

## Exhibit 5-2 Occupancy Standards

### HUD Regulation 24 CFR 100.5(a)

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. No person shall be subjected to discrimination because of race, color, religion, sex, handicap, familial status, or national origin in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions.

### Fair Housing Enforcement—Occupancy Standards; Notice of Statement of Policy<sup>1</sup>

Section 589 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105-276, 112 Stat. 2461, approved October 21, 1998, “QHWRA”) requires HUD to publish a notice in the *Federal Register* that advises the public of the occupancy standards that HUD uses for enforcement purposes under the Fair Housing Act (42 U.S.C. 3601-3619).

Through this notice HUD implements section 589 of the QHWRA by adopting as its policy on occupancy standards, for purposes of enforcement actions under the Fair Housing Act, the standards provided in the Memorandum of General Counsel Frank Keating to Regional Counsel dated March 20, 1991<sup>2</sup>.

## 1. Reasonable Accommodation

A family may request a Reasonable Accommodation if a family member with a disability requires an exception to AHFC occupancy standards to accommodate a disability. Ask your local AHFC office for assistance with this process.

---

<sup>1</sup> *Federal Register*, December 22, 1998, [Document No. 98-33568](#). Summary: This statement of policy advises the public of the factors that HUD will consider when evaluating a housing provider’s occupancy policies to determine whether actions under the provider’s policies may constitute discriminatory conduct under the Fair Housing Act on the basis of familial status (the presence of children in a family).

<sup>2</sup> “There is a HUD Handbook provision regarding the size of the unit needed for public housing tenants. While that Handbook provision states that HUD does not specify the number of persons who may live in public housing units of various sizes, it provides guidance about the factors public housing agencies may consider in establishing reasonable occupancy policies. Neither this memorandum nor the memorandum of February 21, 1991 overrides the guidance that Handbook provides about program requirements.”

## 2. Occupancy Standard

### **HUD Public Housing Occupancy Guidebook, June 2003**

HUD does not specify the number of persons who may live in public housing units of various sizes. PHAs are permitted to develop appropriate occupancy standards as long as the standards do not have the effect of discriminating against families with children. A HUD Notice of Statement of Policy published in the Federal Register on December 18, 1998, states that "...an occupancy policy of two persons in a bedroom, as a general rule, is reasonable under the Fair Housing Act." The Statement also suggests that PHAs are permitted to consider the following issues in establishing their own occupancy standards:

- Applicable state or local housing or occupancy codes (if any);
- Size and configuration of the PHA's housing units;
- Limitations imposed by the capacity of water and sewer systems;
- Site density issues;
- Characteristics of individual families; and
- Avoiding both under-utilizing space and overcrowding families.

When HUD's Office of Fair Housing and Equal Opportunity investigates an allegation of discrimination on the basis of familial status, it considers the above factors as well as the Statement of Policy.

### **HUD Public Housing Occupancy Guidebook, June 2003 Individual Family Characteristics**

The Admissions and Continued Occupancy Policy (ACOP) must state the PHA's policy on the minimum and maximum number of persons who may live in units. Policies may address the following elements:

- Policies related for example to, babies under a specified age being able to share a bedroom with parents or two siblings, or persons who need a separate bedroom for reasons related to a disability;
- How the PHA will handle foster children in establishing unit size;
- Locations of units where the maximum standard is fewer than two persons per bedroom (for very small bedrooms) or more than two persons per bedroom (for very large bedrooms);
- Whether the PHA will permit applicants to be on waiting sub lists for more than one unit size, or whether the PHA requires each applicant to state the size unit for which he/she wishes to be listed;
- Whether the PHA will count an unborn child or a child in the process of being adopted as a family member in determining unit size (the PHA must count children who are added to the family by birth, adoption or court-awarded custody only after these events have occurred); and
- Whether the PHA has any special policies related to the occupancy of units of a certain size (e.g. hard-to-rent efficiencies).

### **HUD Handbook 4350.3, June 2007**

A. Overview. 1. Owners must develop and follow occupancy standards that take into account the size and number of bedrooms needed based on the number of people in the family.

#### **B. Key Requirements.**

1. Owners of all properties subject to this handbook, including subsidized housing cooperatives, must assign a family to a unit of appropriate size, taking into consideration all persons residing in the household.
2. Owners must have written standards describing the project eligibility criteria. Owners have discretion in developing specific occupancy standards for a property, as long as the standards do not violate fair housing requirements or contain prohibited policies and comply with the following.
  - a. Federal, State, and local fair housing and civil rights laws;
  - b. Tenant-landlord laws;
  - c. Zoning restrictions; and
  - d. HUD's Equal Opportunity and nondiscrimination requirements under HUD's administrative procedures.

#### **E. General Occupancy Standards.**

4. Owners may consider the size of the unit, the size of the bedrooms, and the number of bedrooms so long as their policy allows for family preferences (within HUD guidelines) to be considered. As owners develop and implement occupancy standards, they must take into consideration the following factors:
  - a. The number of persons in the family;
  - b. The age, sex and relationship of family members;
  - c. The family's need for a larger unit as a reasonable accommodation; and
  - d. Balancing the need to avoid overcrowding with the need to avoid underutilization of the space and unnecessary subsidy.
6. Counting family members. In order to determine the size of unit that would be appropriate for a particular family, the owner needs to determine the number of family members.
  - a. The owner must count all full-time members of the family.
  - b. The owner must also count all anticipated children. Anticipated children include the following:
    - (1) Children expected to be born to a pregnant woman;
    - (2) Children in the process of being adopted by an adult family member;
    - (3) Children whose custody is being obtained by an adult family member;
    - (4) Foster children who will reside in the unit;
    - (5) Children who are temporarily in a foster home who will return to the family; and
    - (6) Children in joint custody arrangements who are present in the household 50% or more of the time.

c. The owner may count children who are away at school and who live at home during recesses. Owners should not count children who are away at school who have established residency at another address or location as evidenced by a lease agreement.

d. The owner must count live-in aides for purposes of determining appropriate unit size.

e. The owner may establish reasonable standards for counting family members that are temporarily in a correctional facility. For example, it is reasonable for an owner to count a teenager who will return to the family in six months from a detention center. It is not reasonable to count an adult member who may return to the family in two years following incarceration.

f. The owner must not count nonfamily members, such as adult children on active military duty, permanently institutionalized family members, or visitors.

g. The owner must count foster adults living in the unit.

**AHFC Policy**

1. Families of like size and composition will occupy units that provide for the smallest number of bedrooms needed to house a family without overcrowding.
2. AHFC assigns two persons per bedroom (see Composition Factors section).
3. AHFC places families on waiting lists segregated by bedroom size to insure they occupy units that provide for the smallest number of bedrooms needed to house a family without overcrowding.
4. A family may only be placed on one bedroom size waiting list for each specific public housing program.
5. A family may choose to be on a waiting list for a smaller unit; however, the number of persons must not exceed the maximum persons allowed under the occupancy standard.
6. AHFC reserves the right to determine the family's occupancy standard.

<b>Number of Bedrooms</b>	<b>Minimum Persons</b>	<b>Maximum Persons</b>
Efficiency	One	Two
One	One	Three
Two	Two	Five
Three	Three	Seven
Four	Four	Nine
Five	Five	Eleven

### **3. Application**

Occupancy Standards apply to:

1. All new admissions,
2. Families with changes to their household composition which may necessitate a change of unit size (see Transfer Policy), and
3. Families requesting to move due to a reasonable accommodation request, VAWA request, or for personal reasons.

### **4. Composition Factors**

AHFC will consider the following factors when assigning a bedroom size.

1. All persons who are expected to reside regularly (at least 50 percent of the time) in the unit will be counted, including:
  - a) Minors in the process of adoption by the family. During the process, the family must furnish AHFC with verifications from the adoption agent that the child(ren) has been matched with the family.
  - b) Minors in the process of placement with the family as foster children. The family must furnish AHFC with verification from the licensing agent that the family has been approved as a foster family. AHFC will grant the additional subsidy required for the placement of foster children in the home.
  - c) Minors temporarily absent from the home due to placement in foster care. During the process, the family must furnish AHFC with verification from the foster care agent that the child(ren) will be returned to the family timely.
  - d) Minors obtained through custody agreements. The family must provide AHFC with custody verification.
  - e) Students who are away at school, but who live with the family during school breaks. The student must continue to claim the unit as the primary residence.
2. A pregnant woman is counted as two persons.
3. Two or more previously unrelated disabled/elderly persons who choose to live together may receive a two-bedroom unit upon request. Elderly or disabled individuals who decide to cohabitate due to financial, not familial status, encourages those individuals who are interested in sharing or pooling their resources to do so.
4. Family members of different generations are not required to share the same room.

5. A family comprised of more than two generations of family members will qualify the family for a one-step increase in the occupancy level. Families may self-certify the relationship. This encourages families that wish to provide care or support for an elderly relative to do so.
6. A live-in aide approved by AHFC to reside in the unit. See Live-In Aide Exhibit.

#### **4.A Over-Housing Families**

AHFC may choose to over-house<sup>3</sup> a family due to a lack of applicants for a particular bedroom size. Approvals for housing families with less than one person per bedroom must be given by the Director of Housing Operations or his/her designee.

Families that are over-housed at AHFC's discretion will be eligible for the utility allowance attached to the unit. For families housed under the Public Housing Program, families that are over-housed at AHFC's discretion will also be:

- Subject to the unit contract rent for which the family would qualify if housed in the appropriate unit size.
- Eligible for the lesser contract rent as long as they remain in the original unit.

If a unit of appropriate size becomes available, AHFC retains the option to exercise its rights under the Transfer Policy. These transfers are prioritized as Administrative.

#### **4.B Under-Housed Families**

Families that choose to be under-housed<sup>4</sup> must not exceed maximum occupancy requirements and are subject to the contract rent and utility allowance for the unit size. Families that choose this option will not be eligible to transfer unless a change in family composition occurs or AHFC exercises its rights under the Transfer Policy.

### **Numbered Memo**

19-06 Exhibit 5-2 Occupancy Standards

---

<sup>3</sup> "Over-house" means to assign a unit size that is larger than the size for which the family qualifies.

<sup>4</sup> "Under-house" means to assign a unit size that is smaller than the size for which the family qualifies.