
CHAPTER 6. LEASE REQUIREMENTS AND LEASING ACTIVITIES

6-1 Introduction

- A. The previous chapters provided guidance on determining eligibility, organizing and managing waiting lists, determining income, and calculating rents. At this point in the process, residents are ready to sign a lease. A lease is a contract between the owner and tenant that explains the terms for residing in the unit. A lease is a legally binding contract and is enforceable in a court of law. Owners and tenants alike should be familiar with the provisions of the lease (when relevant, the applicable HUD model lease) so they can better understand their responsibilities under the lease.
- B. Chapter 6 contains information on the lease and the activities associated with the leasing process. The information is organized as follows:
- **Section 1: Leases and Lease Attachments** describes the lease requirements for the applicable programs described in paragraph 1-3. It also addresses lease documents that must be attached to the lease, when applicable. The section ends with a discussion on amending and modifying a lease.
 - **Section 2: Security Deposits** discusses the requirements and procedures regarding security deposits.
 - **Section 3: Charges in Addition to Rent** discusses the allowable and prohibited charges that owners may levy. These charges are those other than rent, which is addressed in Chapter 5, Section 4 about calculating tenant rent, and other than security deposits, which are discussed in Section 2 of this chapter.
 - **Section 4: The Leasing Process** discusses the requirements and procedures for two activities associated with the leasing process: briefing new residents and inspecting units. It also addresses the handouts that owners must provide tenants, such as the lease, the Residents Rights and Responsibilities brochure, and the lead-based paint disclosure form.

6-2 Key Terms

- A. There are a number of technical terms used in this chapter that have very specific definitions established by federal statute or regulations or by HUD. These terms are listed in Figure 6-1, and their definitions can be found in the Glossary to this handbook. It is important to be familiar with these definitions when reading this chapter.
- B. The terms “disability” and “persons with disabilities” are used in two contexts – for civil rights protections, and for program eligibility purposes. Each use has specific definitions.
 - 1. When used in context of protection from discrimination or improving the accessibility of housing, the civil rights-related definitions apply.
 - 2. When used in the context of eligibility under multifamily subsidized housing programs, the program eligibility definitions apply.

NOTE: See the Glossary for specific definitions and paragraph 2-23 for an explanation of this difference.

Figure 6-1: Key Terms

<ul style="list-style-type: none"> • Assisted tenant • Assistance animals • Briefing • Common household pet • Covered person • Currently engaging in • Drug • Drug-related criminal activity • Expected to reside • Law enforcement agency • Lease • Lease term • Legitimate tenant organization 	<ul style="list-style-type: none"> • Minimum rent • Other person under the tenant's control • Pet deposit • Premises • Security deposit • Service animals • Tenant • Tenant consultation • Tenant rent • Total tenant payment • Violent criminal activity
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Section 1: Leases and Lease Attachments

6-3 Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 1: Leases and Lease Attachments. The citations and their titles (or topics) are listed below.

A. Lease Requirements

1. 24 CFR 5.360, 891.425 Housing Programs: Additional Lease Provisions
2. 24 CFR 236.750, 886.127, 886.327, 891.425 (Form of lease)
3. 24 CFR 880.606, 881.601, 883.701, 884.215, 886.127, 886.327, 891.425, 891.625, 891.765 Lease Requirements
4. 24 CFR 880.606, 881.601, **883.701**, 884.215, 886.127, 886.327, 891.425, 891.625, 891.765 (Lease term)
5. 24 CFR 884.215 (RHS 515/Section 8 properties lease requirements)
6. 24 CFR 891.425, 891.625, 891.765 (Section 202 and Section 811 properties lease requirements)

B. Lead-Based Paint

1. 24 CFR part 35, subpart A and 40 CFR, part 745 (Requirements for disclosure of known lead-based paint and/or lead-based paint hazards in housing)
2. 24 CFR 35.130 Lead Hazard Information Pamphlet

C. Pet Regulations

- 24 CFR part 5, subpart C – Pet Ownership for the Elderly or Persons with Disabilities

D. Amending the Lease

1. 24 CFR 247.4, 891.430 (Termination notice)
2. 24 CFR 247.4, 880.607, 881.601, 883.701 (Increase in rent)
3. 24 CFR 247.4, 880.607, 881.601, 883.701, 891.430 (Modifying the lease)

6-4 Leases and Lease Attachments – General

- A. This section identifies the regulatory requirements regarding an owner's lease and the lease attachments, including the lead-based paint disclosure form, house rules, and pet regulations. It also describes procedures for meeting these requirements, identifying which procedures are required and which are optional. Throughout this section, the differences in policies and procedural requirements across the four model leases are identified.
- **NOTE:** The leases may also need to be conveyed in languages other than English for LEP persons, when applicable, in accordance with HUD guidance, *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, published in the Federal Register on January 22, 2007. ******
- B. The lease is a legally binding contract between the owner and the tenant. The regulations governing HUD's various multifamily housing programs state that owners must use leases that are in an acceptable form to HUD. In practice, owners must use one of the four model leases prescribed by HUD (see Figure 6-2). The lease an owner uses depends on the program being administered.
1. Owners may, but are not required to, use the HUD model leases for units where the tenant pays market rent, full contract rent, or 110% of the BMIR rent in the case of Section 221(d)(3) BMIR properties.
 2. The HUD model leases do not apply to cooperatives. Cooperative members should use occupancy agreements. All occupancy agreements executed after February 15, 1984 must include the cooperative's policy on unit transfers and ****paragraphs 15, 16, 17, 23 and 25 of the Model Lease for Subsidized Programs covering recertification, termination of assistance, and fraud penalties.****(See paragraph 6-5 A for more information.)
- C. The HUD model leases identify the program requirements that owners and tenants must adhere to while participating in the programs. Although many of these requirements are the same in each of the four leases, several of the lease provisions vary from lease to lease. For example, changes in the tenant rent are listed in all four model leases; however, the specific requirements and language are different among the four leases.
- D. Changes to the Model Lease for Subsidized Programs may be only for documented state or local laws, or a management practice generally used by management entities of assisted projects. Before implementing lease changes, owners must obtain written approval from HUD or the Contract Administrator. The Model Lease for section 202/8 or Section 202 PACs may only be modified for documented state or local laws or as specifically noted in paragraph 6-5 D. The Model Leases for Section 202 PRACs and Section 811 PRACs may only be modified for documented state or local laws or as specifically noted in paragraph 6-5 E.
- E. If any provision of a model lease conflicts with state or local law, the owner must follow the rule that is of most benefit to the tenant.

6-5 Lease Requirements

A. Form of Lease

1. Model leases. HUD has provided model leases that must be used under certain programs. Figure 6-2 identifies the appropriate lease for HUD's subsidized programs.

Figure 6-2: Required Leases

Form of Lease	Programs that Use the Lease
Model Lease for Subsidized Programs (Family Model Lease) (See Appendix 4-A.)	Section 221(d)(3) BMIR Section 236 Section 8 New Construction Section 8 Substantial Rehabilitation Section 8 State Agency (See Paragraph 6.5F) RHS 515 with Section 8 (See Paragraph 6.5 F) Section 8 Loan Management Set-Aside (LMSA) Section 8 Property Disposition Set-Aside (PDSA) **Rental Assistant Payment (RAP) Rent Supplement**
Model Lease for Section 202/8 or Section 202 PACs (See Appendix 4-B.)	Section 202 Programs for the Elderly and Persons with Disabilities in conjunction with Section 8 assistance Section 202 Programs for the Nonelderly Disabled Families and Individuals in conjunction with Section 162 assistance
Model Lease for Section 202 PRACs (See Appendix 4-C.)	Section 202 Program of Supportive Housing for the Elderly
Model Lease for Section 811 PRACs (See Appendix 4-D.)	Section 811 Program of Supportive Housing for Persons with Disabilities
A model lease developed by a State Agency that complies with HUD rules and regulations	Section 8 State Agency
Occupancy Agreement	Assisted Cooperatives

2. For projects financed by a State Agency, owners must use the lease form prescribed by the State Agency or obtain the State Agency's approval for changes to that lease. (State Agencies must ensure that the lease form is consistent with HUD regulations and the rules in this handbook.)
3. Cooperatives. Although a family receiving Section 8 assistance and residing in a cooperative is subject to the same regulatory tenancy requirements as other Section 8-assisted families, cooperatives use HUD-approved occupancy agreements in lieu of a model lease.

Occupancy agreements for assisted cooperatives must incorporate the cooperative's policy on unit transfers and paragraphs 15, 16, 17, 23 and 25 of the Model Lease for Subsidized Programs covering recertification, termination of assistance, and fraud penalties.

4. Required attachments.

The following documents must be attached to the lease:

- a. HUD-50059 signed by the tenant and the owner;
- b. *HUD-50059-A signed by the owner and, when applicable, by the tenant.*
- c. Move-in inspection report signed by both the owner and tenant;
- d. House Rules, if such rules have been developed by the owner;
- e. Lead-based paint disclosure form (if applicable);
- f. Pet rules (if applicable); and
- g. Live-in Aide addendum (if applicable).

NOTE: The live-in aide addendum must establish that a live-in aide is not eligible to remain in the unit once the tenant is no longer living in the unit, regardless of the circumstances for the tenant's departure. The live-in aide addendum may give the owner the right to evict a live-in aide who violates any of the house rules.

B. Key Requirements under HUD's Model Leases

1. The lease may cover only rental of the unit and provision of services routinely provided at rental properties (e.g., parking).
 - a. Owners and tenants must execute separate agreements for special services (e.g., voluntary meals program or health care services).

- b. Failure to adhere to these separate agreements is not grounds for termination of tenancy, except that:

Tenant participation in a mandatory meals program is incorporated as a condition of occupancy in rental properties for the elderly or handicapped with HUD-approved mandatory meals programs. Under these conditions, compliance is binding on the tenant as a lease provision.

2. The head of household, spouse, any individual listed as co-head, and all adult members of the household must sign the lease.
3. When a tenant transfers to another unit, the owner and all tenants required to sign the lease must sign a lease for the new unit.
4. The lease includes language permitting the owner to terminate the lease for drug-related activity and criminal activity. This is the result of regulations effective June 25, 2001, for Screening and Eviction of Drug Abuse and Other Criminal Activity. For more information, refer to the lease and Chapter 8 for information regarding terminations.

C. **Model Lease for Subsidized Programs**

1. Applicability. The following properties use the Model Lease for Subsidized Programs (also known as the family model lease):
 - a. Section 221(d)(3) BMIR;
 - b. Section 236 Interest Reduction;
 - c. Section 8 New Construction;
 - d. Section 8 Substantial Rehabilitation;
 - e. RHS 515 with Section 8 (see Paragraph 6-5 F);
 - f. Section 8 Loan Management Set-Aside (LMSA); and
 - g. Section 8 Property Disposition Set-Aside (PDSA).
 - h. **Rental Assistance Payment (RAP)
 - i. Rent Supplement**
2. HUD will permit modifications to the Model Lease for Subsidized Programs, but modifications must be approved by HUD or the Contract Administrator. (See paragraph 6-12 for modification procedures, and paragraphs 6-11 and 6-12 on amending and modifying leases for more information.)

3. HUD will not permit modifications to the following nine provisions of the model lease:
 - a. Changes in Tenant Rent;
 - b. Regularly Scheduled Recertifications;
 - c. Reporting Changes between Regularly Scheduled Recertifications;
 - d. Removal of Subsidy;
 - e. Tenant Obligation to Repay;
 - f. Discrimination Prohibited;
 - g. Changes in Rental Agreement;
 - h. Termination of Tenancy; and
 - i. Penalties for Submitting False Information.
4. Additional lease provision for pets in Section 8 projects. Lease provisions for pets are found only in the Model Leases for Section 202/8, Section 202 PACs, Section 202 PRACs, and Section 811 PRACs. However, certain properties (e.g., Section 8 New Construction, Section 8 State Agency) may be available for occupancy only to elderly and/or disabled tenants. As a result, the language addressing pets that is found in the Model Lease for Section 202/8 and Section 202 PACs must be added to the Model Lease for Subsidized Programs for use in these properties. Instead of modifying the Model Lease for Subsidized Programs to include the pet provisions from the Model Lease for Section 202/8 and Section 202 PACs, owners may attach a HUD-approved lease addendum.
5. Additional lease provision for authorized police/security personnel. The lease for units occupied by such persons must include a provision that states that the police officer or security personnel's right of occupancy is dependent on the continuation of the employment that qualified him/her for residency in the property under the plan.
6. Prohibited provisions. The following provisions must not be included in a lease modification.
 - a. Confession of judgment. The prior consent by the tenant to any lawsuit initiated by the owner in connection with the lease and to a judgment in favor of the landlord.
 - b. Distraint for rent or other charges. An agreement by the tenant that the owner is authorized to take property of the tenant and hold it until the tenant performs an obligation the owner has determined the tenant has failed to perform.

- c. Exculpatory clauses. An agreement by the tenant not to hold the owner or its agents liable for any acts or omissions, intentional or negligent, on the part of the owner or the owner's authorized representatives or agents.
- d. Waiver of legal notice by tenant before actions for eviction or money judgment. An agreement by the tenant that the landlord may institute suit without notifying the tenant that the suit has been filed.
- e. Waiver of legal proceedings. Authorization for the owner to evict the tenant or hold/sell the tenant's possessions whenever the owner determines a breach or default has occurred, without notice to the tenant or determination by a court of the rights and liabilities of the parties.
- f. Waiver of jury trial. Authorization for the owner's attorney to appear in court on behalf of the tenant and waive the right to a jury trial.
- g. Waiver of right to appeal judicial proceeding. Authorization for the owner's attorney to waive the tenant's rights to (1) appeal for judicial error in any suit brought against the tenant by the owner or its agent, or (2) file suit to prevent the execution of a judgment.
- h. Tenant chargeable with cost of legal actions regardless of outcome. A provision that the tenant agrees to pay all attorney and other legal costs if the owner brings legal action against the tenant, even if the tenant prevails in the action. Prohibition of this provision does not mean the tenant, as a party to a lawsuit, may not be obligated to pay attorney's fees or other costs if the tenant loses the suit.

NOTE: In properties restricted to occupancy by the elderly or disabled, the lease must not contain a provision relieving the owner of liability for the wrongful removal of a pet.

D. Model Lease for Section 202/8 and Section 202 PACs

- 1. The Model Lease for Section 202/8 or Section 202 PACs may only be modified for documented state or local laws or as noted in the following paragraph.
- 2. The regulations for Section 202 properties state that an owner may include a provision in the lease that permits the owner to enter the leased premises at any time without advance notice to the tenant when there is reasonable cause to believe an emergency exists or that the health or safety of a family member is endangered.

E. Model Lease for Section 202 PRACs and Section 811 PRACs

1. The Model Lease for the Section 202 ****PRAC**** or ****Section 811 PRAC**** may only be modified for documented state or local laws or as noted in the following paragraph.
2. The regulations for Section 202 ****PRAC**** and Section 811 ****PRAC**** properties state that an owner may include a provision in the lease that permits the owner to enter the leased premises at any time without advance notice to the tenant when there is reasonable cause to believe an emergency exists or that the health or safety of a family member is endangered.

F. Required Lease Provisions for Specific Properties

1. Required Section 8 State Agency lease provisions. See Exhibit 6-1 at the end of Chapter 6 for a copy of the provision for Section 8 State Agency properties. These provisions must be added to the lease developed by the State Agency.
2. Required RHS 515 with Section 8 lease provisions. ****The HUD model lease in Appendix 4-A must be used at Rural Housing Service's (RHS) Section 515 projects that have Section 8 assistance. Exhibit 6-2 contains the lease provisions required by RHS. Owners will be responsible for ensuring that any RHS required provisions not already included in the HUD model lease are added to the lease as an addendum. The lease addendum must be reviewed and approved by HUD or the Contract Administrator, ensuring the addendum does not include provisions that conflict with HUD requirements or regulations. The RHS required lease provisions are also provided in Attachment 6-E of the USDA *MFH Asset Management Handbook*, HB-2-3560.****

6-6 Lease Term

A. Introduction

Owners and tenants should recognize that lease terms and requirements vary across the different housing programs. An initial lease term is required when leasing the unit, but depending on the housing program, it can range from one month to multiple years.

Owners are required to notify tenants if the property has a HAP contract expiring within the next 12 months. Specific information relating to an expiring HAP contract and the required notification to the tenants can be found in HUD's Section 8 Renewal Policy Guidebook.

B. Initial Term

The requirements regarding the initial lease term are listed for each program in Figure 6-3. Owners of properties with Section 8 contracts should be aware of the expiration date of the HAP contract in relationship to the lease term listed on the lease. In such instances where the HAP contract is less than one year, the

owner should execute a lease with a lease term equal to the remaining term on the HAP contract.

C. Renewal Terms

The requirements regarding the renewal lease term are listed for each program in Figure 6-3.

6-7 Attachments to the Lease

Three common attachments to the lease are described in the following paragraphs:

- A. Paragraph 6-8: Lead-Based Paint Disclosure Form
- B. Paragraph 6-9: House Rules
- C. Paragraph 6-10: Pet Rules

Figure 6-3: Initial and Renewal Lease Terms for HUD Subsidized Programs

Program	Initial Term	Renewal Term
Section 236 Interest Reduction Assistance	Minimum: One month Maximum: One year	Minimum: One month Maximum: One year
Section 221(d)(3) BMIR	Minimum: One month Maximum: One year	Minimum: One month Maximum: One year
Properties with RAP	Minimum: One month Maximum: One year	Minimum: One month Maximum: One year
Properties with Rent Supplement	Minimum: One month Maximum: One year	Minimum: One month Maximum: One year
Section 8 LMSA with HUD-insured or HUD-held mortgages [24 CFR 886.127]	Minimum: The lesser of one year, or the remaining term of the HAP contract	Minimum: The lesser of one year, or the remaining term of the HAP contract
Section 8 – PDSA [24 CFR 886.327]	Minimum: The lesser of one year, or the remaining term of the HAP contract	Minimum: The lesser of one year, or the remaining term of the HAP contract
Section 8 – New Construction [24 CFR 880.606]	Minimum: One year*	Minimum: 30 days
Section 8 – Substantial Rehabilitation [24 CFR 881.601]	Minimum: One year*	Minimum: 30 days
Section 8 – State Agency [24 CFR 883.701]	Minimum: One year*	Minimum: 30 days
RHS 515 with Section 8 [24 CFR 884.215]	Minimum: One year*	Minimum: 30 days
Section 202 with Section 8 [24 CFR 891.625]	Minimum: One year*	The lease will automatically be renewed for successive one-month terms.
Section 202 with PAC [24 CFR 891.765]	Minimum: One year	The lease will automatically be renewed for successive one-month terms.
Section 202 with PRAC [24 CFR 891.425]	Minimum: One year	The lease will automatically be renewed for successive one-month terms.
Section 811 with PRAC [24 CFR 891.425]	Minimum: One year	The lease will automatically be renewed for successive one-month terms.

* **NOTE:** Minimum term may be less than one year if the Section 8 HAP contract will expire in less than 12 months from the effective date of the lease. Owners with these properties need to be aware of the expiration of the HAP contract in relation to lease expirations.

6-8 Lead-Based Paint Disclosure Form

A. Applicability

The Disclosure Rule [40 CFR part 745, subpart F and 24 CFR part 35, subpart A – Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing], published March 6, 1996, specifies the types of information that owners must give to applicants prior to signing their leases. These requirements apply to all properties built prior to January 1, 1978, including cooperatives, with certain exemptions established by regulation. Figure 6-4 lists specific exemptions when the disclosure rule does not apply. If a property is exempt, the owner does not need to comply with the requirements discussed in this paragraph.

Figure 6-4: Disclosure Rule Exemptions

<p><u>Residential structures built after January 1, 1978</u>, are exempt from lead-based paint requirements because Congress banned the use of lead-based paint for residences after this date.</p> <p><u>Rental property found to be lead-based paint free</u> by a lead-based paint inspector certified under the federal certification program or under a federally accredited State or Tribal certification program is exempt.</p> <p><u>Zero-room dwelling units</u>, including single room occupancy (SRO) units, are exempt.</p> <p><u>Housing specifically designated for the elderly or persons with disabilities</u> is exempt, unless a child under age 6 resides or is expected to reside in the unit.</p> <p><u>Short-term leases of 100 days or less</u> when no lease renewal or extension can occur.</p>
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B. Overview

1. For properties where the requirements apply, both owners and tenants need to be aware of lead-based paint hazards, such as paint chips, paint dust in units, and contaminated soil in common areas. Lead-based paint is dangerous to adults and children, but especially to children under age 6. Units that are older, are in poor physical condition, have been renovated unsafely, or have exterior lead-contaminated soil are at the most risk. Nevertheless, owners in all applicable properties must provide tenants with basic information on lead-based paint and its hazards, and they must maintain an accurate record of this communication. Compliance with these regulations is also crucial in order to reduce liability and avoid lawsuits, obtain more favorable insurance premiums, and avoid penalties for failing to meet government requirements.
2. This paragraph on lead-based paint focuses on the owners' requirements during the leasing process. Lead-based paint requirements that must be

met during the life of the property are discussed in Handbook 4350.1, *Multifamily Asset Management and Project Servicing* or other current Notices. These requirements include:

- a. Visual assessments to identify deteriorated paint or (for assistance over \$5,000 per unit annually) risk assessments to identify lead-based paint hazards;
 - b. Paint stabilization or (for assistance over \$5,000 per unit annually) interim controls with clearance testing when appropriate;
 - c. Ongoing paint maintenance and (for assistance over \$5,000 per unit annually) re-evaluation every two years to identify hazards;
 - d. Notification of tenants about the actions above; and
 - e. Special actions when a child under six years old is reported to have high blood lead levels.
3. **REMEMBER:** Compliance with fair housing requirements applies when complying with the lead-based paint regulations. Owners may not refuse to rent to households with children to avoid triggering lead paint requirements, because this would constitute discrimination based on familial status.
4. Owners may affirmatively market the following types of units to families with children under age six:
- a. Units that are built after January 1, 1978; and
 - b. Units that are built prior to January 1, 1978 and found to be free of lead hazards.
5. Owners must disclose known lead-based paint and/or lead-based paint hazards in the property and provide the EPA/HUD/Consumer Product Safety Commission (CPSC) Lead Hazard Information Pamphlet (*Protect Your Family from Lead In Your Home*) to tenants when leases are renewed, modified, or renegotiated, unless no new information on those subjects has come into the possession of the owner and the owner has already provided the tenants with the disclosure information and the pamphlet. This is in accordance with 24 CFR 35.82(d), in the Lead Disclosure Rule.

C. Disclosure Rule Requirements

1. Prior to leasing, owners must provide the tenant with two items:
 - a. Lead Hazard Information Pamphlet. Owners must provide tenants of a residential property with the EPA/HUD/Consumer Product Safety Commission (CPSC) Lead Hazard Information Pamphlet

(*Protect Your Family from Lead In Your Home*), or an EPA-approved equivalent. Owners are required to document that the tenant was given a copy of the pamphlet before signing the lease.

NOTE: The Lead Hazard Information Pamphlet distributed to meet the Disclosure Rule requirement is the same pamphlet distributed for other lead-based paint requirements (e.g., the Lead-Based Paint Pre-Renovation Education Rule). It does not have to be distributed twice, so long as you can document that it has been provided.

- b. Disclosure form. Owners must include the disclosure form in the lease packet and obtain the prospective tenant's signature before he or she signs the lease. (Exhibit 6-3 contains a copy of the Disclosure Form.) The disclosure form is designed to document receipt of the Lead Hazard Information Pamphlet and to meet three disclosure requirements, as follows:
- (1) Disclose the presence of known lead-based paint/hazards. Owners of target housing must disclose the presence of known lead-based paint and/or lead-based paint hazards. The disclosure form has a line for owners to mark to verify that lead-based paint/hazards have been disclosed.
 - (2) Disclose information on lead-based paint/hazards. Owners must provide applicants with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards. Owners must provide applicants with procedures to obtain access to any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards. The disclosure form has a line for owners to mark to verify that copies of all relevant records and reports have been provided to the applicant. The form also documents if there are no records or reports available.
 - (3) Include contract language. Leasing contracts must include a Lead Warning Statement and an acknowledgment section to be signed by the prospective tenant, the owner and any agent. The owner must present the disclosure form signed by the owner and the Lead Hazard Information Pamphlet to the prospective tenant before the tenant signs the lease. The disclosure form has the Lead Warning Statement printed at the top and a place at the bottom for the applicant to sign acknowledging disclosure and receipt of the Lead Hazard Information Pamphlet.
 - (4) Recommended practice. The tenant briefing is an ideal time to provide applicants with the Lead Hazard Information Pamphlet and to give them the opportunity to

review the Disclosure Form. (See paragraph 6-27 Briefing with New Tenants.)

D. **Record-Keeping Requirements**

There are specific records that owners must keep to verify their compliance with the Disclosure Rule requirements.

1. Disclosure form. Owners must keep records of the Disclosure Form provided to each tenant for three years from the commencement of the leasing period.
2. Lead Hazard Information Pamphlet. A record of the distribution of the Lead Hazard Information Pamphlet is required under the HUD-EPA Disclosure Rule and the EPA Lead Pre-Renovation Education Rule. A record is not required under the new HUD regulation, but it is recommended.

6-9 **House Rules**

A. **Overview**

1. Developing a set of house rules is a good practice. By identifying allowable and prohibited activities in housing units and common areas, owners provide a structure for treating tenants equitably and for making sure that tenants treat each other with consideration. House rules are also beneficial in keeping the properties safe and clean and making them more appealing and livable for the tenants.
2. The decision about whether to develop house rules for a property rests solely with the owner, and HUD ****or the Contract Administrator's**** review or approval is not required. Owners, however, must be careful not to develop restrictive rules that limit the freedom of tenants. If owners develop house rules for a property, these rules must be consistent with HUD requirements for operating HUD subsidized projects, must be reasonable, and must not infringe on tenants' civil rights.
3. House rules are listed in the lease as an attachment to the lease. It is important, however, to recognize that house rules do not replace the lease.
4. House rules must not create a disparate impact on tenants based on race, color, national origin, religion, sex, disability, or familial status.

B. **Key Requirements**

1. House rules must:
 - a. Be related to the safety, care, and cleanliness of the building or the safety and comfort of the tenants;

Example – Possible Topics for House Rules

Safety and care of the building: Guest rules, locks and lost keys, access to the front door, and security systems.

Cleanliness of the building: Trash disposal, littering, hallway obstructions, and lobby rules.

Safety and comfort of tenants: Noise levels, fire safety, and security.

- b. Be compliant with HUD requirements;
- c. Not circumvent HUD requirements;
- d. Not discriminate against individuals based upon membership in protected class;
- e. Be reasonable.
 - (1) Reasonable house rules are within the bounds of common sense. They are not excessive or extreme, and most importantly, they are fair.
 - (2) Figure 6-5 identifies examples of reasonable and unreasonable house rules. The table does not include all possible situations; therefore, owners must use their own discretion to determine whether a house rule is reasonable or not while developing house rules for their properties;
- f. Comply with state and local requirements.

Figure 6-5: Reasonable versus Unreasonable House Rules

Reasonable House Rules	Unreasonable House Rules
Requesting that all visitors sign in when entering the building.	Not allowing a visitor in a tenant's apartment during nighttime.
Not allowing smoking in the common areas of the building.	*
Asking tenants to turn sound equipment low after a certain time at night.	Asking tenants to turn the lights off after a certain time at night.
Asking all children under the age of 12 to be accompanied by an adult resident when using building facilities.	Asking all children under the age of 12 to be accompanied by an adult resident at all times in the building.

* **NOTE:** There are no statutory or regulatory provisions governing smoking in assisted housing. HUD assisted properties are required to comply with applicable state and local laws, which would include any laws governing smoking in residential units. Owners are free to adopt reasonable rules that must be related to the safety and habitability of the building and comfort of the tenants. Owners should make their own informed judgment as to the enforceability of house rules.

2. Extended absence or abandonment. As part of a property's house rules, owners may establish rules specifying when tenants give up their right to occupancy because of their extended absence or abandonment of the unit. Under these rules, owners may initiate action to terminate tenancy in response to an extended absence or abandonment of the unit by the tenant or individual listed on the lease for that unit.

NOTE: Abandonment is distinguished from an absence from the unit by the tenant's failure to pay the rent due for the unit and failure to acknowledge or respond to notices from the owner regarding the overdue rent.

- a. Owner discretion. The decision to establish rules regarding extended absence or abandonment of a unit as part of a property's house rules rests solely with the owner.
- b. Requirements and guidelines. If owners elect to establish such rules, they must be consistent with the requirements and guidelines listed below:
 - (1) Rules regarding extended absence and abandonment must be consistent with state and local law.
 - (2) Guidelines for rules regarding extended absence from a unit. Owners may establish a house rule defining extended absence as the tenant being absent from the unit for longer than 60 continuous days, or for longer than 180 continuous days for medical reasons. Owners may allow exceptions for extenuating circumstances.
 - (3) Guidelines for abandonment of a unit. If abandonment of a rental unit is not addressed by state or local law, owners may establish a rule for declaring a unit abandoned. Rules regarding abandonment must be consistent with state and local law regarding nonpayment of rent, specify the actions that the owner will take to contact the tenant, and describe the handling and disposition of any tenant possessions left in the unit.

3. *Tenants conducting incidental business in their unit

Owners may establish house rules covering tenants who conduct incidental business, such as computer work, limited babysitting, etc., in their unit. The rules would deal with or prohibit such things as the:

- a. Amount of traffic (both foot and motor vehicle) associated with such incidental business income;
- b. Amount of noise associated with such incidental income;
- c. Prohibition of signs in unit windows;
- d. Use of parking within the project grounds for such incidental business use;
- e. Hours such as incidental work could be performed if such performance could disturb the rights or comfort of the neighbors; and
- f. Other such reasonable rules.

NOTE: Tenants who conduct incidental business in their unit and receive incidental business income are not in violation of paragraph 13, General Restrictions, of the Model Lease for Subsidized Programs. *

4. House rules are listed in the lease as an attachment and must be attached to the lease.
5. Owners must give tenants written notice 30 days prior to implementing new house rules.
6. If HUD or Contract Administrator staff becomes aware (through routine monitoring, site inspections, tenant complaints, etc.) that house rules circumvent or conflict with HUD requirements (including civil rights and Fair Housing), the owner will be required to modify the rules in order to conform with HUD requirements.

6-10 Pet Rules

A. Applicability

1. Pet rule requirements in this paragraph apply to housing for the elderly and persons with disabilities.
2. These pet rule requirements do not apply to family housing. Those properties are instead covered by state and local requirements.
3. The regulations apply to household pets only. (See the Glossary.)

4. An owner must not apply house pet rules to assistance animals (**see Glossary for definition of Assistance Animals**) and their owners. This prohibition does not preclude an owner from enforcing state and local laws, if they apply.

NOTE: An owner must not apply house pet rules to assistance animals and their owners. However, this prohibition does not preclude the owner from enforcing state and local health and safety laws, if they apply, nor does it preclude the owner from requiring that the tenant with a disability who uses an assistance animal be responsible for the care and maintenance of the animal, including the proper disposal of the assistance animal's waste.

B. Overview

1. Pet rules help maintain a decent, safe, and sanitary living environment for the tenants in a property through the development of guidelines on the registration and inoculation of pets, the sanitary disposal of waste, and the restraint of pets while in common areas. In addition, they help protect and preserve the physical condition of the property and the owner's financial interest in it.
2. Tenants or tenant representatives may submit written comments on the proposed pet rules to the project owner by the date specified in the notice of proposed rules. In addition, the owner may schedule one or more meetings with tenants during the comment period to discuss the proposed rules. Tenants and tenant representatives may make oral comments on the proposed rules at these meetings. (See Exhibit 6-5 for more information on how to develop pet rules.)
3. By developing pet rules, owners ensure that existing and prospective pet owners know their responsibilities to their pets and neighbors as well as the property. Pet rules also make existing and potential tenants aware of their rights while living among pet owners.

C. Key Requirements

1. Owners must not prohibit tenants from having common household pets in the tenants' units or discriminate against applicants based on their ownership of a pet.
2. An applicant may reject an available unit if this unit is close to another unit with a pet. This action must not negatively affect the family's application for occupancy or position on the waiting list to be eligible for the next available unit. The owner is not obligated at the time the applicant rejects a unit to provide an alternate unit.
3. Property owners may refuse to register a pet if:
 - a. The pet is not a common household pet (see Glossary for definition of Common Household Pet);

- b. The keeping of the pet would violate any applicable house rule; or
 - c. The pet owner fails to provide complete pet registration.
4. Pet rules:
- a. Must include the mandatory rules identified in Exhibit 6-4. Mandatory rules are the obligatory rules that must be prescribed for inoculations, sanitary standards, pet restraints, registration, and written notification to a pet owner if an owner refuses to register a pet.
 - b. May include additional discretionary rules, but they must be reasonable. Discretionary rules are the rules that may be developed by the owner. Tenants must be consulted in developing discretionary rules, as discussed in Exhibit 6-5.
 - c. Exhibit 6-4 identifies mandatory pet rules as well as possible discretionary pet rules.
5. Owners must make sure that pet rules do not conflict with applicable state or local law or regulations. If such a conflict exists, the state and local law or regulations apply.
6. For requirements on developing pet rules, see Exhibit 6-5.
7. Owners may modify the rules at any time. When doing so, they must follow procedures for notice and consultation. (See Exhibit 6-5.)
8. A pet owner violates pet rules when he/she fails to act according to the mandatory and discretionary rules.
9. When a pet's conduct or condition causes a threat or nuisance to the health or safety of the property's occupants, its owner violates the pet rules. State and local law determines the criteria for the conduct and conditions that are a threat or nuisance to the tenants of a property. Property owners should check with state or local law to find the appropriate definition for their jurisdiction.
10. In addition to the information presented here, an owner should consult HUD Handbook 4350.1, *Multifamily Asset Management and Project Servicing*, for further information and details relating to pet rules and regulations.

NOTE: See paragraph 5-10 C.4 for information on expenses for assistance animals. Expenses for assistance animals are deductible when calculating a tenant's annual income, because they may be counted as medical expenses. However, expenses for common household pets are not deductible when calculating annual income.

D. Lease Provisions for Pets

1. Leases must:
 - a. State that tenants are permitted to keep common household pets in their units subject to pet rules;
 - b. Incorporate the pet rules by reference;
 - c. Have language that states that the tenant agrees to comply with these rules; and
 - d. State that the tenant agrees to comply with these rules and that a violation of any of these rules may be grounds for removal of the pet or termination of the pet owner's tenancy (or both).

Remember!

The requirements in paragraph 6-10 apply only to properties developed for the elderly and persons with disabilities.

2. Leases may:
 - a. Allow the property owner to enter and inspect the premises after reasonable notice to the tenant and during reasonable hours. This action is permitted by the lease only if the property owner has received a signed, written complaint that the conduct or condition of a pet in the unit constitutes, under applicable state or local law, a nuisance or a threat to the health or safety of the occupants of the project or others in the community.
 - b. Contain language that allows the property owner to enter the premises to remove a pet that becomes vicious, displays symptoms of severe illness, or demonstrates other behavior that may be considered an immediate threat to the health or safety of the tenants, in the absence of state or local personnel to remove a pet.
 - c. Permit the property owner to enter the premises and remove the pet only if the property owner requests that the pet owner remove the pet from the project immediately, and the pet owner refuses to do so. Another situation that allows such action is the case when the property owner is unable to contact the pet owner to make a removal request.

E. Procedures When Pet Rules Are Violated

1. If a property owner determines on the basis of clear evidence, supported by written statements, that a pet owner has violated a pet rule, the property owner may serve a written notice of a pet rule violation to the pet owner.
2. The notice must contain:
 - a. The pet rule(s) alleged to be violated;
 - b. A brief factual statement of how the pet violation was determined;
 - c. A statement that the pet owner has 10 days from the effective date of service of the notice to correct the alleged violation, or to make a written request for a meeting to discuss it;
 - d. A statement that the pet owner is entitled to be accompanied by another person of his/her choice at the meeting; and
 - e. A statement that the pet owner's failure to correct the violation, request a meeting, or appear at a requested meeting may result in initiation of procedures to terminate the pet owner's tenancy.
3. Meeting with the tenant.
 - a. If the pet owner makes a timely request for a meeting to discuss an alleged pet rule violation, a property owner must establish a mutually agreeable time and place for the meeting.
 - b. The meeting must take place no later than 15 days from the effective date of the notice, unless the property owner agrees to a later date. As a result of the meeting, the property owner may give the pet owner additional time to correct the violation.
4. Notice of pet removal. A property owner may issue a notice for the removal of the pet if:
 - a. The pet owner and property owner are unable to resolve the pet rule violation at the meeting; or
 - b. It is determined that the pet owner has failed to correct the pet rule violation.
5. Initiation of procedures to terminate a pet owner's tenancy.
 - a. The owner must not initiate procedures to terminate a pet owner's tenancy based on a pet rule violation, unless:
 - (1) The pet owner has failed to remove the pet or correct a pet rule violation within the applicable time period; and

(2) The pet rule violation is sufficient to begin procedures to terminate the pet owner's tenancy under the terms of the lease and applicable regulations.

b. The property owner may initiate procedures at any time in accordance with the provision of applicable state or local laws. If the state or local provisions conflict with the 10 days that the pet owner is given to correct the violation (see subparagraph E.2.c above), then the timeframe that is most beneficial to the pet owner must be followed.

6-11 Amending the Lease for Rent Changes

A. Overview

Amending the lease for a change in rent provides the owner and tenant with an accurate and up-to-date record of an increase or decrease in a tenant's rent. The lease is a legal contract between the owner and the tenant, which stipulates the amount of rent the tenant is obligated to pay to the owner each month. By amending the lease for changes in the rent, the tenant and owner are both aware of the amount of rent the tenant must pay to the owner each month.

B. Key Requirements

1. Any increase in rent must be governed by HUD regulations and requirements currently in effect.
2. HUD does not require an addendum for a change in the tenant's rent.

***NOTE:** The printout of the HUD-50059 or HUD-50059-A serves as an addendum identifying the change in rent.*
3. If the tenant rent increases for any reason other than a tenant's failure to comply with recertification requirements, the owner must give the tenant 30 days advance written notice of the increase. The notice must state:
 - a. The reason for the increase; and
 - b. That it revises the rent at the following paragraph(s):
 - (1) Paragraph 3 of the Model Lease for Subsidized Programs;
 - (2) Paragraphs 2 and 5 of the Model Lease for Section 202/8 and Section 202 PACs; and
 - (3) Paragraphs 2 and 4 of the Model Leases for Section 202 PRACs and Section 811 PRACs.
4. If the contract rent or assistance payment changes but the tenant rent and utility allowance remain the same, the owner need only provide the

tenant with a copy of the revised HUD-50059 or HUD-50059-A. A copy of the revised HUD-50059 or HUD-50059-A must also be filed in the tenant's file to reflect the correct gross rent and assistance payment (see paragraph 7-17 E).

6-12 Modifying the Lease

A. Applicability

The properties identified in Figure 1-1 may modify their respective HUD Model Leases, except for the following properties:

1. Section 202/8;
2. Section 202 PACs;
3. Section 202 PRACs; and
4. Section 811 PRACs.

NOTE: Information on the model leases for Section 202/8, Section 202 PAC, Section 202 PRAC, and Section 811 PRAC is located at paragraphs 6-5 D and 6-5 E.

B. Key Requirements

1. A lease change provided by HUD Headquarters through issuance of Notices or revisions to this Handbook must be incorporated into the lease and does not require HUD Field Office or Contract Administrator approval. However, the tenant must be given notice as outlined in this paragraph.
2. An owner may modify the term and conditions of the lease, but he/she must receive prior written approval of HUD or the Contract Administrator before providing the modification to the tenant(s).

NOTE: Implementation of the lead-based paint attachment does not require HUD approval.

3. Although not a HUD requirement, an owner may choose to determine whether any applicable state or local law (State Tenant-Landlord Law) requirements also apply when modifying the lease. Such a practice would ensure that an owner's lease is in compliance with, and enforceable under, state and local laws.
4. A modification to the lease may only be effective at the end of a lease term. The owner must provide the tenant with the approved modifications at least 60 days prior to the end of the lease term.
5. The notice must include a copy of the revised lease or an addendum revising the existing lease agreement. Owners must include a letter

clearly stating that the tenant can either accept the modification or move, but that a response is due within 30 days.

6. A tenant must either:
 - a. Accept the modification by signing both copies of the modification and returning one to the owner; or
 - b. Refuse the modification and give the owner a 30-day notice of intent to vacate.
7. If, within 30 days, the tenant indicates that the modification is unacceptable or does not respond, the owner may begin the procedures for terminating tenancy set forth in paragraph 8-13 B of this handbook.

C. Submission and Approval Process for Modifying the Lease

1. An owner must submit a proposed modification to the lease for review and approval to the local HUD Field Office or Contract Administrator having jurisdiction over the property. An owner must submit two (2) copies of the proposed modification, along with an explanation as to the necessity of the modification.
 - For modifications submitted to the HUD Field Office, the HUD Field Office will review the proposed modification and then forward it, along with any comments and/or concerns, to the Field Counsel. After meeting with the Field Counsel (or receiving comments from the Field Counsel), the local HUD Field Office will issue a letter to the owner either approving or denying the proposed modification, along with HUD's reason(s) for denying the modification, if applicable.
2. HUD Field Offices, State Agencies, and Contract Administrators may approve changes that will make the model lease comply with:
 - a. State or local law; or
 - b. Property management practices generally used in the project's market area.

Example – Approving Lease Changes

Examples of acceptable management practices:

- Units with a live-in aide, a lease addendum that denies occupancy of the unit to a live-in aide after the tenant, for whatever reason, is no longer living in the unit. (See also paragraph 3-6 E.)
- Units with a police officer or security personnel, a lease provision that states that the right of occupancy is dependent on continued employment as a police officer or security personnel. (See also paragraph 3-8 D.)

3. HUD Field Offices, Contract Administrators and State Agencies must not approve changes that would:
 - a. Eliminate any provision related to HUD's subsidy rules;
 - b. Circumvent HUD rules, or state or local law; or
 - c. Effectuate any change to the required lease provisions.
(Paragraph 6-5 F lists the required lease provisions.)

D. Providing Notice to the Tenant

The tenant must be provided with proper notice when an owner modifies the lease. An owner must comply with the following requirements to provide such notice.

1. The owner must provide the tenant with the approved modifications at least 60 days prior to the end of the lease term.
2. The notice must include a copy of the revised lease or an addendum revising the existing lease agreement. Owners must include a letter clearly stating that the tenant can either accept the modification or move, but that a response is due within 30 days.
3. The notice must be served by:
 - a. Sending a letter by first-class mail, properly stamped and addressed and including a return address, to the tenant at the unit address; and
 - b. Delivering a copy of the notice to any adult person answering the door at the unit. If no adult answers the door, the person serving the notice may place it under or through the door, or affix it to the door.
4. The date on which the notice is deemed received by the tenant is the later of:
 - a. The date the first-class letter is mailed; or
 - b. The date the notice is properly given.
5. Service of the notice is deemed effective once the notice has been both mailed and delivered.

Section 2: Security Deposits

6-13 Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 2: Security Deposits. The citations and their titles (or topics) are listed below.

- A. 24 CFR 880.608, 881.601, 883.701, 884.115, 886.116, 886.315, 891.435, 891.635, and 891.775 (Security and utility deposits)
- B. 24 CFR 880.608, 881.601, 883.701, 884.115, 886.116, 886.315, 891.435, 891.635, and 891.775 (Interest earned on the security deposit)
- C. 24 CFR 880.608, 881.601, 883.701, 884.115, 886.116, 886.315, 891.435, 891.635, and 891.775 (Refunding and use of the security deposit)

6-14 Applicability

- A. Unless otherwise indicated, all of the applicable properties identified in Figure 1-1 are subject to the information presented in this section.
- B. If the security deposit now held by the owner met the HUD rules in effect at the time the deposit was collected:
 - 1. An owner need not adjust the amount of the deposit to comply with current rules; and
 - 2. The HUD Field Office **or Contract Administrator** may not reduce the Section 8 special claims because the deposit does not meet the current rules.

6-15 Collection of the Security Deposit

- A. It is recommended the owner collect a security deposit at the time of the initial lease execution.
- B. Security deposits provide owners with some financial protection when a tenant moves out of the unit and fails to fulfill his/her obligations under the lease. Additionally, many programs require that owners place security deposits in interest-bearing accounts and allocate the interest to the tenant. This requirement varies by programs and depends to a certain extent on state and local laws.
- C. The owner must collect a security deposit at the time of the initial lease execution for the following properties:
 - 1. Section 8 New Construction with an AHAP executed on or after November 5, 1979;

2. Section 8 Substantial Rehabilitation with an AHAP executed on or after February 20, 1980;
 3. Section 8 State Agency with an AHAP executed on or after February 29, 1980;
 4. Section 202/8;
 5. Section 202 PAC;
 6. Section 202 PRAC; and
 7. Section 811 PRAC.
- D. The amount of the security deposit established at move-in does not change when a tenant's rent changes.
- E. The amount of the security deposit to be collected is dependent upon:
1. The type of housing program;
 2. The date the AHAP or HAP contract for the unit was signed; and
 3. The amount of the total tenant payment or tenant rent.
- Figure 6-6 outlines the amount of the security deposit the owner may collect for each of the different programs.
- F. The owner must comply with any applicable state and local laws governing the security deposit.
- G. The tenant is expected to pay the security deposit from his/her own resources, and/or other public or private sources.
- H. The owner may collect the security deposit on an installment basis. **
- I. The security deposit is refundable. (See paragraph 6-18 for more information on refunding a security deposit.)
- J. An applicant may be rejected if he/she does not have sufficient funds to pay the deposit.

6-16 Security Deposits for Tenants Transferring to Another Unit

- A. When a tenant transfers to a new unit, an owner may:
1. Transfer the security deposit; or
 2. Charge a new deposit and refund the deposit for the old unit.
- B. If the deposit for the old unit is refunded, the owner must:

-
1. Follow the requirements listed in paragraph 6-18 regarding the refunding and use of the security deposit; and
 2. Establish a security deposit for the new unit based on the requirements listed in paragraph 6-15 regarding the collection of a security deposit.

Figure 6-6: Amount of Security Deposit to Collect from Tenant

Program	Amount to Collect
Section 8 New Construction with AHAP executed <u>before</u> November 5, 1979	One month's total tenant payment
Section 8 Substantial Rehabilitation with AHAP executed <u>before</u> February 20, 1980	One month's total tenant payment
Section 8 State Agency with AHAP executed <u>before</u> February 29, 1980	One month's total tenant payment
Section 8 New Construction with AHAP executed <u>on or after</u> November 5, 1979 [24 CFR 880.608]	The greater of: 1) One month's total tenant payment, or 2) \$50
Section 8 Substantial Rehabilitation with AHAP executed <u>on or after</u> February 20, 1980 [24 CFR 881.601]	The greater of: 1) One month's total tenant payment, or 2) \$50
Section 8 State Agency with AHAP executed <u>on or after</u> February 29, 1980 [24 CFR 883.701]	The greater of: 1) One month's total tenant payment, or 2) \$50
RHS 515 with Section 8 [24 CFR 884.115]	Equal to one month's total tenant payment
Section 8 LMSA with HUD-insured or HUD-held mortgages [24 CFR 886.116]	An amount up to, but no greater than, one month's total tenant payment
Section 8 provided with the sale of a HUD-owned property (Property Disposition) [24 CFR 886.315]	The greater of: 1) One month's total tenant payment, or 2) \$50
Section 202/8 or Section 202 PAC [24 CFR 891.435]	The greater of: 1) One month's total tenant payment, or 2) \$50
Section 202 PRAC [24 CFR 891.435]	The greater of: 1) One month's total tenant payment, or 2) \$50
Section 811 PRAC [24 CFR 891.435]	The greater of: 1) One month's total tenant payment, or 2) \$50
Section 236	One month's tenant rent
Section 236 with RAP	The greater of: 1) One month's total tenant payment, or 2) \$50
Section 221(d)(3) BMIR	One month's tenant rent
Rent Supplement	The greater of: 1) One month's total tenant payment, or 2) \$50

6-17 Interest Earned on the Security Deposit

- A. Section 8 New Construction, Substantial Rehabilitation, and State Agency properties are subject to two different sets of requirements depending on the date the AHAP was signed. Additionally, Section 202 properties with Section 8 or PAC have additional requirements for allocating interest and maintaining records. To further complicate the process, most states (and some counties and municipalities) have laws regarding the investment of security deposits and payments to the tenant of interest earned on the deposits, with which owners must comply. In instances where laws conflict, owners should follow the requirements that provide the greatest benefit to the tenant.

Owners must comply with any state and local laws regarding investment of security deposits and distribution of any interest earned thereon. If state law is silent, or if HUD regulations are more demanding, owners must comply with HUD's regulations. HUD requirements are discussed below.

In addition, interest to the tenants must be computed in accordance with state or local law. When state or local law is silent, the actual rate earned on the security deposits must be computed and credited to each tenant's portion of the security deposit.

- B. The owner must place the security deposits into a segregated, interest-bearing account. The balance of the account must equal the total amount collected from all tenants then in occupancy, plus any accrued interest.

NOTE: For Section 202/8, Section 202 PRACs, and Section 811 PRACs, the balance must equal the total amount collected from all tenants then in occupancy, plus any accrued interest and less allowable administrative cost adjustments.

NOTE: For Section 202/8, the allowable administrative costs may not exceed the accrued interest allocated to the family's balance for the year.

NOTE: Owners of the following properties are not subject to the revised Section 8 regulations. Subject to state and local requirements, these properties may invest security deposits and deposit the interest into the property's operating account on a quarterly basis.

- Section 8 New Construction with an AHAP executed before November 5, 1979.
- Section 8 Substantial Rehabilitation with an AHAP executed before February 20, 1980.
- Section 8 State Agency with an AHAP executed before February 29, 1980.

- C. In addition to the other requirements listed in this section, Section 202 properties with Section 8 or PAC are subject to the following:
1. The owner must maintain a record of the amount in the segregated interest-bearing account that is attributable to each tenant.
 2. The owner must allocate interest accrued on the tenant's security deposit on an annual basis and when a tenant vacates the unit.
 3. Unless prohibited by state or local law, the owner may deduct, from the accrued interest attributable to the tenant for the year, the administrative cost of computing the allocation of interest to the tenant's security deposit balance. The amount of the administrative cost must not exceed the accrued interest allocated to the tenant's balance for the year.
- D. Although not a specific requirement for every program, it is in the owner's best interest to:
1. Maintain a record of the amount in the security deposit account attributable to each tenant; and
 2. Allocate interest to the tenant's security deposit on an annual basis and when a tenant vacates the unit.

6-18 Refunding and Use of the Security Deposit

- A. In order to receive a refund of the security deposit, a tenant must provide the owner with a forwarding address or arrange to pick up the refund. [24 CFR 880.608(c), 881.601, 883.701, 891.435(b)(2), 891.635, and 891.775]
- NOTE:** The regulations do not require the tenant to provide this type of notification to the owners in RHS 515 properties with Section 8 and properties with Section 8 LMSA and Section 8 PDSA. However, state law typically requires owners to attempt to refund a tenant's security deposit.
- B. Subject to state and local laws, an owner may use the tenant's security deposit as reimbursement for any unpaid rent or other amounts the tenant owes under the lease.
- C. Within 30 days after the move-out date (or shorter time if required by state and/or local laws), the owner must either:
1. Refund the full security deposit plus accrued interest to a tenant that does not owe any amounts under the lease; or
 2. Provide the tenant with an itemized list of any unpaid rent, damages to the unit, and an estimated cost for repair, along with a statement of the tenant's rights under state and local laws.

- a. If the amount the owner claims is less than the security deposit plus accrued interest, the owner must refund the unused balance to the tenant.
- b. If the owner fails to provide the list to the tenant, the tenant is entitled to a full refund of the tenant's security deposit plus accrued interest.

NOTE: State laws may also have requirements regarding itemizing damages. When a specific federal housing program does not require an itemized list (as is the case for properties with Section 8 LMSA and Section 8 PDSA), owners must be aware of any state or local law that obligates an owner to provide the tenant with an itemized list of damages.

- D. If a disagreement arises concerning the reimbursement of the security deposit to the tenant, the tenant has the right to present objections to the owner in an informal meeting. The owner must keep a record of any disagreements and meetings in the tenant file for a period of three years for inspection by the HUD Field Office or Contract Administrator. These procedures do not preclude the tenant from exercising any rights under state and local law.

NOTE: The regulations for RHS 515 properties with Section 8 and properties with Section 8 LMSA and Section 8 PDSA do not require an owner to meet with the tenant or keep a record of the meeting or any disagreements.

- E. If the security deposit is insufficient to reimburse the owner for any unpaid rent or other amounts that the tenant owes under the lease, the owner may be able to claim reimbursement from the HUD Field Office or Contract Administrator. (See paragraph 9-14 for information on special claims.)
- F. Any reimbursement from HUD received by the owner must be applied first toward any unpaid tenant rent due under the lease. Additionally, no reimbursement may be claimed for unpaid rent for the period after termination of the tenancy.

Helpful Hint!

An owner should review the requirements and procedures for special claims outlined in paragraph 9-14 of this handbook, for information regarding specific requirements and funds available to a property.

Section 3: Charges in Addition to Rent

6-19 Key Regulations

This paragraph identifies the key regulatory citation pertaining to Section 3: Charges in Addition to Rent. The citation and its title are listed below.

- 24 CFR 5.318 Discretionary Pet Rules (Pet Deposit)
- **24 CFR 2.278 Mandatory Meals in Multifamily Rental or Cooperative Projects for the Elderly or Handicapped**

6-20 Charges Prior to Occupancy

- A. An owner must not charge applicants for costs associated with accepting and processing applications, screening applicants, or verifying income and eligibility. Hence, owners must not require applicants to pay application fees, credit report charges, charges for home visits, charges to obtain a police report(s), or other costs associated with the above functions. These costs are considered project expenses.
- B. Cooperatives are permitted to charge a reasonable application and credit check fee.

6-21 Charges at Initial Occupancy

Owners must not collect any money from tenants at initial occupancy other than rent and the maximum HUD-allowed security deposit, unless they receive HUD approval to do otherwise.

Reminder!

An owner of housing specifically designed for occupancy by the elderly and persons with disabilities may also collect a pet deposit at initial occupancy. See paragraphs 6-10 and 6-24 of this handbook and HUD Handbook 4350.1, *Multifamily Asset Management and Project Servicing*, for further information and details relating to pet rules and regulations subject to HUD requirements.

6-22 Meal Program

Owners of properties for the elderly or persons with disabilities for which HUD approved a mandatory meals program prior to April 1, 1987, must comply with the following:

- A. Owners may charge a HUD-approved meals fee. Such fees are paid by the tenants and are not rent. Income collected from such charges must be used solely to offset costs associated with purchasing, preparing, and serving meals.
- B. HUD requires owners to grant exceptions to participation in a meals program for reasons such as medical or dietary restrictions, or employment.
- C. Owners are required to execute a separate meals contract, incorporated as part of the lease, stating the program requirements.

6-23 Charges for Late Payment of Rent

- A. Paragraph 6-23 does not apply to cooperatives. Cooperatives may collect any late charges that are approved by the Board and that are consistent with the cooperative's organizational documents and state and local laws.
- B. **Paragraph 6-23 does not apply to Section 202/8, Section 202 PAC, Section 202 PRAC and Section 811 PRAC projects. Owners of Section 202/8, Section 202 PAC, Section 202 PRAC and Section 811 PRAC projects cannot charge fees for late payment of rent.
- C. Owners may assess a charge if the tenant has been given at least 5 calendar days as a grace period to pay the rent. The rent must be received by the fifth day, not postmarked by then.

On the sixth day, the owner may charge a fee, not to exceed \$5 for the period of the first through fifth day that the rent is not paid. Additionally, the owner may charge a fee of \$1 per day for each additional day the rent remains unpaid for the month.

- D. Field Offices or Contract Administrators may approve a higher initial late fee if:
 - 1. It is permitted under state and local laws;
 - 2. It is consistent with local management practices; and
 - 3. The total late charge assessed for the month does not exceed \$30.
- E. An owner may deduct accrued, unpaid late charges from the tenant's security deposit at the time of move-out, if such a deduction is permitted under state and local laws.
- F. An owner must not evict a tenant for failure to pay late charges.

6-24 Pet Deposits

- A. The pet rules may require tenants to pay a refundable pet deposit, but apply only to those tenants who own or keep cats or dogs in their units. This deposit is in addition to any additional financial obligation generally imposed on tenants of the property.

- B. The maximum amount of the pet deposit that may be charged by an owner on a per-unit basis is determined as outlined in Figure 6-7. The amount of the deposit was set by publication of a notice in the *Federal Register* by HUD and may change periodically with future publications.
- C. Pet deposits only apply to properties established for the elderly and persons with disabilities. Assistance animals that assist persons with disabilities are considered to be auxiliary aids and are exempt from the pet policy and from the refundable pet deposit.
- D. An owner may use the pet deposit only to pay reasonable expenses directly attributable to the presence of the pet on the property. Such expenses would include, but not be limited to, the cost of repairs and replacement to the unit, fumigation of the unit, and the cost of animal care facilities.
- E. Owners must return the unused portion of a pet deposit to the tenant within a reasonable time after the tenant moves from the property or no longer owns or keeps a household pet in the unit.
- F. In addition to the information presented here, an owner should consult HUD Handbook 4350.1, *Multifamily Asset Management and Project Servicing*, for further information and details relating to pet rules and regulations.

Figure 6-7: Collection of Pet Deposits

Program	Maximum Amount to Collect
Tenants whose rents are subsidized under the following programs: Section 8 New Construction Section 8 Substantial Rehabilitation Section 8 State Agency RHS 515 with Section 8 Section 202 with PRAC Section 811 with PRAC Rent Supplement Rental Assistance Payment	The <u>pet deposit</u> must not exceed \$300. The <u>initial deposit</u> cannot exceed \$50 at the time the pet is brought onto the premises. The <u>pet rules</u> must provide for gradual accumulation of the remaining required deposit, not to exceed \$10 per month until the deposit is reached. NOTE: A tenant must be allowed to pay the entire amount or increments that are greater than \$10 if he or she chooses to do so.
Tenants whose rents are not subsidized under one of the programs listed in 1 above, but who live in a property assisted under the following programs: Section 236 Interest Reduction Section 202 with Section 8 Section 202 with PAC Section 221(d)(3) BMIR	The <u>pet deposit</u> must not exceed \$300. The <u>pet rules</u> may provide for a gradual accumulation of the required deposit.

6-25 Other Charges During Occupancy

A. When Owners May Require Other Charges

An owner may **charge tenants for** allowable charges identified under subparagraphs B, C, D, and E **below**.

B. Checks Returned for Insufficient Funds

1. Owners may impose a fee on the second time, and each additional time, a check is not honored for payment. (See paragraph 5 of the Model Lease for Subsidized Programs for more information.)
2. The owner may bill a tenant only for the amount the bank charges for processing the returned check.
3. Field Offices or Contract Administrators may authorize an owner to impose additional charges, if such charges are consistent with local management practices and are permitted by state and local laws.

****NOTE:** This paragraph does not apply to Section 202/8, Section 202 PAC, Section 202 PRAC and Section 811 PRAC projects. Owners of Section 202/8, Section 202 PAC, Section 202 PRAC and Section 811 PRAC projects cannot charge fees for checks returned for insufficient funds.**

C. Damages

1. Whenever damage is caused by carelessness, misuse, or neglect on the part of the tenant, household member, or visitor, the tenant is obligated to reimburse the owner for the damages within 30 days after the tenant receives a bill from the owner.
2. An owner may deduct accrued, unpaid damage charges from the tenant's security deposit at the time of move-out, if such a deduction is permitted under state and local laws.
3. The owner's bill is limited to actual and reasonable costs incurred by the owner for repairing the damages.

D. Special Management Services

1. An owner may charge a tenant for special services such as responding to lock-out calls and providing extra keys.
2. At the time of move-out, the owner may charge the tenant a fee for each key not returned.
3. An owner may not charge a tenant for bad behavior, such as foul language, noise, or failure to supervise children. However, if such

behavior is serious or prolonged, it may be grounds for termination of tenancy.

E. Court Filing, Attorney, and Sheriff Fees

1. Owners may accept payment of these fees from tenants who wish to avoid or settle an eviction suit provided:
 - a. It is permitted under state and local laws; and
 - b. *The fees appear reasonable and do not exceed the actual costs incurred.
2. Cooperatives may collect legal and other out-of pocket costs incurred in collecting delinquent carrying charges and in terminating a membership following a member's default under the occupancy agreement.* The occupancy agreement requires members to pay attorney fees even if the cooperative has not filed a suit. Any charges levied on a cooperative member must be consistent with state and local law and policies approved by the cooperative's Board.

F. Owners May Require Tenants to Pay Other Charges:

1. If HUD or Contract Administrator has approved the charges; and
2. The schedule of charges is either:
 - a. Listed in the lease agreement; or
 - b. Has been distributed to all tenants in accordance with the modification of the lease requirements and procedures listed in this chapter, paragraph 6-12 D.

Section 4: The Leasing Process Key Regulations

6-26 Key Regulations

This paragraph identifies the key regulatory citation pertaining to Section 4: The Leasing Process. The citation and its topic are listed below.

- 24 CFR 5.703 and 5.705 (Unit inspections)

6-27 Briefing with New Tenants

A. Overview

HUD does not require a briefing with residents prior to occupancy, but it is good practice for managers to incorporate this briefing as a part of their routine process. Holding a meeting prior to occupancy helps an owner ensure that new tenants understand the terms of the lease. It also gives the owner an opportunity to relay important information about resident rights, lead-based paint disclosure, house rules, and conditions for termination of assistance and tenancy. At the same time, information provided during tenant briefing topics gives tenants a clear understanding of the owner's responsibilities and better enables tenants to fulfill their own responsibilities. The briefing gives the tenant an opportunity to ask questions and discuss the information being presented.

B. Briefing Topics

1. The briefing may cover a variety of topics. The following list identifies topics related to lease requirements that are important to discuss with the tenant:
 - a. Signatures;
 - b. Term of lease;
 - c. Annual/interim recertifications;
 - d. Rent;
 - e. Security deposit
 - f. *Lease attachments, when applicable (e.g., HUD-50059, HUD-50059-A, move-in inspection report, house rules, lead-based paint disclosure form, pet rules, and live-in aide addendum);*
 - g. Other charges;
 - h. Maintenance/damages;
 - i. Rights and responsibilities: At move-in and annually at recertification, owners are required to provide the head of household with a copy of the *Resident Rights and Responsibilities* brochure reissued by HUD in the fall of 1998. The brochure is available in 10 languages through the HUD Multifamily Clearinghouse at 800-685-8470;
 - j. Penalties for fraud;
 - k. Termination of assistance;
 - l. Termination of tenancy; and

m. General rules.

2. Exhibit 6-6 provides **examples of ** more detailed information that may be provided to the tenant during the briefing.

C. **Conducting the Briefing Meeting**

If owners decide to conduct a briefing with new tenants:

1. They are advised to conduct the briefing before the tenant signs the lease to make sure that the tenant has a good understanding of his/her obligations and responsibilities prior to move-in.
2. They must make sure that the presentation is clear. If at all possible, it is suggested that the presenter use visual and media aids such as slide presentations and charts to conduct the briefing. **This information may also have to be conveyed in languages other than English for LEP persons, in accordance with HUD guidance.**
3. It would also be beneficial for the tenant to receive an information packet that contains handouts summarizing important topics covered during the briefing. If applicable, forms can also be given to the residents during the briefing.
4. Preferably, the briefing does not take place the same day the tenant signs the lease. This way the tenant will have time to think of questions regarding the lease.

6-28 **Form of Payment**

- A. An owner may require any tenant to pay the security deposit or the last month's rent in a guaranteed form (e.g., money order, cashier's check, bank check).
- B. In all other instances, an owner must accept a tenant's personal check.
- C. If the tenant bounces a rent check, thereafter the owner may refuse to accept the tenant's personal check. The owner may require the tenant to pay rent in a guaranteed form as identified above.

REMINDER: Owners must be consistent in their treatment of all tenants.

6-29 **Unit Inspections**

A. **Overview**

1. The move-in inspection is an opportunity to familiarize the tenant with the project and the unit, as well as to document its current condition. By performing move-in inspections, owners and tenants are assured that the unit is in livable condition and is free of damages. A move-in inspection gives the owner an opportunity to explain to the new residents the tenant's responsibility for damages caused to the unit by family members

and visitors, discuss the house rules, and familiarize tenants with the operation of appliances and equipment in the unit.

2. Upon the unit being vacated by the tenant, an owner performs a move-out inspection to ensure there are no damages to the unit. The owner should list the damages on the move-out form and compare it with the move-in form to determine if the damage is reasonable wear or tear or excessive damage caused by the tenant's abuse or negligence. The tenant should be given prior notice of the move-out inspection and be allowed to accompany the owner if the tenant chooses. Ideally, the tenant should accompany the owner on the move-out inspection so that any discrepancies can be discussed and a decision reached as to the extent of the damage and who is responsible for the cost associated with the damage.
3. Move-in and move-out inspection forms should not be confused with annual unit inspections performed by owners and physical inspections performed by HUD and/or HUD contractors. Owners perform unit inspections on at least an annual basis to determine whether the appliances and equipment in the unit are functioning properly and to assess whether a component needs to be repaired or replaced. This is also an opportunity to determine any damage to the unit caused by the tenant's abuse or negligence and, if so, make the necessary repairs and bill the tenant for the cost of the repairs.
4. HUD, or its authorized contractor(s), has the right to inspect the units and the entire property to ensure that the property is being physically well maintained. These inspections assure HUD that owners are fulfilling their obligations under the regulatory agreements and/or subsidy contracts and that tenants are provided with decent, safe, and sanitary housing.

B. Key Requirements

1. Owners in all HUD-subsidized multifamily properties are required to complete move-in and move-out inspections.
2. Owners must document these inspections. (See **Appendix 5** for a sample unit inspection report.)
3. Owners may design their own inspection forms.

C. Move-In Inspection Requirements

1. Before executing a lease, the owner and tenant must jointly inspect the unit.
2. After the owner conducts a unit inspection, the inspection form must indicate the condition of the unit. The condition of the unit must be decent, safe, sanitary, and in good repair. If cleaning or repair is required, the owner must specify on the inspection form the date by which the work will

be completed. The date must be no more than 30 days after the effective date of the lease.

3. Both the owner and the tenant must sign and date the inspection form. ****The inspection form must include the statement, "The unit is in decent, safe and sanitary condition". ****
4. The tenant has 5 days to report any additional deficiencies to the owner to be noted on the move-in inspection form.
5. The move-in inspection form must be made part of the lease, as an attachment to the lease.

D. **Move-Out Inspection Instructions**

1. Owners are advised to encourage tenants to accompany them on the inspection. Upon a tenant's request, he/she must be allowed to attend the move-out inspection conducted by the owner. If a tenant is with the owner during the inspection, disagreements between the owner and the tenant regarding unit damage can be resolved up front.
2. If a tenant does not wish to participate, the owner may do the inspection alone.
3. HUD does not provide move-out inspection criteria. It is at the owner's discretion to develop criteria to distinguish between wear-and-tear and damage. If an owner determines that the unit is damaged as a result of tenant abuse or neglect, he/she may use the security deposit to cover the repair costs. (See Section 2: Security Deposits for more information.)

Example – Wear-and-Tear Versus Damage

Wear-and-tear: The carpet is worn and has reached the end of its useful life.

Damage: A relatively new carpet has rips and tears.

6-30 Documents to Be Provided to Tenants

Throughout Chapter 6, several documents have been identified that owners must, and in some cases may, provide tenants when they initially sign the lease and occupy the unit. This paragraph summarizes all of these documents in Figure 6-8.

Figure 6-8: Summary of Documents for Tenants

Documents
Lease, with the HUD-50059 or HUD-50059-A
Move-in inspection form
Consent forms
Lead-Based Paint Disclosure Form (if applicable)
Lead Hazard Information Pamphlet (if applicable)
House Rules (if developed)
Pet Rules (if applicable)
Live-in Aide addendum (if applicable)
Resident Rights and Responsibilities brochure

Chapter 6 Exhibits

- 6-1 Required State Agency Lease Provisions
<http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503e6-1HSGH.pdf>
- 6-2 Required RHS 515 with Section 8 Lease Provisions
<http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503e6-2HSGH.pdf>
- 6-3 Disclosure Form for Target Housing Rentals and Leases
<http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503e6-3HSGH.pdf>
- 6-4 Mandatory and Discretionary Pet Rule
<http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503e6-4HSGH.pdf>
- 6-5 How to Develop Pet Rules
<http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503e6-5HSGH.pdf>
- 6-6 ****Examples of**** Tenant Briefing Topics
<http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503e6-6HSGH.pdf>