DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 960 and 966

[Docket No. FR–4084–P–01]

RIN 2577–AB67

Streamlining the Public Housing Admission and Occupancy Regulations

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule will revise HUD's regulations that govern admission and occupancy issues in the public housing program to do the following: Remove rule text that is repetitive of statutory language and otherwise streamline the rule; respond to relevant recommendations of the Public and Assisted Housing Occupancy Task Force report of April 1994; implement a recent statute regarding screening of applicants for admission and termination of tenancy; add important provisions concerning application processing, previously found only in a superseded Annual Contributions Contract between HUD and Housing Agencies and in HUD Handbooks; and clarify applicability of the part. The overall goal of this rule is to make the regulations clearer and more concise and to implement statutory directives.

DATES: Comments due date: July 8, 1997.

The deadline for comments on the information collection requirements is July 8, 1997, although commenters are advised that a comment is best assured of having its full effect if it is received by the Office of Management and Budget (OMB) within 30 days of publication. See the Public Reporting Burden heading under the Findings and Certifications section of this preamble regarding the information collection burden.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

Comments on the information collections contained in the rule, which are described in detail under the heading, FINDINGS AND CERTIFICATIONS, must refer to the docket number and title of the proposed rule and be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Linda Campbell, Director, Marketing, Leasing and Management Division, Office of Public and Assisted Housing Operations, Room 4206, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708–0744, extension 4020. (This telephone number is not toll-free.) For hearing-and speech-impaired persons, this number may be accessed via text telephone by dialing the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Regulatory Reinvention Effort

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. HUD has determined that the regulations for 24 CFR, Part 960, Admission To, And Occupancy Of, Public Housing, can be improved and streamlined by eliminating unnecessary language. Throughout the part, this rule shortens and simplifies the provisions retained.

The various subparts of part 960 currently contain their own sections on purpose, scope, and/or applicability. The statements of purpose and scope have been eliminated, since they were explanatory only and the information can be provided in HUD documents other than a rule. The applicability provisions have been consolidated into one section in a new subpart A, which deals with general topics. All statements of OMB approval numbers for information collection requirements have also been consolidated in that subpart.

Sections on tenant selection policies and standards for tenant selection criteria (§§ 960.204 and 960.205) have been streamlined and consolidated into one section (new § 960.201) entitled, ''Applicant admission policies.'' Examples have been removed, since they can be provided in HUD guidance documents.

References in the codified rule to reserved subparts and sections have been removed, to eliminate confusion.

A number of the changes made in this proposed rule increase the flexibility of housing agencies (''HAs'') administering the program. For example, § 960.206 now explicitly authorizes HAs to verify information about an applicant's disability to determine appropriate accommodations, to verify information relative to qualification for a preference, and to determine deductions for calculating adjusted income. It clarifies that the HA makes the final determination of whether an applicant's failure to meet the HA's tenant selection criteria is outweighed with respect to these issues. Another example is the explicit authorization for HAs to adopt income limits for continued occupancy, found in § 960.210. This responds to the desire of many HAs to adopt reasonable limits to avoid housing families who can obtain housing on the private market. In addition, language was removed from § 960.208 that required a tenant's approval for direct payment of a utility reimbursement to a utility provider (see discussion below).

II. Statutory Change and Related Change to Bar Admission of Certain Evicted Tenants

The statutory foundation for the public housing program is the United States Housing Act of 1937 (42 U.S.C. 1437a, et seq., ''1937 Act''). On March 28, 1996, that Act was amended by the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104–120, 110 Stat. 834) (''Extender Act''). It makes ineligible for admission to public housing those individuals who have been evicted from housing assisted under the 1937 Act (including Section 8 assistance) for drug-related criminal activity for a three-year period, unless the evicted tenant has successfully completed a rehabilitation program or the circumstances leading to the eviction no longer exist.

The statute also requires HAs to prohibit occupancy in any public housing dwelling unit by any person who the HA determines is illegally using a controlled substance, or whose pattern of illegal use of a controlled substance or pattern of alcohol abuse would interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents of the project. In this connection, the statutory amendment authorizes the housing agency administering the program to determine whether an applicant has

been rehabilitated from drug or alcohol abuse.

The amendment also provides some specific requirements about the administration of this applicant screening authority: (1) It requires law enforcement agencies to provide information to housing agencies concerning criminal convictions for purposes of applicant screening, lease enforcement, and eviction; (2) it requires the housing agency to provide anyone adversely affected by report of a criminal record an opportunity to dispute the accuracy and relevance of that record before any adverse action is taken; and (3) it requires that reports of criminal records be maintained confidentially. The first of these changes is not the subject of this rule but is the subject of current intergovernmental coordination efforts. The second and third changes are being implemented through revisions of the verification procedures contained in the section now designated as § 960.206(e).

A. Ineligibility of Persons Previously Evicted

This rule interprets the statute's ban on admission of a person previously evicted for drug-related criminal activity for three years to be a period of at least three years. Thus, an HA can determine the period of time it believes reasonable for particular types of drug-related activity, as long as that period is at least three years long.

This rule also proposes a related change in § 960.201 to make tenants evicted from housing assisted under the 1937 Act for serious lease violations ineligible for admission to public housing for an appropriate period of time. For example, families evicted for committing crimes against persons or property, and other acts that affect the health, safety or right to peaceful enjoyment of the premises by other residents, would be barred from admission to public housing for a specified period. These proposals will facilitate HUD and HA efforts to crack down on crime and to impose tougher expectations on federally assisted tenants, holding them responsible for their actions.

It is noted that in order to determine the eligibility of an applicant under this proposed rule, an HA needs to know whether the applicant was evicted from housing assisted under the 1937 Act and whether the eviction involved drug-related criminal activity. HUD is specifically requesting public comment on the best means to obtain information on evictions from privately owned assisted projects and ways HAs can share this information with each other.

B. Ineligibility of Persons Involved in Drug or Alcohol Abuse

The Extender Act requires that HAs prohibit occupancy in public housing by any person engaged in illegal use of a controlled substance or any person that the HA has reasonable cause to believe is engaged in a pattern of illegal use of a controlled substance or abuse (or a pattern of abuse) of alcohol that ''may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents of the project.'' This rule implements that provision by requiring HAs to establish screening criteria to prevent admission of such ineligible persons and by requiring HAs to establish standards for evicting tenants related to illegal drug use and alcohol abuse. (See §§ 960.201(c)(1).) Since the Extender Act makes these same standards the basis for termination of tenancy as well as for denial of admission, this rulemaking revises the provisions of current regulations pertaining to grounds for termination of tenancy, § 966.4(l), to add them.

In addition, consonant with the Department's overall efforts to make public housing safe and following the pattern of Section 8 regulations (§ 982.553), this proposed rule provides that the HA may deny admission or evict a tenant at any time if the HA determines that any family member has engaged in drug-trafficking or violent criminal activity. (Definitions of these terms are added to the rule.)

C. Criminal Background Checks

The rule currently requires, at § 960.206(a), that ''[a]dequate procedures must be developed to obtain and verify information with respect to each applicant.'' It also suggests as sources of information ''parole officers, court records, drug treatment centers, clinics, physicians or police departments where warranted by the particular circumstances.'' That section is being revised to provide, at paragraph (c)(1), that verification procedures include a ''criminal background check of all adult household members to identify any recent history of crimes of physical violence to persons or property and other activities that would adversely affect the health, safety or welfare of others.''

The enactment of the Extender Act makes it clear that Congress wants applicants who are admitted to public housing to be carefully screened for criminal and antisocial behavior, so that public housing developments will be more desirable places to live. HUD concludes that HAs must carefully screen applicants to assure that they are carrying out the new statutory provisions making ineligible for admission persons involved in drug use and alcohol abuse or previously evicted for drug-related activity and requiring that law enforcement agencies make available information about criminal records.

To assure that screening is thorough and is not conducted in a discriminatory way, the proposed rule provides that HAs must do a criminal background check on *all adult household members* of each applicant family. The rule requires HAs to access an individual's criminal history records from a local, State, or Federal government entity with law enforcement responsibility. The type of criminal background check done is left to the discretion of the HA, based on local circumstances.

This approach was discussed at a meeting in the summer of 1996 with representatives of housing agency officials (National Association of Housing and Redevelopment Officials, Council of Large Public Housing Authorities, and Public Housing Authority Directors Association). Although there was not unanimous support for this position among those officials, the Department has determined that benefits will outweigh the costs, as described below, and that the policy should be implemented. Of course, public comments are invited on this subject, as on other elements of this proposed rule.

When considering what type of check to do, an HA may consider factors described in this rule preamble. Local and county records, which may contain records of misdemeanors, as well as felonies, are generally available free or for only a small fee. This type of background check may be appropriate for long-term residents of the locality or county. State records are available, for fees that vary widely, and may be appropriate to check on the background of an applicant that has moved from other localities within a State. In some parts of the country, states have created networks through which HAs can access criminal records from all participating states through one request.

Another possible source is the National Crime Information Center (NCIC), which provides information about felonies and many misdemeanors. At this point, most HAs do not have access to NCIC records, but HUD is working with other Federal agencies to develop procedures so that this option can be pursued where it is deemed appropriate.

A large number of HAs have residency preferences (including New York, Puerto Rico, and Chicago—administering a total of 284,000 units), which, combined with long waiting lists, result in admission primarily of local residents, or those who work in the locality. Background checks on local residents can often be done through local, county, or State systems. In the HAs that have residency preferences, non-local residents rarely reach the top of the waiting list and the stage of screening that involves the criminal background check.

The range of effort an HA undertakes may vary from having the applicant get a document from the local police department or sheriff's office that indicates whether or not the applicant has a criminal record, and the nature of any such record, to having the applicant fingerprinted and checking these prints and other pertinent data with the NCIC. The former method has the advantage that applicants who know they have a criminal history may choose to withdraw their applications, thus screening themselves out of the applicant pool. The cost may range from nothing, to $1 for a name check with local authorities using a diskette for computerized access, to $10 for a name check with NCIC, to $25 for a fingerprint check with NCIC. In no event will the applicant be charged to cover the cost of the criminal background check.

The cost to HAs, in the aggregate, to conduct the required background check, which many are already doing under the existing regulations, is estimated as follows. There are approximately 1.3 million public housing households. Of these, there is turnover in 13% of the units each year, producing a need to do applicant screening to fill 169,000 units per year. Considering that criminal background checks will be done on the adults in applicant households that have already passed other standard screening procedures, it is likely that 1.5 households will be checked for each of the 169,000 admissions. That results in 253,000 households being checked. At an average of 1.2 adults per household, the requirement to check all adult members of an applicant household would require 303,600 individuals to be checked.

We estimate that 95% of these criminal background checks could be done at the local, county, or State level. The cost of this type of check varies widely, from about $1 to more than $15. Using a relatively high estimate of approximately $10 per person, the total annual cost for this category of background check would be $2,884,200. Another 3% of the checks would probably be done through a name check with the NCIC, at a ballpark estimate of $10 per person—for a total cost of $91,080. The last 2% would be checked via the fingerprint check with the NCIC, at an approximate cost of $25 (not including the cost of obtaining the applicant's fingerprints)—for a total cost of $151,800. Altogether, the cost then would be $3,127,080.

The HAs cover the cost of all their screening activities, as well as the cost of other operations, such as evictions, through HUD operating subsidy and rental and other income. If an HA does not properly screen applicants, both tangible and intangible costs will be incurred. The tangible costs to the HA will include the cost of evicting a tenant involved in criminal activity.

Costs associated with an eviction, if the HA uses its own counsel, are estimated to be in the range of $450 to $700 for each eviction, provided there is no appeal. If there is an appeal or a jury trial, the HA is likely to spend, at a minimum, $2,000 per eviction. These estimates do not include the HA staff time devoted to documentation of problems with the tenant family that takes place before the commencement of an eviction action.

The cost of doing adequate screening at the point of admission (at $1–$25 per adult) is an investment in effective management of public housing developments. Lease enforcement—via eviction—is much more costly. Using the high estimate of $25 per adult, the cost per household of universal adult screening is $30, which compares very favorably with an eviction cost of $450 to $2,000.

The intangible costs associated with failing to do adequate criminal background checks would include the effect on neighbors in the development whose peaceful enjoyment of the premises would be impeded by the presence of tenant families involved in criminal activity. These neighbors' dissatisfaction with the development might produce an undesirable image for the development and increased turnover and vacancies in the development. Of course, such turnover would result in costs for cleaning units and additional applicant screening to fill the units, and if units could not be filled because of a negative image of the development, loss in rental income resulting from vacancies. Complaints to the HA staff about tenants who might have been prevented from being admitted if a criminal background check had been completed would require staff to devote time to meet with affected families to attempt to resolve the situation, as well as action necessary to evict the families whose illegal activities could not be terminated by any other means.

The Department concludes that, in fulfillment of the statutory mandate to screen applicants to prevent admission of those who are involved in illegal drug use and drug-related criminal activity or who have been evicted previously for such activity and to terminate the tenancy of persons whose use of illegal drugs or abuses of alcohol interferes with the use of the premises by other residents, applicants must be screened for criminal activity. Considering the costs associated with criminal background checks and the tangible and intangible costs of failure to do adequate criminal background checks, the Department has determined that requiring such checks on all adults in applicant households before admission of a family is justified as a means of satisfying the statutory objective.

III. Annual Contributions Contract and Handbook Provisions

The Department revised the standard contract between it and housing agencies, called the Annual Contributions Contract (''ACC''), in the July 1995 revision streamlining and replacing the November 1969 version. The 1969 standard ACC contained requirements that are no longer found in the new ACC but are still to be kept in force. Therefore, this rule is adding to part 960 some requirements formerly found in the ACC, or in HUD Handbooks, on the subject of applications, waiting lists, and tenant selection and assignment.

A new subpart C requires HAs to obtain a written application from each applicant, and it builds on the framework established in 24 CFR 1.4 for tenant selection and assignment plans and use of waiting lists.

IV. Occupancy Task Force

In 1993, the Secretary established a task force to review all rules, policy statements, handbooks, technical assistance memoranda, and other relevant documents issued by the Department on the standards and obligations governing residency in federally assisted housing, to comply with Section 643 of the Housing and Community Development Act of 1992 (42 U.S.C. 13603).

This task force was comprised of individuals representing the interests of owners, managers, and tenants of federally assisted housing, HAs, owner and tenant advisory organizations, persons with disabilities and disabled families, organizations assisting homeless individuals, and social

service, mental health and other nonprofit servicers and providers who serve federally assisted housing. Members of the task force were directed to review all existing standards, regulations, and guidelines governing occupancy and tenant selection policies in federally assisted housing, as well as lease provisions and other rules of occupancy for federally assisted housing, to determine whether the standards, regulations and guidelines provide sufficient guidance to owners and managers of federally assisted housing to:

(1) Develop procedures for preselection inquiries sufficient to determine the capacity of the applicants to comply with reasonable lease terms and conditions of occupancy;

(2) Use leases that prohibit behavior which endangers the health and safety of other tenants or HA employees or violates the rights of other tenants to peaceful enjoyment of the premises;

(3) Assess the need to provide, and appropriate measures for providing, reasonable accommodations required under the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973 for persons with various types of disabilities; and

(4) Comply with civil rights laws and regulations.

The task force made the necessary review, conducted several public hearings across the country, and received written comments. As mandated, the task force submitted to the Secretary and Congress a final report on April 7, 1994 that set forth the task force's recommendations for occupancy criteria in federally assisted housing, standards for the reasonable performance and behavior of tenants of federally assisted housing, compliance standards consistent with the reasonable accommodation of the requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973, standards for compliance with other civil rights laws, and procedures for the eviction of tenants not complying with such standards consistent with sections 6 and 8 of the 1937 Act.

Some of the recommendations were directed to the Congress, and others would require the appropriation of funds for their implementation. Those recommendations are not covered by this proposed rule.

Most of the remaining recommendations do not require implementation through the rulemaking process but rather through the promulgation of guidance. The Department is committed to minimizing the regulatory burden on the housing agencies. As a result, the only recommendations that are covered in this proposed rule are those related to 24 CFR part 960 that require an explicit, enforceable requirement on the HAs or for which the existing regulation must be modified to be consistent with Task Force recommendations. The Department intends to address and adopt other Task Force recommendations in future revisions of other regulations, such as 24 CFR part 966, covering leases and grievance procedures, and in future training.

The Task Force recommended that HUD provide broader coverage with respect to requiring that HAs provide reasonable accommodations to applicants whose applications would be denied, considering what accommodations could be provided that would permit the applicants to comply with program requirements. The revised § 960.206 addresses this issue.

The Task Force recommended that HUD require all housing providers to ask all applicants at the point of initial contact whether they need another form of communication other than plain language paperwork. Some alternatives recommended were providing sign language interpretation; having material explained orally by staff, either in person or by phone; providing large type materials; offering information on tape; or having some third party representative (a friend, relative or advocate, named by the applicant) accompany the applicant to receive, interpret and explain housing materials and be present at all meetings and discussions. The Department has decided to require that applicants be informed of alternative forms of communication that can be used, upon the request of an applicant. The provision (in § 960.207) is worded in the form of providing information to applicants instead of asking applicants what they need, to respect their privacy.

The Task Force recommended that HUD require housing providers to include in all letters rejecting applicants a notice asking applicants with disabilities who are being rejected to request an interview to determine whether a reasonable accommodation would enable them to comply with essential lease provisions. This recommendation has been accepted and embodied in the same section.

V. Description of Specific Changes

A. General

The entire part has been rewritten, instead of amending some of the existing parts. The new subpart A describes the applicability of the part, clarifying a possible confusion about what leased housing projects are covered—units leased by the HA from a private owner and then subleased to tenants under the Section 23 or the Section 10(c) programs are covered. This subpart also describes the authorization for information collections.

B. Subpart B—Admission, Rent, and Reexamination of Income

When the rule governing Federal preferences was issued, on March 6, 1996, it removed § 960.203 covering nondiscrimination requirements when it added a provision (§ 5.410(i)) imposing the requirements with respect to administration of selection preferences. However, the scope of that provision did not clearly apply to all tenant selection and occupancy determinations made by an HA. Therefore, this rule restores a § 960.203 to apply those nondiscrimination provisions to all such activities. To minimize repetition of lists of statutory references in its rules, the Department cross-references the list already stated in that rule.

While that change restores language previously removed, another change to this subpart eliminates reference to utility reimbursements, in § 960.208. Utility reimbursements are payments to, or on behalf of, tenants who pay their own utility bills in cases where the utility allowance applicable to their unit exceeds their payment for rent, based on their income. Currently, six percent of the total population of public housing residents have a utility allowance that is greater than their payment for rent (''total tenant payment'' under 24 CFR part 5). These households are, therefore, entitled to receive a utility reimbursement. This means that HAs currently send out approximately 75,000 checks monthly to tenants, if tenants have not consented to direct payment to the utility company.

The method of paying utility reimbursements is now covered in both part 960 and the rule defining income that is applicable to the public housing program, now found in 24 CFR part 5 (a broader rule applicable to all programs administered under the 1937 Act). The current provisions require that before an HA can pay a utility reimbursement directly to the utility company, it must obtain the consent of the tenant.

This proposed rule eliminates reference to utility reimbursements from part 960, so that treatment of these reimbursements will be covered in only one part. The final rule based on this proposed rule will include a revision to the income reimbursement provision in part 5 to permit an HA, with the consent

of the utility company—but without obtaining consent of the tenant—to pay the reimbursement directly to the utility company on the tenant's behalf. This change is intended to assure that the funds are used for their intended purpose and to save HAs money by consolidating the number of utility reimbursement checks they must issue from several to one. The Department believes that the change will have no adverse impact on tenants, but specifically invites public comments on this change.

As mentioned above with respect to Task Force recommendations, § 960.207 has been significantly revised. The title reflects that change. It is no longer ''Notification to Applicants'' but is ''Communication With Applicants.''

With respect to reexamination of family income and composition, § 960.209, the rule is being revised to provide that the HA shall prescribe the conditions under which changes in circumstances between annual reexaminations must be reported.

C. Subpart C—Applications, Waiting List, Tenant Selection and Assignment

This subpart prescribes requirements for waiting lists and tenant selection and assignment policies adopted pursuant to 24 CFR 1.4(b)(2)(ii). Section 1.4 requires HAs to use a community-wide waiting list, but permits HAs to seek an exception from this requirement where the exception would be consistent with title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d-1, and the purposes of 24 CFR part 1.

In the waiting list section of this rule, § 960.303, clarification is given that HAs may divide their waiting list into separate categories for general occupancy projects, for mixed population projects, for projects designated for elderly families, and for projects designated for disabled families, provided that all applicants are given an opportunity to be on the waiting list for any category of project for which they are qualified. This provision is intended to permit operation of projects that were previously approved as projects designated for elderly and disabled families in accordance with their designation, while permitting families eligible for that housing to also seek admission to other projects.

The tenant selection and assignment provisions of 24 CFR 1.4 have been augmented in § 960.304 by a provision that explicitly permits an HA to deal with an applicant who refuses offered units a prescribed number of times by removing the applicant from the waiting list entirely. This additional option provides an HA with greater flexibility in administering its program. This new section also specifies that the number of offers to be given an applicant before such action shall not exceed three. Of course, the HA's tenant selection and assignment plan remains subject to HUD review, in accordance with 24 CFR 1.4.

The provisions concerning a preference for elderly families and disabled families in mixed population projects now found in subpart D of part 960 are consolidated into one section (§ 960.307) in this subpart.

D. Subpart D—Exemption From Eligibility Requirements for Police Officers and Other Security Personnel

This subpart permits the admission to public housing of police officers and other security personnel, who are not otherwise eligible under any other admission requirements, under a plan submitted by a housing agency (HA) and approved by the Department, to increase their visible presence to serve as a deterrent to criminal activity in and around public housing.

VI. Findings and Certifications

A. Public Reporting Burden

The information collection requirements contained in this rule, as described in §§ 960.201, 960.206, 960.207, 960.209, 960.301, 960.303, 960.304, and 960.405 are being submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995 (42 U.S.C. 3501–3520).

1. In accordance with 5 CFR 1320.5(a)(1)(iv), the Department is setting forth the following concerning the proposed collections of information:

(a) Title of the information collection proposal: Public Housing Admission and Occupancy Policies.

(b) Summary of the collection of information: The information collected covers the following: (1) Policies on applicant admission, including procedures for selection of applicants, verification of applicant data and criminal history records, communication with applicants, maintenance of waiting lists, and tenant selection and assignment; (2) provision for reexamination of family income; and (3) a plan for housing security officers.

(c) Description of the need for the information and its proposed use: The information collected is needed to monitor compliance with HUD public housing program requirements authorized by statute to assure that sound management practices will be followed in the operation of the projects, consistent with the obligations of the HAs under the United States Housing Act of 1937, 42 U.S.C. 1437, et seq.

(d) Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information: The likely respondents are the approximately 3,300 HAs that administer public housing units. The information is collected only once, unless an HA changes its policy.

(e) Estimate of the total reporting and recordkeeping burden that will result from the collection of information: The total number of burden hours for this collection of information is estimated to be 344,800 hours, including the time for reviewing instructions, gathering and maintaining the data. The actual burden to HAs is minimal, since the collections are already a part of the day-to-day operation of the HAs. The only collections actually sent to HUD are those described in § 960.201 (Applicant Admission Policies), in § 960.304 (Tenant Selection and Assignment Plan) and in § 960.405 (Plan Standards and Criteria for Admission of Police Officers). All other collections are developed and maintained at the HA. It is difficult to determine a cost per hour due to the different organizational structure of HAs and the various collections being performed by different individuals. No outside consultation was necessary to ascertain data collection requirements. The information is not reported to the Department on a form.

REPORTING BURDEN

Type of collection	Proposed section of 24 CFR affected	Number of respondents	Frequency of response	Est. ave. response time (hrs.)	Annual burden hrs.
Policies on Applicant Admission	960.201, 960.206, 960.207, 960.209, 960.304	3,300	1	68	224,400
Procedures for Applications & Waiting Lists	960.301, 960.303	3,300	1	36	118,800
Submission of Plan to Exempt Police Officers from Eligibility Requirements.	960.405	800	1	2	1,600
Total Burden					344,800

2. In accordance with 5 CFR 1320.8(b)(3), the Department makes the following statement:

The reason for collecting the information is to permit housing agencies to collect necessary information from program applicants to determine their eligibility for participation in the program, and to permit HUD to monitor housing agencies' activities. HUD uses the information it collects to ensure that the policies and procedures adopted by the housing agencies in administration of the public housing program are consistent with requirements of the authorizing legislation and applicable nondiscrimination laws. The information submitted to HUD is public information and does not lend itself to confidentiality. Information submitted to a housing agency in the verification of applicant data is not public information and is subject to statutory requirements concerning confidentiality (42 U.S.C. 1437d(q)(4)). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

3. In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected agencies (see **DATES** and **ADDRESSES** sections above) concerning the proposed collection of information to:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

B. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would amend occupancy and tenant selection policies in the Public Housing program. The Department recognizes that uniform application of requirements on entities of differing sizes may place a disproportionate burden on small entities. Therefore, the Department invites small entities to suggest alternatives ways of compliance with the basic provisions of this proposed rule about how they might comply in a way less burdensome to them.

C. Environmental Impact

This proposed rulemaking does not have an environmental impact. This proposed rulemaking simply amends an existing regulation by consolidating and streamlining provisions and does not alter the environmental effect of the regulations being amended. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

D. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule do not have significant impact on States or their political subdivisions, or the relationship between the Federal Government and State and local governments, or on the distribution of power and responsibilities among the various levels of government. As a result, the proposed rule is not subject to review under the Order. The proposed rule merely streamlines existing regulations and implements certain statutory requirements with respect to admission and occupancy of housing funded by the Federal Government but administered by local entities.

E. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this proposed rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order.

F. Unfunded Mandates Reform Act

The Secretary, in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, has reviewed this proposed rule before publication and by approving it certifies that this proposed rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

G. Regulatory Review

This proposed rule was reviewed by the Office of Management and Budget under Executive Order 12866, not on the basis of impact in excess of $100 million but on the basis of its importance. Any changes made in this proposed rule as a result of that review are clearly identified in the docket file for this proposed rule, which is available for public inspection in the HUD's Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Catalog

The Catalog of Federal Domestic Assistance number for the program affected by this proposed rule is 14.850.

List of Subjects

24 CFR Part 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Reporting and recordkeeping requirements, Public housing.

24 CFR Part 966

Grant programs—housing and community development, Public housing.

Accordingly, in title 24 of the Code of Federal Regulations, parts 960 and 966 are proposed to be amended as follows:

1. Part 960 is revised to read as follows:

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

Subpart A—General

Subpart B—Admission, Rent, and Reexamination

Subpart C—Applications, Waiting List, Tenant Selection, and Assignment

Subpart D—Exemption From Eligibility Requirements for Police Officers and Other Security Personnel

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, and 3535(d).

Subpart A—General

§ 960.101 Applicability.

This part is applicable to all dwelling units assisted under the 1937 Act in projects owned by or leased to HAs and leased or subleased by HAs to tenants, including Section 23 and Section 10(c) leased housing projects directly operated by the HA. This subpart is not applicable to the Low-Rent Housing Homeownership Opportunities Program (Turnkey III); to the Indian Housing Rental, Turnkey III and Mutual Help Homeownership Opportunities Program; or to units assisted under Section 8 of the 1937 Act, 42 U.S.C. 1437f.

§ 960.105 Approved information collections.

The following sections of the part have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 and assigned the OMB approval number indicated:

Approval No.	Sections
2577– ...	960.201, 960.206, 960.207, 960.301, 960.303, 60.304, and 960.405
2577– ...	960.209

Subpart B—Admission, Rent, and Reexamination of Income

§ 960.201 Applicant admission policies.

(a) *General.* The HA must admit to public housing only families that are qualified for admission, as follows:

(1) They are eligible in terms of income, family composition and citizenship or immigration status;

(2) Their past behavior indicates that they can be reasonably expected to comply with the lease;

(3) No family member has been evicted from housing assisted under the 1937 Act for drug-related criminal activity during a reasonable time period specified by the HA, which is not less than three years from the date of the eviction. Notwithstanding the immediately preceding sentence, the HA may, in its discretion, determine that the family is eligible for admission if the HA determines that the evicted family member who was engaged in drug-related criminal activity has successfully completed a rehabilitation program approved by the HA or that the circumstances leading to the eviction no longer exist (e.g., the evicted family member involved in drugs is no longer in the household because of incarceration); and

(4) No family member has been evicted from housing assisted under the 1937 Act for other serious violations of the lease during a reasonable time period specified by the HA, unless the HA determines that the circumstances leading to the eviction no longer exist.

(b) *Criminal activity by family members.* At any time, the HA may deny admission to an applicant if the HA determines that any family member has engaged in drug-trafficking or violent criminal activity. For purposes of this section, drug-trafficking means the illegal manufacture, sale, or distribution, or the possession with intent to manufacture, sell, or distribute, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)). For purposes of this section, violent criminal activity means any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

(c) *Written policies and procedures.* The HA must adopt and implement written policies for admission of tenants and procedures identifying standards and criteria for tenant selection that comply with the provisions of the 1937 Act, 42 U.S.C. 1437d, and applicable civil rights requirements, including the following elements:

(1) *Policies on illegal drug use and abuse of alcohol.*

(i) The HA must establish standards for denying admission if the HA determines that:

(A) Any Family member is illegally using a controlled substance; or

(B) There is reasonable cause to believe that a Family member's illegal use or pattern of illegal use of a controlled substance or abuse or pattern of abuse of alcohol may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(ii) In determining whether to deny admission for illegal use or pattern of use of a controlled substance or for abuse or pattern of abuse of alcohol, the HA may consider whether the person:

(A) Is no longer engaging in the illegal use of a controlled substance or in abuse of alcohol (as applicable); or

(B) Has successfully completed a supervised drug or alcohol rehabilitation program (as applicable), has otherwise been rehabilitated successfully, or is participating in a supervised drug or alcohol rehabilitation program (as applicable).

(2) *Requirements for applications and waiting lists.* (See 24 CFR 1.4 and subpart C of this part). A dwelling unit must not be allowed to remain vacant for the purpose of awaiting an application from a family falling within a particular income range or for any other preference;

(3) *Policies for selection of applicants from the waiting list.* Selection policies must include:

(i) *Preferences.* Federal preferences (if any), and any ranking or local preferences, and how they are applied. (See 24 CFR part 5, subpart D, for applicable requirements.)

(ii) *Tenant selection and assignment plan.* The organization of the waiting

list, how applicants are assigned to specific projects and dwelling units, and the precedence of transfers over admissions;

(iii) *General screening criteria.* Applicant screening criteria and information to be considered must be reasonably related to each applicant's individual attributes and behavior, and not imputed to a particular group or category of persons of which an applicant may be a member. These criteria must be related to whether an applicant's conduct would be likely to interfere with other residents by adversely affecting their health, safety or welfare or the physical environment or the financial stability of the project if the applicant were admitted.

(4) *Policies for participant transfer between units, projects, and programs.* These shall include a policy on the transfer to a standard unit of an applicant who was admitted to an accessible unit but does not need its special features when an applicant who does need the unit's special features is being admitted.

(d) *Availability of policies.* These policies must be available in each office where applications are received and be furnished to applicants or tenants upon request, free or at their expense, at the discretion of the HA. A copy must be submitted to HUD upon request.

(e) *Tenant Advisory Boards.* The HA may establish Tenant Advisory Boards for consultation in connection with the tenant selection process.

§ 960.203 Nondiscrimination requirements.

The HA must administer its system of tenant selection and determinations concerning continued assistance in accordance with the nondiscrimination requirements specified with respect to selection preferences in 24 CFR 5.410.

§ 960.206 Verification procedures.

(a) *General.* (1) The HA must develop procedures to obtain and verify information with respect to each applicant's qualification for admission. (See 24 CFR part 5, subpart B.) Information relative to the acceptance or rejection of an applicant and the granting or denial of a preference under 24 CFR part 5 must be documented and placed in the applicant's file. The methods of verification and documentation must be specified in writing.

(2) Relevant information to verify with respect to an applicant's qualification may include, but is not limited to:

(i) An applicant's past performance in meeting financial obligations, especially rent; and

(ii) A record of violent criminal activity, drug-trafficking, destruction of property, disturbance of neighbors, or living or housekeeping habits that may adversely affect the health, safety or welfare of others.

(b) *Disabilities.* (1) With respect to applicants claiming that they have a disability, the HA may verify the claim only to the extent necessary to ensure:

(i) That applicants are qualified for the housing for which they are applying;

(ii) That applicants are qualified for the deductions used in determining adjusted income;

(iii) That applicants are entitled to any preference they may claim; and

(iv) That applicants who have requested a reasonable accommodation have a need for the requested accommodation. For purposes of this part, ''reasonable accommodation'' means special action(s) to overcome barriers to equal access in order to provide access to the HA's programs and activities for a person with a disability.

(2) An applicant who does not want to be considered on the basis of a disability does not have to reveal the existence of a disability. The HA may not inquire about a disability if none is revealed by the applicant.

(3) If an applicant does not satisfy the HA's tenant selection criteria because of a disability, the HA must, if requested by the applicant:

(i) Consider whether any mitigating circumstances related to the disability could be verified to explain and overcome the problematic conduct; and

(ii) Make a reasonable accommodation that will allow the applicant to meet the HA's tenant selection criteria.

(c) *Criminal activity.*—(1) *Background check.* The HA must perform a criminal background check of all adult household members to identify any recent history of crimes of physical violence to persons or property and other activities that would adversely affect the health, safety or welfare of others. The type of criminal background check done is within the discretion of the HA. For purposes of this paragraph (c)(1), a criminal background check is accessing an individual's criminal history records from a local, State, or Federal government entity with law enforcement responsibility or with responsibility for maintaining governmental records relating to criminal acts.

(2) *Standard of evidence.* In determining whether to deny admission to a family based on drug-related criminal activity or violent criminal activity, the HA may act where the preponderance of evidence indicates that a family member has engaged in such activity, regardless of whether the family member has been arrested or convicted.

(d) *Documentation of rehabilitation from drug or alcohol abuse.* The HA may require a family member who has engaged in the illegal use of a controlled substance, or in abuse of alcohol that interfered with the health, safety, and peaceful enjoyment of the premises by other residents, to submit evidence of current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program (as applicable) as a condition to admission.

(e) *Treatment of unfavorable information.*—(1) *General.* If unfavorable information is received about an applicant's ability to meet the tenant selection criteria, consideration must be given to mitigating circumstances such as the time, nature, and extent of the applicant's conduct and to factors that in the judgment of the HA indicate a reasonable probability of favorable future conduct.

(2) *Criminal record.* If the unfavorable information is a criminal record, the HA must safeguard the record in accordance with 42 U.S.C. 1437d(q) (4) and must provide the applicant a copy of the record and an opportunity to dispute the accuracy and relevance of the record.

(f) *Final determination.* After appropriate verification, the HA makes the final determination as to whether a claim of mitigating circumstances or a proposed accommodation is sufficient to overcome a failure to meet the HA's tenant selection criteria.

§ 960.207 Communication with applicants.

(a) *Form of communication.* At the initial point of contact with each applicant, the HA must inform the applicant that forms of communication other than standard written communication, such as oral explanation, sign language, large print, audiotape, or braille, can be made available to the applicant, upon request. If the applicant requests that the HA use an alternative form of communication, the HA must use the agreed upon alternative form, in addition to its written communication, until the applicant requests another form of communication or notifies the HA that an alternative form of communication is no longer necessary.

(b) *Notification of denial.* The HA must promptly notify any applicant determined unqualified for admission to a project of the basis for such

determination, and must provide the applicant upon request, within a reasonable time after the determination is made, with an opportunity to meet with a representative of the HA to review the determination. This meeting may be conducted by any person or persons designated by the HA, including the person who made or reviewed the original determination. The notification must inform the applicant of the HA's responsibility to make reasonable accommodation for applicants with disabilities and the applicant's right to propose a reasonable accommodation to enable the applicant to comply with eligibility criteria.

(c) *Notification of acceptance.* When the HA determines that an applicant is qualified for admission, the applicant must be notified of the approximate date of occupancy insofar as that date can be reasonably determined. Notification of the waiting period of similar applicants who are currently being admitted will meet this requirement.

§ 960.208 Rent.

The amount of rent payable by the tenant to the HA is the Tenant Rent, as defined in part 5 of this title.

§ 960.209 Reexamination of family income and composition.

(a) *Regular reexaminations.* When the HA reexamines the income and composition of tenant families in accordance with 24 CFR part 5, subpart F, it must determine whether the family's unit size is still appropriate. In accordance with that rule, after consultation with the family and upon verification of the information, the HA must make appropriate adjustments in tenant rent. See requirements concerning consent forms for income and eligibility requirements (including citizenship or immigration status) in 24 CFR part 5, subparts B and E.

(b) *Interim redeterminations.* The HA must adopt policies prescribing when and under what conditions tenant changes in circumstances must be reported and prescribing the effective date of rent changes resulting from interim redeterminations. The tenants must comply with provisions in the lease regarding interim reporting of changes. If the HA receives information concerning a change in the tenant income or other circumstances between regularly scheduled reexaminations that would require a redetermination under its policy, the HA must consult with the family and make any adjustments determined to be appropriate. Any change in the family's circumstances that results in adjustment in the Tenant Rent must be verified. See 24 CFR part 5 for other applicable requirements. At any interim redetermination when there is a new family member, the HA must follow the requirements of 24 CFR part 5 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) *Termination.* For provisions requiring termination of tenancy for failure to establish citizenship or eligible immigration status, and for provisions concerning assistance to certain mixed families (families whose members include those with citizenship and eligible immigration status and those without eligible immigration status) in lieu of termination of tenancy, see 24 CFR part 5.

§ 960.210 Continued occupancy limits.

(a) *General.* The HA may adopt reasonable income limits for continued occupancy of its dwelling units. The limits must not be less than the low income limit determined by HUD, in accordance with 24 CFR part 5.

(b) *Action based on ineligibility.* No HA may commence eviction proceedings, or refuse to renew a lease, based on the income of the tenant family unless:

(1) It has identified, for possible rental by the family, a decent, safe, and sanitary unit of suitable size available at a rent not exceeding the tenant rent as defined and calculated in accordance with 24 CFR part 5; or

(2) It is required to do so by local law.

Subpart C—Applications, Waiting List, Tenant Selection and Assignment

§ 960.301 Applications.

(a) The HA must have a written application before placing any applicant on the waiting list. The HA must, if requested, provide assistance to the applicant in completing the application.

(b) The application must provide sufficient information to the HA for it to make a preliminary determination of the applicant's eligibility, type and size of dwelling requirement, and rent.

(c) The HA must record the date and time of receipt of all applications and process them centrally.

(d) Unless the waiting list is closed, the HA must give an applicant an opportunity to submit a written application, even if informal discussion suggests that the applicant is not eligible.

§ 960.303 Waiting lists.

See 24 CFR 1.4 for requirements concerning selection of tenants for all of the public housing projects under an HA's jurisdiction from a community-wide waiting list. The HA may divide its waiting list into separate categories for general occupancy projects, for mixed population projects, for projects designated for elderly families, and for projects designated for disabled families, provided that all applicants are given an opportunity to be on the waiting list for any category of project for which they are qualified.

§ 960.304 Tenant selection and assignment.

(a) Assignment of applicants and units must be conducted in accordance with a Tenant Selection and Assignment Plan that meets the requirements of 24 CFR 1.4(b)(2)(ii) and is approved by HUD.

(b) Unit assignments must be in sequence and must be based on the type of project, size and type of unit required, applicable Federal and local preferences, and date and time of application. See 24 CFR 1.4(b)(2) and 24 CFR part 5, subpart D.

(c) The HA may move to the bottom of the waiting list or remove from the waiting list the name of any applicant who refuses more than the number of offers of suitable units prescribed in the HA's plan. The HA may prohibit any applicant whose name was removed in accordance with such a policy from reapplying for a period of time specified in the plan. The number of offers allowed under the plan must not exceed three.

(d) An applicant who is dropped from the waiting list because a disability interfered with the ability to respond to an HA request can be reinstated as a reasonable accommodation.

§ 960.307 Mixed population projects.

(a) For purposes of this section, a ''mixed population project'' is a public housing project, or portion of a project, that either was reserved for elderly families and disabled families at its inception (and has retained that character), or was approved by HUD for preference in tenant selection to elderly families and disabled families.

(b) Elderly families and disabled families must be given a preference over all other applicants for admission to dwelling units in a mixed population project.

(c) Preference must be given to elderly families and disabled families equally in determining priority for admission to mixed population projects. An HA may not establish a limit on the number of elderly families or disabled families who may be accepted for occupancy in a mixed population project.

(d) In offering available units to elderly families and disabled families in

mixed population projects, units with accessible features must be offered first to persons with disabilities who require the accessibility features of the unit in accordance with the requirements of 24 CFR 8.27 and 24 CFR 100.202(c)(3).

(e) If Federal preferences are in effect, elderly families and disabled families who do not qualify for a Federal preference and who are given preference for admission under paragraph (b) of this section over non-elderly families and non-disabled families that qualify for a Federal preference, are not subject to the statutory limitation on admission of families without a Federal preference over families with such a Federal preference that may initially receive assistance in any one-year period.

Subpart D—Exemption From Eligibility Requirements for Police Officers and Other Security Personnel

§ 960.401 Exemption from eligibility requirements.

HUD may exempt officers from the eligibility requirements for admission to public housing, provided that:

(a) The officers would not be eligible, under any other admission requirements or procedures, for admission to the public housing development without such an exemption; and

(b) The exemption is given under a plan, as described in § 960.402, that has been approved by HUD.

§ 960.402 Definitions.

Officer means a professional police officer or other professional security provider. Police officers and other security personnel are considered professional if they are employed full time, i.e., not less than 35 hours per week, by a governmental unit or a private employer and compensated expressly for providing police or security services. As used in this subpart, ''Officer'' may refer to the Officer as so defined or to the Officer and his or her family taken together, depending on the context.

Plan means the written plan submitted by a housing agency (HA) to the Department, under which, if approved, the Department will exempt Officers from the normal eligibility requirements for residence in public housing and allow Officers, who are otherwise not eligible, to reside in public housing units. An HA may have only one plan in effect at any one time, which will govern exemptions under this subpart for all public housing managed by that HA.

§ 960.405 Plan standards and criteria.

(a) *Minimum requirements.* To be approved, a plan must satisfy the following requirements:

(1) The plan must identify the number of units under management by the HA and the number and location of the units the HA intends to use for officers and the amount of rent to be charged and a basis for determining that it is reasonable;

(2) The plan must identify the specific benefits to the community and to the HA that will result from the presence of the officer in each affected development;

(3) The plan must describe the existing physical and social conditions in and around each affected development sufficient for HUD to make an informed assessment of the level of need for increased security; and

(4) The plan will provide information sufficient for HUD to determine that granting an exemption will:

(i) Increase security for other public housing residents;

(ii) Result in a limited loss of income to the HA; and

(iii) Not result in a significant reduction of units available for residence by qualified families.

(b) *Certifications by HA.* The HA must certify that:

(1) The dwelling units proposed to be allocated to officers are situated so as to place the officers in close physical proximity to other residents;

(2) No resident families will have to be transferred to other dwelling units in order to make available the units proposed to be allocated to officers;

(3) The dwelling units proposed to be allocated to officers will be rented under a lease that enforces the provisions of § 960.409; and

(4) The number of dwelling units proposed to be allocated to officers under the plan does not exceed a reasonable number, as determined on the basis of total number of units under management by the HA, in consultation with HUD.

§ 960.409 Special rent requirements and other terms and conditions.

The HA must lease units to officers under a lease agreement that is consistent with the requirements of this section and with part 966 of this chapter. If there is any inconsistency between the requirements of part 966 and this section, the provisions of this section shall govern.

(a) *Reasonable rent.* The lease must provide for a reasonable rent.

(b) *Continued employment.* The lease must provide that the officer's right of occupancy is dependent on the continuation of the employment that qualified the officer for residency in the development under the plan and provide that the officer will move from the unit within a reasonably prompt time, to be established in the lease, after termination of such employment.

§ 960.411 Applicability of the annual contributions contract; effect on the Performance Funding System.

(a) *Annual contributions contract.* Public housing units occupied by Officers in accordance with a plan submitted and approved under this subpart will be subject to the terms and conditions of the annual contributions contract (ACC) between the HA and HUD. This subpart does not override any of the terms and conditions of the ACC except insofar as they are inconsistent with the provisions of this subpart.

(b) *Performance funding system.* For purposes of the operating subsidy under the Performance Funding System (PFS) described in part 990, subpart A, of this chapter, dwelling units allocated to Officers in accordance with this subpart are excluded from the total unit months available, as defined in § 990.102 of this chapter. Also for purposes of the operating subsidy under the PFS, the full amount of any rent paid by Officers in accordance with this subpart is included in other income, as defined in § 990.102 of this chapter. HAs may receive operating subsidy for one unit per housing development to promote economic self-sufficiency services or anti-drug programs, including housing police officers and security personnel. An HA may request consideration of such units in its calculation of operating subsidy eligibility through the appropriate local HUD Office. (See § 990.108(b) of this chapter.)

PART 966—LEASE AND GRIEVANCE PROCEDURES

2. The authority citation for part 966 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437d note, and 3535(d).

3. In § 966.4, paragraph (l)(2) is revised to read as follows:

§ 966.4 Lease requirements.

* * * * *

(l) * * *

(2) *Grounds for termination.* The PHA shall not terminate or refuse to renew the lease other than for serious or repeated violation of material terms of the lease or for other good cause.

(i) *General.* Failure to make payments due under the lease or to fulfill the tenant obligations set forth in § 966.4(f)

would constitute grounds for termination of tenancy.

(ii) *Crime.* (A) At any time, the PHA may terminate the lease if the PHA determines that any family member has engaged in drug-trafficking or violent criminal activity. For purposes of this section, drug-trafficking means the illegal manufacture, sale, or distribution, or the possession with intent to manufacture, sell, or distribute, of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)). For purposes of this section, violent criminal activity means any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

(B) The PHA may terminate the lease if the PHA determines that any family member, a guest, or another person under the tenant's control, is engaged in any criminal activity that threatens the health, safety or right of peaceful enjoyment of the PHA's public housing premises by other residents or any drug-related criminal activity.

(iii) *Illegal drug use and alcohol abuse.* (A) The PHA must establish standards for determining whether to terminate program assistance if the PHA determines that:

(*1*) Any family member is illegally using a controlled substance; or

(*2*) A family member's use of a controlled substance or abuse of alcohol interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(B) In determining whether to deny or terminate program assistance for illegal use or pattern of use of a controlled substance or for abuse or pattern of abuse of alcohol by a family member, the PHA may consider whether the person:

(*1*) Is no longer engaging in the illegal use of a controlled substance or in abuse of alcohol (as applicable); or

(*2*) Has successfully completed a supervised drug or alcohol rehabilitation program (as applicable), has otherwise been rehabilitated successfully, or is participating in a supervised drug or alcohol rehabilitation program (as applicable).

(C) The PHA may require a family member who has engaged in the illegal use of a controlled substance, or in alcohol abuse activity that interfered with the health, safety, and peaceful enjoyment of the premises by other residents, to submit evidence of current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program (as applicable) as a condition to being allowed to reside in the unit.

(D) In determining whether to terminate the lease based on drug-related criminal activity or violent criminal activity, the PHA may act when the preponderance of evidence indicates that the person has engaged in such activity, regardless of whether the person has been arrested or convicted.

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Dated: April 9, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

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