of alcohol that affects the health, safety, or right to peaceful enjoyment of the premises by other residents.

(g) *Tenant maintenance.* The lease may provide that the tenant shall perform seasonal maintenance or other maintenance tasks, as specified in the lease, where performance of such tasks by tenants of dwellings units of a similar design and construction is customary: *Provided*, That such provision is included in the lease in good faith and not for the purpose of evading the obligations of the PHA. The PHA shall exempt tenants who are unable to perform such tasks because of age or disability.

(h) *Defects hazardous to life, health, or safety.* The lease shall set forth the rights and obligations of the tenant and the PHA if the dwelling unit is damaged to the extent that conditions are created which are hazardous to life, health, or safety of the occupants and shall provide that:

(1) The tenant shall immediately notify project management of the damage;

(2) The PHA shall be responsible for repair of the unit within a reasonable time: *Provided*, That if the damage was caused by the tenant, tenant's household or guests, the reasonable cost of the repairs shall be charged to the tenant;

(3) The PHA shall offer standard alternative accommodations, if available, where necessary repairs cannot be made within a reasonable time; and

(4) Provisions shall be made for abatement of rent in proportion to the seriousness of the damage and loss in value as a dwelling if repairs are not made in accordance with paragraph (h)(2) of this section or alternative accommodations not provided in accordance with paragraph (h)(3) of this section, except that no abatement of rent shall occur if the tenant rejects the alternative accommodation or if the damage was caused by the tenant, tenant's household or guests.

(i) *Pre-occupancy and pre-termination inspections.* The lease shall provide that the PHA and the tenant or representative shall be obligated to inspect the

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dwelling unit prior to commencement of occupancy by the tenant. The PHA will furnish the tenant with a written statement of the condition of the dwelling unit, and the equipment provided with the unit. The statement shall be signed by the PHA and the tenant, and a copy of the statement shall be retained by the PHA in the tenant's folder. The PHA shall be further obligated to inspect the unit at the time the tenant vacates the unit and to furnish the tenant a statement of any charges to be made in accordance with paragraph (b)(2) of this section. Provision shall be made for the tenant's participation in the latter inspection, unless the tenant vacates without notice to the PHA.

(j) *Entry of dwelling unit during tenancy.* The lease shall set forth the circumstances under which the PHA may enter the dwelling unit during the tenant's possession thereof, which shall include provision that:

(1) The PHA shall, upon reasonable advance notification to the tenant, be permitted to enter the dwelling unit during reasonable hours for the purpose of performing routine inspections and maintenance, for making improvement or repairs, or to show the dwelling unit for re-leasing. A written statement specifying the purpose of the PHA entry delivered to the dwelling unit at least two days before such entry shall be considered reasonable advance notification;

(2) The PHA may enter the dwelling unit at any time without advance notification when there is reasonable cause to believe that an emergency exists; and

(3) If the tenant and all adult members of the household are absent from the dwelling unit at the time of entry, the PHA shall leave in the dwelling unit a written statement specifying the date, time and purpose of entry prior to leaving the dwelling unit.

(k) *Notice procedures.* (1) The lease shall provide procedures to be followed by the PHA and the tenant in giving notice one to the other which shall require that:

(i) Except as provided in paragraph (j) of this section, notice to a tenant shall be in writing and delivered to the tenant or to an adult member of the

tenant's household residing in the dwelling or sent by prepaid first-class mail properly addressed to the tenant; and

(ii) Notice to the PHA shall be in writing, delivered to the project office or the PHA central office or sent by prepaid first-class mail properly addressed.

(2) If the tenant is visually impaired, all notices must be in an accessible format.

(1) *Termination of tenancy and eviction—(1) Procedures.* The lease shall state the procedures to be followed by the PHA and by the tenant to terminate the tenancy.

(2) *Grounds for termination of tenancy.* The PHA may terminate the tenancy only for:

(i) Serious or repeated violation of material terms of the lease, such as the following:

(A) Failure to make payments due under the lease;

(B) Failure to fulfill household obligations, as described in paragraph (f) of this section;

(ii) Being over the income limit for the program, as provided in 24 CFR 960.261.

(iii) Other good cause. Other good cause includes, but is not limited to, the following:

(A) Criminal activity or alcohol abuse as provided in paragraph (1)(5) of this section;

(B) Discovery after admission of facts that made the tenant ineligible;

(C) Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with reexamination of income;

(D) Failure of a family member to comply with service requirement provisions of part 960, subpart F, of this chapter—as grounds only for non-renewal of the lease and termination of tenancy at the end of the twelve-month lease term; and

(E) Failure to accept the PHA's offer of a lease revision to an existing lease: that is on a form adopted by the PHA in accordance with § 966.3; with written notice of the offer of the revision at least 60 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.

(3) *Lease termination notice.* (i) The PHA must give written notice of lease termination of:

(A) 14 days in the case of failure to pay rent;

(B) A reasonable period of time considering the seriousness of the situation (but not to exceed 30 days):

(1) If the health or safety of other residents, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or

(2) If any member of the household has engaged in any drug-related criminal activity or violent criminal activity; or

(3) If any member of the household has been convicted of a felony;

(C) 30 days in any other case, except that if a State or local law allows a shorter notice period, such shorter period shall apply.

(ii) The notice of lease termination to the tenant shall state specific grounds for termination, and shall inform the tenant of the tenant's right to make such reply as the tenant may wish. The notice shall also inform the tenant of the right (pursuant to § 966.4(m)) to examine PHA documents directly relevant to the termination or eviction. When the PHA is required to afford the tenant the opportunity for a grievance hearing, the notice shall also inform the tenant of the tenant's right to request a hearing in accordance with the PHA's grievance procedure.

(iii) A notice to vacate which is required by State or local law may be combined with, or run concurrently with, a notice of lease termination under paragraph (1)(3)(i) of this section.

(iv) When the PHA is required to afford the tenant the opportunity for a hearing under the PHA grievance procedure for a grievance concerning the lease termination (see § 966.51(a)(1)), the tenancy shall not terminate (even if any notice to vacate under State or local law has expired) until the time for the tenant to request a grievance hearing has expired, and (if a hearing was timely requested by the tenant) the grievance process has been completed.

(v) When the PHA is not required to afford the tenant the opportunity for a

hearing under the PHA administrative grievance procedure for a grievance concerning the lease termination (see § 966.51(a)(2)), and the PHA has decided to exclude such grievance from the PHA grievance procedure, the notice of lease termination under paragraph (1)(3)(i) of this section shall:

(A) State that the tenant is not entitled to a grievance hearing on the termination.

(B) Specify the judicial eviction procedure to be used by the PHA for eviction of the tenant, and state that HUD has determined that this eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations.

(C) State whether the eviction is for a criminal activity as described in § 966.51(a)(2)(i)(A) or for a drug-related criminal activity as described in § 966.51(a)(2)(i)(B).

(4) *How tenant is evicted.* The PHA may evict the tenant from the unit either:

(i) By bringing a court action or;

(ii) By bringing an administrative action if law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, and without a court determination of the rights and liabilities of the parties. In order to evict without bringing a court action, the PHA must afford the tenant the opportunity for a pre-eviction hearing in accordance with the PHA grievance procedure.

(5) *PHA termination of tenancy for criminal activity or alcohol abuse—(i) Evicting drug criminals. (A) Methamphet-amine conviction.* The PHA must immediately terminate the tenancy if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of meth-amphetamine on the premises of federally assisted housing.

(B) *Drug crime on or off the premises.* The lease must provide that drug-related criminal activity engaged in on or off the premises by any tenant, member of the tenant's household or guest, and any such activity engaged in on the premises by any other person under the tenant's control, is grounds for the PHA to terminate tenancy. In

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addition, the lease must provide that a PHA may evict a family when the PHA determines that a household member is illegally using a drug or when the PHA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(ii) *Evicting other criminals.* (A) *Threat to other residents.* The lease must provide that any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including PHA management staff residing on the premises) or threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises is grounds for termination of tenancy.

(B) *Fugitive felon or parole violator.* The PHA may terminate the tenancy if a tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or violating a condition of probation or parole imposed under Federal or State law.

(iii) *Eviction for criminal activity.* (A) *Evidence.* The PHA may evict the tenant by judicial action for criminal activity in accordance with this section if the PHA determines that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction.

(B) *Notice to Post Office.* When a PHA evicts an individual or family for criminal activity, the PHA must notify the local post office serving the dwelling unit that the individual or family is no longer residing in the unit.

(iv) *Use of criminal record.* If the PHA seeks to terminate the tenancy for criminal activity as shown by a criminal record, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the tenant with a copy of the criminal record before a PHA grievance hearing

or court trial concerning the termination of tenancy or eviction. The tenant must be given an opportunity to dispute the accuracy and relevance of that record in the grievance hearing or court trial.

(v) *Cost of obtaining criminal record.* The PHA may not pass along to the tenant the costs of a criminal records check.

(vi) *Evicting alcohol abusers.* The PHA must establish standards that allow termination of tenancy if the PHA determines that a household member has:

(A) Engaged in abuse or pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; or

(B) Furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

(vii) *PHA action, generally.* (A) *Assessment under PHAS.* Under the Public Housing Assessment System (PHAS), PHAs that have adopted policies, implemented procedures and can document that they appropriately evict any public housing residents who engage in certain activity detrimental to the public housing community receive points. (See 24 CFR 902.43(a)(5).) This policy takes into account the importance of eviction of such residents to public housing communities and program integrity, and the demand for assisted housing by families who will adhere to lease responsibilities.

(B) *Consideration of circumstances.* In a manner consistent with such policies, procedures and practices, the PHA may consider all circumstances relevant to a particular case such as the seriousness of the offending action, the extent of participation by the leaseholder in the offending action, the effects that the eviction would have on family members not involved in the offending activity and the extent to which the leaseholder has shown personal responsibility and has taken all reasonable steps to prevent or mitigate the offending action.

(C) *Exclusion of culpable household member.* The PHA may require a 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.

(D) *Consideration of rehabilitation.* In determining whether to terminate tenancy for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or a pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the PHA may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13662). For this purpose, the PHA may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

(E) *Length of period of mandatory prohibition on admission.* If a statute requires that the PHA prohibit admission of persons for a prescribed period of time after some disqualifying behavior or event, the PHA may apply that prohibition for a longer period of time.

(F) *Nondiscrimination limitation.* The PHA's eviction actions must be consistent with fair housing and equal opportunity provisions of § 5.105 of this title.

(m) *Eviction: Right to examine PHA documents before hearing or trial.* The PHA shall provide the tenant a reasonable opportunity to examine, at the tenant's request, before a PHA grievance hearing or court trial concerning a termination of tenancy or eviction, any documents, including records and regulations, which are in the possession of the PHA, and which are directly relevant to the termination of tenancy or eviction. The tenant shall be allowed to copy any such document at the tenant's expense. A notice of lease termination pursuant to § 966.4(1) (3) shall inform the tenant of the tenant's right to examine PHA documents concerning the termination of tenancy or eviction. If the PHA does not make documents available for examination upon request by the tenant (in accord

ance with this § 966.4(m)), the PHA may not proceed with the eviction.

(n) *Grievance procedures.* The lease shall provide that all disputes concerning the obligations of the tenant or the PHA shall (except as provided in § 966.51(a)(2)) be resolved in accordance with the PHA grievance procedures. The grievance procedures shall comply with subpart B of this part.

(o) *Provision for modifications.* The lease shall provide that modification of the lease must be accomplished by a written rider to the lease executed by both parties, except for paragraph (c) of this section and § 966.5.

(p) *Signature clause.* The lease shall provide a signature clause attesting that the lease has been executed by the parties.

[56 FR 51576, Oct. 11, 1991, as amended at 61 FR 13273, Mar. 26, 1996; 65 FR 16730, Mar. 29, 2000; 66 FR 28802, May 24, 2001; 66 FR 32875, June 18, 2001; 66 FR 33134, June 20, 2001; 69 FR 68791, Nov. 26, 2004; 75 FR 66262, Oct. 27, 2010]

§ 966.5 Posting of policies, rules and regulations.

Schedules of special charges for services, repairs and utilities and rules and regulations which are required to be incorporated in the lease by reference shall be publicly posted in a conspicuous manner in the Project Office and shall be furnished to applicants and tenants on request. Such schedules, rules and regulations may be modified from time to time by the PHA provided that the PHA shall give at least 30-day written notice to each affected tenant setting forth the proposed modification, the reasons therefor, and providing the tenant an opportunity to present written comments which shall be taken into consideration by the PHA prior to the proposed modification becoming effective. A copy of such notice shall be:

(a) Delivered directly or mailed to each tenant; or

(b) Posted in at least three (3) conspicuous places within each structure or building in which the affected dwelling units are located, as well as in a conspicuous place at the project office, if any, or if none, a similar central business location within the project.

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§ 966.6 Prohibited lease provisions.

Lease clauses of the nature described below shall not be included in new leases between a PHA and a tenant and shall be deleted from existing leases either by amendment thereof or execution of a new lease:

(a) *Confession of judgment.* Prior consent by the tenant to any lawsuit the landlord may bring against him in connection with the lease and to a judgment in favor of the landlord.

(b) *Distraint for rent or other charges.* Agreement by the tenant that landlord is authorized to take property of the tenant and hold it as a pledge until the tenant performs the obligation which the landlord has determined the tenant has failed to perform.

(c) *Exculpatory clauses.* Agreement by the tenant not to hold the landlord or landlord's agent liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representatives or agents.

(d) *Waiver of legal notice by tenant prior to actions for eviction or money judgments.* Agreements by the tenant that the landlord may institute suit without any notice to the tenant that the suit has been filed, thus preventing the tenant from defending against the lawsuit.

(e) *Waiver of legal proceedings.* Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred without notice to the tenant or any determination by a court of the rights and liabilities of the parties.

(f) *Waiver of jury trial.* Authorization of the landlord's lawyer to appear in court for the tenant and waive the right to a trial by jury.

(g) *Waiver of right to appeal judicial error in legal proceeding.* Authorization to the landlord's lawyer to waive the right to appeal for judicial error in any suit or to waive the right to file a suit in equity to prevent the execution of a judgment.

(h) *Tenant chargeable with cost of legal actions regardless of outcome.* Provision that the tenant agrees to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant even though the

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court determines that the tenant prevails in the action. Prohibition of this type of provision does not mean that the tenant as a party to the lawsuit may not be obligated to pay attorney's fees or other costs if he loses the suit.

§ 966.7 Accommodation of persons with disabilities.

(a) For all aspects of the lease and grievance procedures, a handicapped person shall be provided reasonable accommodation to the extent necessary to provide the handicapped person with an opportunity to use and occupy the dwelling unit equal to a non-handicapped person.

(b) The PHA shall provide a notice to each tenant that the tenant may, at any time during the tenancy, request reasonable accommodation of a handicap of a household member, including reasonable accommodation so that the tenant can meet lease requirements or other requirements of tenancy.

[56 FR 51579, Oct. 11, 1991]

Subpart B—Grievance Procedures and Requirements

SOURCE: 40 FR 33406, Aug. 7, 1975, unless otherwise noted. Redesignated at 49 FR 6714, Feb. 23, 1984.

§ 966.50 Purpose and scope.

The purpose of this subpart is to set forth the requirements, standards and criteria for a grievance procedure to be established and implemented by public housing agencies (PHAs) to assure that a PHA tenant is afforded an opportunity for a hearing if the tenant disputes within a reasonable time any PHA action or failure to act involving the tenant's lease with the PHA or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status.

[56 FR 51579, Oct. 11, 1991]

§ 966.51 Applicability.

(a)(1) The PHA grievance procedure shall be applicable (except as provided in paragraph (a)(2) of this section) to all individual grievances as defined in § 966.53 of this subpart between the tenant and the PHA.

(2)(i) The term *due process determination* means a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process (as defined in § 966.53(c)) before eviction from the dwelling unit. If HUD has issued a due process determination, a PHA may exclude from the PHA administrative grievance procedure under this subpart any grievance concerning a termination of tenancy or eviction that involves:

(A) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PHA;

(B) Any violent or drug-related criminal activity on or off such premises; or

(G) Any criminal activity that resulted in felony conviction of a household member.

(iii) For guidance of the public, HUD will publish in the FEDERAL REGISTER a notice listing the judicial eviction procedures for which HUD has issued a due process determination. HUD will make available for public inspection and copying a copy of the legal analysis on which the determinations are based.

(iv) If HUD has issued a due process determination, the PHA may evict the occupants of the dwelling unit through the judicial eviction procedures which are the subject of the determination. In this case, the PHA is not required to provide the opportunity for a hearing under the PHA's administrative grievance procedure.

(b) The PHA grievance procedure shall not be applicable to disputes between tenants not involving the PHA or to class grievances. The grievance procedure is not intended as a forum for initiating or negotiating policy changes between a group or groups of tenants and the PHA's Board of Commissioners.

[40 FR 33406, Aug. 7, 1975. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 56 FR 51579, Oct. 11, 1991; 61 FR 13273, Mar. 26, 1996; 66 FR 28804, May 24, 2001]

§ 966.52 Requirements.

(a) Each PHA shall adopt a grievance procedure affording each tenant an op

portunity for a hearing on a grievance as defined in § 966.53 in accordance with the requirements, standards, and criteria contained in this subpart.

(b) The PHA grievance procedure shall be included in, or incorporated by reference in, all tenant dwelling leases pursuant to subpart A of this part.

(c) The PHA shall provide at least 30 days notice to tenants and resident organizations setting forth proposed changes in the PHA grievance procedure, and providing an opportunity to present written comments. Subject to requirements of this subpart, comments submitted shall be considered by the PHA before adoption of any grievance procedure changes by the PHA.

(d) The PHA shall furnish a copy of the grievance procedure to each tenant and to resident organizations.

[56 FR 51579, Oct. 11, 1991]

§ 966.53 Definitions.

For the purpose of this subpart, the following definitions are applicable:

(a) *Grievance* shall mean any dispute which a tenant may have with respect to PHA action or failure to act in accordance with the individual tenant's lease or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status.

(b) *Complainant* shall mean any tenant whose grievance is presented to the PHA or at the project management office in accordance with §§ 966.54 and 966.55(a).

(c) *Elements of due process* shall mean an eviction action or a termination of tenancy in a State or local court in which the following procedural safeguards are required:

(1) Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction;

(2) Right of the tenant to be represented by counsel;

(3) Opportunity for the tenant to refute the evidence presented by the PHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have;

(4) A decision on the merits.

(d) *Hearing officer* shall mean a person selected in accordance with § 966.55 of this subpart to hear grievances and render a decision with respect thereto.

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(e) *Hearing panel* shall mean a panel selected in accordance with § 966.55 of this subpart to hear grievances and render a decision with respect thereto.

(f) *Tenant* shall mean the adult person (or persons) (other than a live-in aide):

(1) Who resides in the unit, and who executed the lease with the PHA as lessee of the dwelling unit, or, if no such person now resides in the unit,

(2) Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit.

(g) *Resident organization* includes a resident management corporation.

[40 FR 33406, Aug. 7, 1975. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 56 FR 51579, Oct. 11, 1991]

§ 966.54 Informal settlement of grievance.

Any grievance shall be personally presented, either orally or in writing, to the PHA office or to the office of the project in which the complainant resides so that the grievance may be discussed informally and settled without a hearing. A summary of such discussion shall be prepared within a reasonable time and one copy shall be given to the tenant and one retained in the PHA's tenant file. The summary shall specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefor, and shall specify the procedures by which a hearing under § 966.55 may be obtained if the complainant is not satisfied.

§ 966.55 Procedures to obtain a hearing.

(a) *Request for hearing.* The complainant shall submit a written request for a hearing to the PHA or the project office within a reasonable time after receipt of the summary of discussion pursuant to § 966.54. For a grievance under the expedited grievance procedure pursuant to § 966.55(g) (for which § 966.54 is not applicable), the complainant shall submit such request at such time as is specified by the PHA for a grievance under the expedited grievance procedure. The written request shall specify:

- (1) The reasons for the grievance; and
- (2) The action or relief sought.

(b) *Selection of Hearing Officer or Hearing Panel.* (1) A grievance hearing shall be conducted by an impartial person or persons appointed by the PHA, other than a person who made or approved the PHA action under review or a subordinate of such person.

(2) The method or methods for PHA appointment of a hearing officer or hearing panel shall be stated in the PHA grievance procedure. The PHA may use either of the following methods to appoint a hearing officer or panel:

(i) A method approved by the majority of tenants (in any building, group of buildings or project, or group of projects to which the method is applicable) voting in an election or meeting of tenants held for the purpose.

(ii) Appointment of a person or persons (who may be an officer or employee of the PHA) selected in the manner required under the PHA grievance procedure.

(3) The PHA shall consult the resident organizations before PHA appointment of each hearing officer or panel member. Any comments or recommendations submitted by the tenant organizations shall be considered by the PHA before the appointment.

(c) *Failure to request a hearing.* If the complainant does not request a hearing in accordance with this paragraph, then the PHA's disposition of the grievance under § 966.54 shall become final: *Provided*, That failure to request a hearing shall not constitute a waiver by the complainant of his right thereafter to contest the PHA's action in disposing of the complaint in an appropriate judicial proceeding.

(d) *Hearing prerequisite.* All grievances shall be personally presented either orally or in writing pursuant to the informal procedure prescribed in § 966.54 as a condition precedent to a hearing under this section: *Provided*, That if the complainant shall show good cause why he failed to proceed in accordance with § 966.54 to the hearing officer or hearing panel, the provisions of this subsection may be waived by the hearing officer or hearing panel.

(e) *Escrow deposit.* (1) Before a hearing is scheduled in any grievance involving the amount of rent (as defined in § 966.4(b)) that the PHA claims is

due, the family must pay an escrow deposit to the PHA. When a family is required to make an escrow deposit, the amount is the amount of rent the PHA states is due and payable as of the first of the month preceding the month in which the family's act or failure to act took place. After the first deposit, the family must deposit the same amount monthly until the family's complaint is resolved by decision of the hearing officer or hearing panel.

(2) A PHA must waive the requirement for an escrow deposit where required by § 5.630 of this title (financial hardship exemption from minimum rent requirements) or § 5.615 of this title (effect of welfare benefits reduction in calculation of family income). Unless the PHA waives the requirement, the family's failure to make the escrow deposit will terminate the grievance procedure. A family's failure to pay the escrow deposit does not waive the family's right to contest in any appropriate judicial proceeding the PHA's disposition of the grievance.

(f) *Scheduling of hearings.* Upon complainant's compliance with paragraphs (a), (d) and (e) of this section, a hearing shall be scheduled by the hearing officer or hearing panel promptly for a time and place reasonably convenient to both the complainant and the PHA. A written notification specifying the time, place and the procedures governing the hearing shall be delivered to the complainant and the appropriate PHA official.

(g) *Expedited grievance procedure.* (1) The PHA may establish an expedited grievance procedure for any grievance concerning a termination of tenancy or eviction that involves:

(i) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA, or

(ii) Any drug-related criminal activity on or near such premises.

(2) In the case of a grievance under the expedited grievance procedure, § 966.54 (informal settlement of grievances) is not applicable.

(3) Subject to the requirements of this subpart, the PHA may adopt special procedures concerning a hearing under the expedited grievance procedure,

including provisions for expedited notice or scheduling, or provisions for expedited decision on the grievance.

[40 FR 33406, Aug. 7, 1975, as amended at 42 FR 5573, Jan. 28, 1977. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 56 FR 51579, Oct. 11, 1991; 65 FR 16731, Mar. 29, 2000]

§ 966.56 Procedures governing the hearing.

(a) The hearing shall be held before a hearing officer or hearing panel, as appropriate.

(b) The complainant shall be afforded a fair hearing, which shall include:

(1) The opportunity to examine before the grievance hearing any PHA documents, including records and regulations, that are directly relevant to the hearing. (For a grievance hearing concerning a termination of tenancy or eviction, see also § 966.4(m).) The tenant shall be allowed to copy any such document at the tenant's expense. If the PHA does not make the document available for examination upon request by the complainant, the PHA may not rely on such document at the grievance hearing.

(2) The right to be represented by counsel or other person chosen as the tenant's representative, and to have such person make statements on the tenant's behalf;

(3) The right to a private hearing unless the complainant requests a public hearing;

(4) The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by the PHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the PHA or project management relies; and

(5) A decision based solely and exclusively upon the facts presented at the hearing.

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

(d) If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer or hearing panel may make a determination to postpone

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the hearing for not to exceed five business days or may make a determination that the party has waived his right to a hearing. Both the complainant and the PHA shall be notified of the determination by the hearing officer or hearing panel: *Provided*, That a determination that the complainant has waived his right to a hearing shall not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in an appropriate judicial proceeding.

(e) At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the PHA must sustain the burden of justifying the PHA action or failure to act against which the complaint is directed.

(f) The hearing shall be conducted informally by the hearing officer or hearing panel and oral or documentary evidence pertinent to the facts and issues raised by the complaint may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. The hearing officer or hearing panel shall require the PHA, the complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer or hearing panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

(g) The complainant or the PHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript.

(h) *Accommodation of persons with disabilities.* (1) The PHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.

(2) If the tenant is visually impaired, any notice to the tenant which is re-

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quired under this subpart must be in an accessible format.

[40 FR 33406, Aug. 7, 1975. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 56 FR 51580, Oct. 11, 1991]

§ 966.57 Decision of the hearing officer or hearing panel.

(a) The hearing officer or hearing panel shall prepare a written decision, together with the reasons therefor, within a reasonable time after the hearing. A copy of the decision shall be sent to the complainant and the PHA. The PHA shall retain a copy of the decision in the tenant's folder. A copy of such decision, with all names and identifying references deleted, shall also be maintained on file by the PHA and made available for inspection by a prospective complainant, his representative, or the hearing panel or hearing officer.

(b) The decision of the hearing officer or hearing panel shall be binding on the PHA which shall take all actions, or refrain from any actions, necessary to carry out the decision unless the PHA Board of Commissioners determines within a reasonable time, and promptly notifies the complainant of its determination, that

(1) The grievance does not concern PHA action or failure to act in accordance with or involving the complainant's lease on PHA regulations, which adversely affect the complainant's rights, duties, welfare or status;

(2) The decision of the hearing officer or hearing panel is contrary to applicable Federal, State or local law, HUD regulations or requirements of the annual contributions contract between HUD and the PHA.

(c) A decision by the hearing officer, hearing panel, or Board of Commissioners in favor of the PHA or which denies the relief requested by the complainant in whole or in part shall not constitute a waiver of, nor affect in any manner whatever, any rights the complainant may have to a trial *de novo* or judicial review in any judicial proceedings, which may thereafter be brought in the matter.