

**Occupancy
Frequently Asked Questions**

24. In a 202/811 project are children ages 18 and under allowed to live in the unit if the head of household has legal custody of that child?

Yes. Owners may not exclude families with children from their properties, nor develop policies or procedures that have the purpose or effect of prohibiting children (e.g., policies in tenant selection plan, occupancy standards, house rules). Owners may not exclude otherwise eligible elderly families with children from elderly properties or elderly/disabled properties covered by handbook 4350.3. See Paragraph 3-22.D.

23. Is it permissible to allow an elderly person already in the unit to admit an adult child to move into the unit?

In all Section 202 projects, adult children are not eligible to move into a unit after initial occupancy, unless they are performing the functions of a live-in aide and are classified as a live-in aid for eligibility purposes. Paragraph 7-10.A.2. will be updated to include all Section 202 projects.

22. If an owner does not submit the required recertification data within 15 months of the previous year's recertification anniversary date will HUD terminate the owner's HAP payment forever?

If a new recertification is not submitted within 15 months of the previous year's recertification date the HAP payment will stop, but will be reinstated retroactively to the anniversary recertification date once the new recertification data is submitted. See Paragraphs 7-8 C. 2. and 7-8 D. 1.b.

21. If a tenant submitted the required information to the owner on time and the owner failed to complete the recertification process by the tenant's anniversary recertification date and later determined that the tenant's rent should have increased, can the owner retroactively collect from the tenant the amount of the new rent increase back to the date of original recertification?

No. If the owner failed to complete the verification and recertification process by the

tenant's recertification date and, as a result, the tenant's rent increased, the owner is not entitled to collect the tenant's portion of the new rent increase amount retroactively to the anniversary date. The owner must provide the tenant a 30-day notice indicating the new rent increase amount. See page 7-13, Paragraph D.1.c.(2).

20. If a tenant submitted the required verification information to the owner on time and the owner failed to complete the recertification process by the tenant's anniversary recertification date and later determined that the tenant's rent should have decreased, is the tenant entitled to reimbursement retroactively for the difference that the tenant over paid?

Yes. If the owner did not complete the verification and recertification process by the tenant's recertification date and, as a result, the tenant's rent decreased, the owner must retroactively reimburse the tenant for the difference that the tenant overpaid. See page, 7-13, Paragraph D. 1. c. (1)

19. Tenants are given a 120-day notice to provide information for the recertification process. See Paragraph 7-7.B.2. Verification of the various materials received during the recertification process is valid for 90 days from receipt by the owner. See Paragraph 5-17B.1. For those materials that are received prior to the expiration of the 120-day period but the materials are more than 90-day old, is the owner authorized to extend the validation period from 90 days to 120 days to coincide with the 120-day recertification period?

The handbook at paragraph 5-17B.2. provides that after the 90 days, "...the owner may update the verifications orally with the verification source. As with any oral verification, the owner must include written documentation in the file." The regulations do not prescribe a specific time period for the age of materials received during the recertification process. Further, 9887 (Individual Consent Form) provides that the owner "...may use these individual consent forms during the 120 days preceding the certification period." Owners may now extend the validation period from 90 days to 120 days and are no longer required to complete the extra step of calling to confirm the validity of the information. For verifications

that are more than 120 days old, the owner must obtain new verifications. See Paragraph 5-17B.3.

18. Does a live-in aide qualify as a remaining family member if the person dies for whom they were providing services?

No. A live-in aide is not a party to the lease and would not be living in the unit except to provide the necessary supportive services. See Paragraph 3-6.E.3.a.

17. If an elderly person in a 202 PRAC is married to a non-elderly person and the elderly person dies, can that non-elderly person remain in the unit?

Yes. The remaining family member, based on the death of the family is eligible to remain in the unit but must pay rent based on income. The remaining member must have been a party to the lease prior to the death of the elderly person. An extensive discussion on determining eligibility of a remaining member by project type is found at Paragraph 3-15.

16. Should all residents in a Section 202 project, subsidized or non-subsidized, use Section 202/8 lease?

Residents in a 202/8 project must use the HUD model lease. Residents in a 202 project with no rental assistance are not required to use the HUD model lease. There is no HUD-prescribed model lease for residents at a 202 project with no rental assistance.

15. Handbook 4350.3 Revised 1, page 6-27, item C 1-7 states: The owner must collect a security deposit at the time of the initial lease execution for the Section 202/8, 202/PAC and 202/PRAC programs. Does this mean owners who have not previously collected security deposits are now required to go back to all existing residents to collect a deposit?

Owners are required by regulation to collect a security deposit. However, if an owner has not previously collected a security deposit, they are not required to go back to all existing residents to collect a deposit. A security deposit must be collected for residents going forward. Owners should be reminded that they are not eligible for Special Claims for unpaid rent and tenant damages if the full security deposit has not been received.

14. What is the implementation date to begin using actual days in the month rather than a standard 30 day month to calculate rent for partial-month occupancies?

The implementation memo for HUD Handbook 4350.3 REV-1 signed by Deputy Assistant Secretary Stillman Knight on August 21, 2003 states that all polices in the Handbook are effective June 12, 2003 with a few exceptions. The calculation of partial month occupancies based on actual days in the month is not noted as an exception. Therefore, owners must calculate rent for partial month occupancies by using the actual number of days in the month rather than a standard 30 days month for all actions after June 12, 2003. If calculations were made in July and August (31 day months) using 30 days in the month, rent and subsidy will have to be recalculated and adjusted on the Housing Assistance Payment (HAP) voucher to correct the amount collected in subsidy. Since the recalculation will result in a lesser amount of rent due from the tenant, when the HAP voucher is adjusted, reimburse the tenant by either crediting the tenant's rent or reimbursing the tenant. If the owner's software is unable to perform the calculation, the calculation and correction must be performed manually in order to comply with the Department's requirement.

13. Are owners required to have all of the tenants sign the new model leases provided in the revised Handbook?

Tenants who are on a year-to-year lease must sign the new lease no later than at the next recertification. For those tenants on a month-to-month lease, the owner may execute a lease addendum. The lease addendum must be approved by the local HUD Field Office.

12. Are owners required to verify the immigration status of noncitizens over the age of 62?

No, however, noncitizens over the age of 62 must have eligible immigration status. Both the handbook at 3-12.I. and the regulations at 5.508(b)(2) provide the appropriate guidance. Those persons 62 years and older must sign a declaration of their eligible noncitizen status and proof of age.

11. Can a single person occupy a two-bedroom unit if there are no one-bedroom units at the project; and, there are

no other families on the waiting list for the two-bedroom apartment?

A single person who is not an elderly or displaced person, a person with disabilities, or the remaining member of a family may NOT be provided a housing unit with two or more bedrooms. This provision may not be waived. It is supported by both the regulations at 24 CFR Part 5.655(5) and the statute at Section 3(b)(3)(A) of the U. S. Housing Act of 1937.

10. What is HUD's position regarding smoking in units? Can an owner have a non-smoking building as long as they grandfather in all the existing smokers and, going forward, comply with state and local laws on smoking?

There are no statutory or regulatory provisions governing smoking in HUD-assisted properties. Properties must comply with state and local ordinances as it relates to smoking. Any requests for approval to designate a building, or a portion of a building, for smoking or non-smoking must be submitted to the state and local authorities for their review. Refer to the Note in Figure 6-5 on page 6-16.

9. Can you include the cost of the medical insurance portion of your car insurance (assuming that cost can be broken down) in your medical deduction? The revised 4350.3 allow for premiums paid to a HMO, but does not address medical insurance premiums paid to a different source such as car insurance.

There are no portions of an automobile insurance premium that are allowed for a medical expense deduction.

8. The Handbook and lease state Owners may impose a fee on the second time a check is not honored, does this mean they cannot charge a fee the first time a check is not honored?

The owner cannot impose a fee the first time a check is returned. See page 6-36, paragraph 6-25 B.1.

7. Can a PRAC property charge a late fee?

Tenants in a PRAC property may not be charged a late fee. There is no provision in the model lease for late fees in a PRAC property.

6. If a person needs a nutritional supplement and can buy them over the counter, does this mean we cannot use this item. Or does it mean it's OK to use if a doctor prescribes this item for the person.

Nutritional supplements may be deducted only if a doctor prescribes the item for the person. See page 5-44, paragraph 5-10 D.8.d.

5. Can PBCAs accept a facsimile signature and still be in compliance with 4350.3 REV-1.

Yes, PBCAs can accept a facsimile signature and still be in compliance with the Handbook. See page 5-49, paragraph 5-13 B.3.

4. Will Handbook 4350.3 be made available in a single document or will it be put into a PDF format, so all users can have access to it?

We are working on formatting the files to make a CD version and PDF version of the Handbook. Both are expected to be available in the near future.

3. Children who grow up in the property and now want a unit of their own, do they have to be put on the waiting list?

Yes. Children who grow up in a property must submit an application for a unit. If they qualify for a unit and one is not available, they may be placed on a waiting list. They are treated the same as any new applicant and must meet the same screening criteria.

2. Any idea when the index for the Handbook will be released?

The index follows Appendix 15 in the handbook.

1. What is the effective date of implementation of the revised Occupancy handbook and when will the printed copies be available?

The effective date is June 12, 2003. The Occupancy Handbook is available on HUDCLIPS, www.hudclips.org/cgi/index.cgi. For those who do not have Internet access, it can be ordered by calling the HUD Distribution Center's toll free number at 1-800-767-7468 or the order request can be faxed to (202) 708-2313.