

Chapter 6 Part 1a. References in this Chapter

1(a) 24 CFR § 966.4 Lease Requirements also 1(m) – 966.4(l)(3)

24 CFR § 966.4 - Lease requirements.

§ 966.4 Lease requirements.

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

(a) Parties, dwelling unit and term.

(1) The lease shall state:

(i) The names of the PHA and the tenant;

(ii) The unit rented (address, apartment number, and any other information needed to identify the dwelling unit);

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

(iv) A statement of what utilities, services, and equipment are to be supplied by the PHA without additional cost, and what utilities and appliances are to be paid for by the tenant;

(v) The composition of the household as approved by the PHA (family members and any PHA-approved live-in aide). The family must promptly inform the PHA of the birth, adoption, or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit;

(vi) HUD's regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply.

(2) Lease term and renewal.

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

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

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

(3) Execution and modification. The lease must be executed by the tenant and the PHA, except for automatic renewals of a lease. The lease may be modified at any time by written agreement of the tenant and the PHA.

(b) Payments due under the lease -

(1) Tenant rent.

(i) The tenant shall pay the amount of the monthly tenant rent determined by the PHA in accordance with HUD regulations and other requirements. The amount of the tenant rent is subject to change in accordance with HUD requirements.

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

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

charges are determined by an individual check meter servicing the leased unit or result from the use of major tenant-supplied appliances.

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

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

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

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

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

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

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

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

(d) Tenant's right to use and occupancy.

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

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

(3)

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

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

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

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

- (A) Is determined to be essential to the care and well-being of the person;
 - (B) Is not obligated for the support of the person; and
 - (C) Would not be living in the unit except to provide the necessary supportive services.
- (e) The PHA's obligations. The lease shall set forth the PHA's obligations under the lease, which shall include the following:
- (1) To maintain the dwelling unit and the project in decent, safe, and sanitary condition;
 - (2) To comply with requirements of applicable building codes, housing codes, and HUD regulations materially affecting health and safety;
 - (3) To make necessary repairs to the dwelling unit;
 - (4) To keep project buildings, facilities, and common areas, not otherwise assigned to the tenant for maintenance and upkeep, in a clean and safe condition;
 - (5) To maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, and other facilities and appliances, including elevators, supplied or required to be supplied by the PHA;
 - (6) To provide and maintain appropriate receptacles and facilities (except containers for the exclusive use of an individual tenant family) for the deposit of ashes, garbage, rubbish, and other waste removed from the dwelling unit by the tenant in accordance with paragraph (f)(7) of this section;
 - (7) To supply running water and reasonable amounts of hot water and reasonable amounts of heat at appropriate times of the year (according to local custom and usage), except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or where heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct utility connection; and
 - (8)
 - (i) To notify the tenant of the specific grounds for any proposed adverse action by the PHA. (Such adverse action includes, but is not limited to, a proposed lease termination, transfer of the tenant to another unit, or imposition of charges for maintenance and repair, or for excess consumption of utilities.)
 - (ii) When the PHA is required to afford the tenant the opportunity for a hearing under the PHA grievance procedure for a grievance concerning a proposed adverse action:
 - (A) The notice of proposed adverse action shall inform the tenant of the right to request such hearing. In the case of a lease termination, a notice of lease termination, in accordance with paragraph (l)(3) of this section, shall constitute adequate notice of proposed adverse action.
 - (B) In the case of a proposed adverse action other than a proposed lease termination, the PHA shall not take the proposed action until the time for the tenant to request a grievance hearing has expired, and (if a hearing was timely requested by the tenant) the grievance process has been completed.
 - (9) To consider lease bifurcation, as provided in 24 CFR 5.2009, in circumstances involving domestic violence, dating violence, sexual assault, or stalking addressed in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), provided that, if a PHA chooses to bifurcate a lease, no assistance will be given for an individual who does not meet public housing eligibility and 24 CFR 5.508(h)(2) applies to submission of evidence of citizenship or eligible immigration status.
- (f) Tenant's obligations. The lease shall provide that the tenant shall be obligated:
- (1) Not to assign the lease or to sublease the dwelling unit;

- (2) Not to provide accommodations for boarders or lodgers;
 - (3) To use the dwelling unit solely as a private dwelling for the tenant and the tenant's household as identified in the lease, and not to use or permit its use for any other purpose;
 - (4) To abide by necessary and reasonable regulations promulgated by the PHA for the benefit and well-being of the housing project and the tenants which shall be posted in the project office and incorporated by reference in the lease;
 - (5) To comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;
 - (6) To keep the dwelling unit and such other areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition;
 - (7) To dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner;
 - (8) To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appurtenances including elevators;
 - (9) To refrain from, and to cause the household and guests to refrain from destroying, defacing, damaging, or removing any part of the dwelling unit or project;
 - (10) To pay reasonable charges (other than for wear and tear) for the repair of damages to the dwelling unit, or to the project (including damages to project buildings, facilities or common areas) caused by the tenant, a member of the household or a guest.
 - (11) To act, and cause household members or guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe and sanitary condition;
 - (12) (i) To assure that no tenant, member of the tenant's household, or guest engages in:
 - (A) Criminal activity.
 - (1) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents;
 - (2) Any drug-related criminal activity on or off the premises; or
 - (B) Civil activity. For any units covered by 24 CFR part 965, subpart G, any smoking of prohibited tobacco products in restricted areas, as defined by 24 CFR 965.653(a), or in other outdoor areas that the PHA has designated as smoke-free.
 - (ii) To assure that no other person under the tenant's control engages in:
 - (A) Criminal activity.
 - (1) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents;
 - (2) Any drug-related criminal activity on the premises; or
 - (B) Civil activity. For any units covered by 24 CFR part 965, subpart G, any smoking of prohibited tobacco products in restricted areas, as defined by 24 CFR 965.653(a), or in other outdoor areas that the PHA has designated as smoke-free.
 - (iii) To assure that no member of the household engages in an abuse or pattern of abuse of alcohol that affects the health, safety, or right to peaceful enjoyment of the premises by other residents.
- (g) Tenant maintenance. The lease may provide that the tenant shall perform seasonal maintenance or other maintenance tasks, as specified in the lease, where performance of such tasks by tenants of dwellings units of a similar design and construction is customary: Provided, That such provision is included in the lease in good faith and not for the

purpose of evading the obligations of the PHA. The PHA shall exempt tenants who are unable to perform such tasks because of age or disability.

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

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

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

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

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

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

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

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

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

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

(k) Notice procedures.

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

(i) Except as provided in paragraph (j) of this section, notice to a tenant shall be in writing and delivered to the tenant or to an adult member of the tenant's household residing in the dwelling or sent by prepaid first-class mail properly addressed to the tenant; and

- (ii) Notice to the PHA shall be in writing, delivered to the project office or the PHA central office or sent by prepaid first-class mail properly addressed.
- (2) If the tenant is visually impaired, all notices must be in an accessible format.
- (1) Termination of tenancy and eviction -
 - (1) Procedures. The lease shall state the procedures to be followed by the PHA and by the tenant to terminate the tenancy.
 - (2) Grounds for termination of tenancy. The PHA may terminate the tenancy only for:
 - (i) Serious or repeated violation of material terms of the lease, such as the following:
 - (A) Failure to make payments due under the lease;
 - (B) Failure to fulfill household obligations, as described in paragraph (f) of this section;
 - (ii) Being over the income limit for the program, as provided in 24 CFR 960.261.
 - (iii) Other good cause. Other good cause includes, but is not limited to, the following:
 - (A) Criminal activity or alcohol abuse as provided in paragraph (1)(5) of this section;
 - (B) Discovery after admission of facts that made the tenant ineligible;
 - (C) Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with reexamination of income;
 - (D) Failure of a family member to comply with service requirement provisions of part 960, subpart F, of this chapter - as grounds only for non-renewal of the lease and termination of tenancy at the end of the twelve-month lease term; and
 - (E) Failure to accept the PHA's offer of a lease revision to an existing lease: that is on a form adopted by the PHA in accordance with § 966.3; with written notice of the offer of the revision at least 60 calendar days before the lease revision is scheduled to take effect; and with the offer specifying a reasonable time limit within that period for acceptance by the family.
- (3) Lease termination notice.
 - (i) The PHA must give written notice of lease termination of:
 - (A) 14 days in the case of failure to pay rent;
 - (B) A reasonable period of time considering the seriousness of the situation (but not to exceed 30 days):
 - (1) If the health or safety of other residents, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or
 - (2) If any member of the household has engaged in any drug-related criminal activity or violent criminal activity; or
 - (3) If any member of the household has been convicted of a felony;
 - (C) 30 days in any other case, except that if a State or local law allows a shorter notice period, such shorter period shall apply.
 - (ii) The notice of lease termination to the tenant shall state specific grounds for termination, and shall inform the tenant of the tenant's right to make such reply as the tenant may wish. The notice shall also inform the tenant of the right (pursuant to § 966.4(m)) to examine PHA documents directly relevant to the termination or eviction. When the PHA is required to afford the tenant the opportunity for a grievance hearing, the notice shall also inform the tenant of the tenant's right to request a hearing in accordance with the PHA's grievance procedure.
 - (iii) A notice to vacate which is required by State or local law may be combined with, or run concurrently with, a notice of lease termination under paragraph (1)(3)(i) of this section.

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

(v) When the PHA is not required to afford the tenant the opportunity for a hearing under the PHA administrative grievance procedure for a grievance concerning the lease termination (see § 966.51(a)(2)), and the PHA has decided to exclude such grievance from the PHA grievance procedure, the notice of lease termination under paragraph (l)(3)(i) of this section shall:

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

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

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

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

(i) By bringing a court action or;

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

(5) PHA termination of tenancy for criminal activity or alcohol abuse -

(i) Evicting drug criminals.

(A) Methamphetamine conviction. The PHA must immediately terminate the tenancy if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(B) Drug crime on or off the premises. The lease must provide that drug-related criminal activity engaged in on or off the premises by any tenant, member of the tenant's household or guest, and any such activity engaged in on the premises by any other person under the tenant's control, is grounds for the PHA to terminate tenancy. In addition, the lease must provide that a PHA may evict a family when the PHA determines that a household member is illegally using a drug or when the PHA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(ii) Evicting other criminals.

(A) Threat to other residents. The lease must provide that any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including PHA management staff residing on the premises) or threatens the health, safety, or right to peaceful enjoyment of their residences by

persons residing in the immediate vicinity of the premises is grounds for termination of tenancy.

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

(iii) Eviction for criminal activity.

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

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

(iv) Use of criminal record. If the PHA seeks to terminate the tenancy for criminal activity as shown by a criminal record, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the tenant with a copy of the criminal record before a PHA grievance hearing or court trial concerning the termination of tenancy or eviction. The tenant must be given an opportunity to dispute the accuracy and relevance of that record in the grievance hearing or court trial.

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

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

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

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

(vii) PHA action, generally.

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

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

(C) Exclusion of culpable household member. The PHA may require a tenant to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

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

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

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

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

(n) Grievance procedures.

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

(2) The lease must include a description of the PHA's policies for selecting a hearing officer.

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

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

[56 FR 51576, Oct. 11, 1991, as amended at 61 FR 13273, Mar. 26, 1996; 65 FR 16730, Mar. 29, 2000; 66 FR 28802, May 24, 2001; 66 FR 32875, June 18, 2001; 66 FR 33134, June 20, 2001; 69 FR 68791, Nov. 26, 2004; 75 FR 66262, Oct. 27, 2010; 81 FR 12374, Mar. 8, 2016; 81 FR 80815, Nov. 16, 2016; 81 FR 87444, Dec. 5, 2016]

1(a)(1)(vi) 24 CFR § Part 5 Subpart L Also 1(e)(9)

Subpart L - Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

Source: 81 FR 80798, Nov. 16, 2016, unless otherwise noted.

§ 5.2001 Applicability.

(a) This subpart addresses the protections for victims of domestic violence, dating violence, sexual assault, or stalking who are applying for, or are the beneficiaries of, assistance under a HUD program covered by the Violence Against Women Act (VAWA), as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e *et seq.*) (“covered housing program,” as defined in § 5.2003). Notwithstanding the title of the statute, protections are not limited to women but cover victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation. Consistent with the nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a), victims cannot be discriminated against on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD programs must also be operated consistently with HUD's Equal Access Rule at § 5.105(a)(2), which requires that HUD-assisted and HUD-insured housing are made available to all otherwise eligible individuals and families regardless of actual or perceived sexual orientation, gender identity, or marital status.

(b)

(1) The applicable assistance provided under a covered housing program generally consists of two types of assistance (one or both may be provided): Tenant-based rental assistance, which is rental assistance that is provided to the tenant; and project-based assistance, which is assistance that attaches to the unit in which the tenant resides. For project-based assistance, the assistance may consist of such assistance as operating assistance, development assistance, and mortgage interest rate subsidy.

(2) The regulations in this subpart are supplemented by the specific regulations for the HUD-covered housing programs listed in § 5.2003. The program-specific regulations address how certain VAWA requirements are to be implemented and whether they can be implemented (for example, reasonable time to establish eligibility for assistance as provided in § 5.2009(b)) for the applicable covered housing program, given the statutory and regulatory framework for the program. When there is conflict between the regulations of this subpart and the program-specific regulations, the program-specific regulations govern. Where assistance is provided under more than one covered housing program and there is a conflict between VAWA protections or remedies under those programs, the individual seeking the VAWA protections or remedies may choose to use the protections or remedies under any or all of those programs, as long as the protections or remedies would be feasible and permissible under each of the program statutes.

§ 5.2003 Definitions.

The definitions of *PHA*, *HUD*, *household*, and *other person under the tenant's control* are defined in subpart A of this part. As used in this subpart L:

Actual and imminent threat refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: The duration of the risk, the nature and severity of the potential harm, the likelihood

that the potential harm will occur, and the length of time before the potential harm would occur.

Affiliated individual, with respect to an individual, means:

- (1) A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or
- (2) Any individual, tenant, or lawful occupant living in the household of that individual.

Bifurcate means to divide a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable HUD-covered program and State or local law, such that certain tenants or lawful occupants can be evicted or removed and the remaining tenants or lawful occupants can continue to reside in the unit under the same lease requirements or as may be revised depending upon the eligibility for continued occupancy of the remaining tenants and lawful occupants.

Covered housing program consists of the following HUD programs:

- (1) Section 202 Supportive Housing for the Elderly (12 U.S.C. 1701q), with implementing regulations at 24 CFR part 891.
- (2) Section 811 Supportive Housing for Persons with Disabilities (42 U.S.C. 8013), with implementing regulations at 24 CFR part 891.
- (3) Housing Opportunities for Persons With AIDS (HOPWA) program (42 U.S.C. 12901 *et seq.*), with implementing regulations at 24 CFR part 574.
- (4) HOME Investment Partnerships (HOME) program (42 U.S.C. 12741 *et seq.*), with implementing regulations at 24 CFR part 92.
- (5) Homeless programs under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360 *et seq.*), including the Emergency Solutions Grants program (with implementing regulations at 24 CFR part 576), the Continuum of Care program (with implementing regulations at 24 CFR part 578), and the Rural Housing Stability Assistance program (with regulations forthcoming).
- (6) Multifamily rental housing under section 221(d)(3) of the National Housing Act (12 U.S.C. 17151(d)) with a below-market interest rate (BMIR) pursuant to section 221(d)(5), with implementing regulations at 24 CFR part 221.
- (7) Multifamily rental housing under section 236 of the National Housing Act (12 U.S.C. 1715z-1), with implementing regulations at 24 CFR part 236.
- (8) HUD programs assisted under the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*); specifically, public housing under section 6 of the 1937 Act (42 U.S.C. 1437d) (with regulations at 24 CFR Chapter IX), tenant-based and project-based rental assistance under section 8 of the 1937 Act (42 U.S.C. 1437f) (with regulations at 24 CFR chapters VIII and IX), and the Section 8 Moderate Rehabilitation Single Room Occupancy (with implementing regulations at 24 CFR part 882, subpart H).
- (9) The Housing Trust Fund (12 U.S.C. 4568) (with implementing regulations at 24 CFR part 93).

Covered housing provider refers to the individual or entity under a covered housing program that has responsibility for the administration and/or oversight of VAWA protections and includes PHAs, sponsors, owners, mortgagors, managers, State and local governments or agencies thereof, nonprofit or for-profit organizations or entities. The program-specific regulations for the covered housing programs identify the individual or entity that carries out the duties and responsibilities of the covered housing provider as set forth in part 5, subpart L.

For any of the covered housing programs, it is possible that there may be more than one covered housing provider; that is, depending upon the VAWA duty or responsibility to be performed by a covered housing provider, the covered housing provider may not always be the same individual or entity.

Dating violence means violence committed by a person:

- (1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (2) Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - (i) The length of the relationship;
 - (ii) The type of relationship; and
 - (iii) The frequency of interaction between the persons involved in the relationship.

Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. The term "spouse or intimate partner of the victim" includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

Sexual assault means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (1) Fear for the person's individual safety or the safety of others; or
- (2) Suffer substantial emotional distress.

VAWA means the Violence Against Women Act of 1994, as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e *et seq.*).

§ 5.2005 VAWA protections.

(a) *Notification of occupancy rights under VAWA, and certification form.*

(1) A covered housing provider must provide to each of its applicants and to each of its tenants the notice of occupancy rights and the certification form as described in this section:

- (i) A "Notice of Occupancy Rights under the Violence Against Women Act," as prescribed and in accordance with directions provided by HUD, that explains the VAWA protections under this subpart, including the right to confidentiality, and any limitations on those protections; and
- (ii) A certification form, in a form approved by HUD, to be completed by the victim to document an incident of domestic violence, dating violence, sexual assault or stalking, and that:

- (A) States that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking;
- (B) States that the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection under this subpart meets the applicable definition for such incident under § 5.2003; and

(C) Includes the name of the individual who committed the domestic violence, dating violence, sexual assault, or stalking, if the name is known and safe to provide.

(2) The notice required by paragraph (a)(1)(i) of this section and certification form required by paragraph (a)(1)(ii) of this section must be provided to an applicant or tenant no later than at each of the following times:

(i) At the time the applicant is denied assistance or admission under a covered housing program;

(ii) At the time the individual is provided assistance or admission under the covered housing program;

(iii) With any notification of eviction or notification of termination of assistance; and

(iv) During the 12-month period following *December 16, 2016*, either during the annual recertification or lease renewal process, whichever is applicable, or, if there will be no recertification or lease renewal for a tenant during the first year after the rule takes effect, through other means.

(3) The notice required by paragraph (a)(1)(i) of this section and the certification form required by paragraph (a)(1)(ii) of this section must be made available in multiple languages, consistent with guidance issued by HUD in accordance with Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency, signed August 11, 2000, and published in the Federal Register on August 16, 2000 (at 65 FR 50121).

(4) For the Housing Choice Voucher program under 24 CFR part 982, the project-based voucher program under 24 CFR part 983, the public housing admission and occupancy requirements under 24 CFR part 960, and renewed funding or leases of the Section 8 project-based program under 24 CFR parts 880, 882, 883, 884, 886, as well as project-based section 8 provided in connection with housing under part 891, the HUD-required lease, lease addendum, or tenancy addendum, as applicable, must include a description of specific protections afforded to the victims of domestic violence, dating violence, sexual assault, or stalking, as provided in this subpart.

(b) *Prohibited basis for denial or termination of assistance or eviction -*

(1) *General.* An applicant for assistance or tenant assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

(2) *Termination on the basis of criminal activity.* A tenant in a covered housing program may not be denied tenancy or occupancy rights solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking if:

(i) The criminal activity is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, and

(ii) The tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault or stalking.

(c) *Construction of lease terms and terms of assistance.* An incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as:

(1) A serious or repeated violation of a lease executed under a covered housing program by the victim or threatened victim of such incident; or

(2) Good cause for terminating the assistance, tenancy, or occupancy rights under a covered housing program of the victim or threatened victim of such incident.

(d) *Limitations of VAWA protections.*

(1) Nothing in this section limits the authority of a covered housing provider, when notified of a court order, to comply with a court order with respect to:

(i) The rights of access or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking; or

(ii) The distribution or possession of property among members of a household.

(2) Nothing in this section limits any available authority of a covered housing provider to evict or terminate assistance to a tenant for any violation not premised on an act of domestic violence, dating violence, sexual assault, or stalking that is in question against the tenant or an affiliated individual of the tenant. However, the covered housing provider must not subject the tenant, who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, or is affiliated with an individual who is or has been a victim of domestic violence, dating violence, sexual assault or stalking, to a more demanding standard than other tenants in determining whether to evict or terminate assistance.

(3) Nothing in this section limits the authority of a covered housing provider to terminate assistance to or evict a tenant under a covered housing program if the covered housing provider can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to property of the covered housing provider would be present if that tenant or lawful occupant is not evicted or terminated from assistance. In this context, words, gestures, actions, or other indicators will be considered an “actual and imminent threat” if they meet the standards provided in the definition of “actual and imminent threat” in § 5.2003.

(4) Any eviction or termination of assistance, as provided in paragraph (d)(3) of this section should be utilized by a covered housing provider only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents.

(e) *Emergency transfer plan.* Each covered housing provider, as identified in the program-specific regulations for the covered housing program, shall adopt an emergency transfer plan, no later than June 14, 2017 based on HUD's model emergency transfer plan, in accordance with the following:

(1) For purposes of this section, the following definitions apply:

(i) *Internal emergency transfer* refers to an emergency relocation of a tenant to another unit where the tenant would not be categorized as a new applicant; that is, the tenant may reside in the new unit without having to undergo an application process.

(ii) *External emergency transfer* refers to an emergency relocation of a tenant to another unit where the tenant would be categorized as a new applicant; that is the tenant must undergo an application process in order to reside in the new unit.

(iii) *Safe unit* refers to a unit that the victim of domestic violence, dating violence, sexual assault, or stalking believes is safe.

(2) The emergency transfer plan must provide that a tenant receiving rental assistance through, or residing in a unit subsidized under, a covered housing program who is a victim of domestic violence, dating violence, sexual assault, or stalking qualifies for an emergency transfer if:

(i) The tenant expressly requests the transfer; and

(ii)

(A) The tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit that the tenant is currently occupying; or

(B) In the case of a tenant who is a victim of sexual assault, either the tenant reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit that the tenant is currently occupying, or the sexual assault occurred on the premises during the 90-calendar-day period preceding the date of the request for transfer.

(3) The emergency transfer plan must detail the measure of any priority given to tenants who qualify for an emergency transfer under VAWA in relation to other categories of tenants seeking transfers and individuals seeking placement on waiting lists.

(4) The emergency transfer plan must incorporate strict confidentiality measures to ensure that the covered housing provider does not disclose the location of the dwelling unit of the tenant to a person who committed or threatened to commit an act of domestic violence, dating violence, sexual assault, or stalking against the tenant.

(5) The emergency transfer plan must allow a tenant to make an internal emergency transfer under VAWA when a safe unit is immediately available.

(6) The emergency transfer plan must describe policies for assisting a tenant in making an internal emergency transfer under VAWA when a safe unit is not immediately available, and these policies must ensure that requests for internal emergency transfers under VAWA receive, at a minimum, any applicable additional priority that housing providers may already provide to other types of emergency transfer requests.

(7) The emergency transfer plan must describe reasonable efforts the covered housing provider will take to assist a tenant who wishes to make an external emergency transfer when a safe unit is not immediately available. The plan must include policies for assisting a tenant who is seeking an external emergency transfer under VAWA out of the covered housing provider's program or project, and a tenant who is seeking an external emergency transfer under VAWA into the covered housing provider's program or project. These policies may include:

(i) Arrangements, including memoranda of understanding, with other covered housing providers to facilitate moves; and

(ii) Outreach activities to organizations that assist or provide resources to victims of domestic violence, dating violence, sexual assault, or stalking.

(8) Nothing may preclude a tenant from seeking an internal emergency transfer and an external emergency transfer concurrently if a safe unit is not immediately available.

(9) Where applicable, the emergency transfer plan must describe policies for a tenant who has tenant-based rental assistance and who meets the requirements of paragraph (e)(2) of this section to move quickly with that assistance.

(10) The emergency transfer plan may require documentation from a tenant seeking an emergency transfer, provided that:

- (i) The tenant's submission of a written request to the covered housing provider, where the tenant certifies that they meet the criteria in paragraph (e)(2)(ii) of this section, shall be sufficient documentation of the requirements in paragraph (e)(2) of this section;
- (ii) The covered housing provider may, at its discretion, ask an individual seeking an emergency transfer to document the occurrence of domestic violence, dating violence, sexual assault, or stalking, in accordance with § 5.2007, for which the individual is seeking the emergency transfer, if the individual has not already provided documentation of that occurrence; and
- (iii) No other documentation is required to qualify the tenant for an emergency transfer.

(11) The covered housing provider must make its emergency transfer plan available upon request and, when feasible, must make its plan publicly available.

(12) The covered housing provider must keep a record of all emergency transfers requested under its emergency transfer plan, and the outcomes of such requests, and retain these records for a period of three years, or for a period of time as specified in program regulations. Requests and outcomes of such requests must be reported to HUD annually.

(13) Nothing in this paragraph (e) may be construed to supersede any eligibility or other occupancy requirements that may apply under a covered housing program.

§ 5.2007 Documenting the occurrence of domestic violence, dating violence, sexual assault, or stalking.

(a) *Request for documentation.*

(1) Under a covered housing program, if an applicant or tenant represents to the covered housing provider that the individual is a victim of domestic violence, dating violence, sexual assault, or stalking entitled to the protections under § 5.2005, or remedies under § 5.2009, the covered housing provider may request, in writing, that the applicant or tenant submit to the covered housing provider the documentation specified in paragraph (b)(1) of this section.

(2)

(i) If an applicant or tenant does not provide the documentation requested under paragraph (a)(1) of this section within 14 business days after the date that the tenant receives a request in writing for such documentation from the covered housing provider, nothing in § 5.2005 or § 5.2009, which addresses the protections of VAWA, may be construed to limit the authority of the covered housing provider to:

- (A) Deny admission by the applicant or tenant to the covered housing program;
- (B) Deny assistance under the covered housing program to the applicant or tenant;
- (C) Terminate the participation of the tenant in the covered housing program; or
- (D) Evict the tenant, or a lawful occupant that commits a violation of a lease.

(ii) A covered housing provider may, at its discretion, extend the 14-business-day deadline under paragraph (a)(2)(i) of this section.

(b) *Permissible documentation and submission requirements.*

(1) In response to a written request to the applicant or tenant from the covered housing provider, as provided in paragraph (a) of this section, the applicant or tenant may submit, as documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking, any one of the following forms of documentation, where it is at the discretion of the tenant or applicant which one of the following forms of documentation to submit:

- (i) The certification form described in § 5.2005(a)(1)(ii); or
- (ii) A document:

(A) Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, “professional”) from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse;

(B) Signed by the applicant or tenant; and

(C) That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection and remedies under this subpart, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under § 5.2003; or

(iii) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or

(iv) At the discretion of a covered housing provider, a statement or other evidence provided by the applicant or tenant.

(2) If a covered housing provider receives documentation under paragraph (b)(1) of this section that contains conflicting information (including certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator), the covered housing provider may require an applicant or tenant to submit third-party documentation, as described in paragraphs (b)(1)(ii), (b)(1)(iii), or (b)(1)(iv) of this section, within 30 calendar days of the date of the request for the third-party documentation.

(3) Nothing in this paragraph (b) shall be construed to require a covered housing provider to request that an individual submit documentation of the status of the individual as a victim of domestic violence, dating violence, sexual assault, or stalking.

(c) *Confidentiality.* Any information submitted to a covered housing provider under this section, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking (confidential information), shall be maintained in strict confidence by the covered housing provider.

(1) The covered housing provider shall not allow any individual administering assistance on behalf of the covered housing provider or any persons within their employ (e.g., contractors) or in the employ of the covered housing provider to have access to confidential information unless explicitly authorized by the covered housing provider for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

(2) The covered housing provider shall not enter confidential information described in paragraph (c) of this section into any shared database or disclose such information to any other entity or individual, except to the extent that the disclosure is:

(i) Requested or consented to in writing by the individual in a time-limited release

(ii) Required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program; or

(iii) Otherwise required by applicable law.

(d) A covered housing provider's compliance with the protections of §§ 5.2005 and 5.2009, based on documentation received under this section shall not be sufficient to constitute evidence of an unreasonable act or omission by the covered housing provider. However, nothing in this paragraph (d) of this section shall be construed to limit the liability of a covered housing provider for failure to comply with §§ 5.2005 and 5.2009.

§ 5.2009 Remedies available to victims of domestic violence, dating violence, sexual assault, or stalking.

(a) *Lease bifurcation.*

(1) A covered housing provider may in accordance with paragraph (a)(2) of this section, bifurcate a lease, or remove a household member from a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to such member who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual:

(i) Without regard to whether the household member is a signatory to the lease; and

(ii) Without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant.

(2) A lease bifurcation, as provided in paragraph (a)(1) of this section, shall be carried out in accordance with any requirements or procedures as may be prescribed by Federal, State, or local law for termination of assistance or leases and in accordance with any requirements under the relevant covered housing program.

(b) *Reasonable time to establish eligibility for assistance or find alternative housing following bifurcation of a lease -*

(1) *Applicability.* The reasonable time to establish eligibility under a covered housing program or find alternative housing is specified in paragraph (b) of this section, or alternatively in the program-specific regulations governing the applicable covered housing program. Some covered housing programs may provide different time frames than are specified in this paragraph (b), and in such cases, the program-specific regulations govern.

(2) *Reasonable time to establish eligibility assistance or find alternative housing.*

(i) If a covered housing provider exercises the option to bifurcate a lease as provided in paragraph (a) of this section, and the individual who was evicted or for whom assistance was terminated was the eligible tenant under the covered housing program, the covered housing provider shall provide to any remaining tenant or tenants that were not already eligible a period of 90 calendar days from the date of bifurcation of the lease to:

(A) Establish eligibility for the same covered housing program under which the evicted or terminated tenant was the recipient of assistance at the time of bifurcation of the lease;

or

(B) Establish eligibility under another covered housing program; or

(C) Find alternative housing.

(ii) The 90-calendar-day period provided by paragraph (b)(2) of this section will not be available to a remaining household member if the statutory requirements for the covered housing program prohibit it. The 90-day calendar period also will not apply beyond the expiration of a lease, unless this is permitted by program regulations. The 90-calendar-day period is the total period provided to a remaining tenant to establish eligibility under the three options provided in paragraphs (b)(2)(i)(A), (B), and (C) of this section.

(iii) The covered housing provider may extend the 90-calendar-day period in paragraph (b)(2) of this section up to an additional 60 calendar days, unless prohibited from doing so by statutory requirements of the covered program or unless the time period would extend beyond expiration of the lease.

(c) *Efforts to promote housing stability for victims of domestic violence, dating violence, sexual assault, or stalking.* Covered housing providers are encouraged to undertake whatever actions permissible and feasible under their respective programs to assist individuals residing in their

units who are victims of domestic violence, dating violence, sexual assault, or stalking to remain in their units or other units under the covered housing program or other covered housing providers, and for the covered housing provider to bear the costs of any transfer, where permissible.

§ 5.2011 Effect on other laws.

(a) Nothing in this subpart shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, sexual assault, or stalking.

(b) All applicable fair housing and civil rights statutes and requirements apply in the implementation of VAWA requirements. See § 5.105(a).

1(a)(2)(ii) 24 CFR § 960 Subpart F

Part Admission to, and Occupancy of, Public Housing 960.101 – 960.707
960

Subpart When Resident Must Perform Community Service Activities or 960.600 – 960.609
F Self-Sufficiency Work Activities

§ Implementation.

960.600

§ Definitions.

960.601

§ General requirements.

960.603

§ How PHA administers service requirements.

960.605

§ Assuring resident compliance.

960.607

§ Prohibition against replacement of PHA employees.

960.609

1(b)(4) 24 CFR § 966.4(e)(8)

(8)

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

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

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

(B) In the case of a proposed adverse action other than a proposed lease termination, the PHA shall not take the proposed action until the time for the tenant to request a grievance

hearing has expired, and (if a hearing was timely requested by the tenant) the grievance process has been completed.

1(d)(1) 24 CFR § 5.100

Definitions: *Guest*, only for purposes of [24 CFR part 5, subparts A and I](#), and parts 882, 960, 966, and 982, means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. The requirements of parts 966 and 982 apply to a guest as so defined.

1(e)(9) 24 CFR § 5.2009

§ 5.2009 Remedies available to victims of domestic violence, dating violence, sexual assault, or stalking.

(a) Lease bifurcation.

(1) A covered housing provider may in accordance with paragraph (a)(2) of this section, bifurcate a lease, or remove a household member from a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to such member who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual:

(i) Without regard to whether the household member is a signatory to the lease; and

(ii) Without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant.

(2) A lease bifurcation, as provided in paragraph (a)(1) of this section, shall be carried out in accordance with any requirements or procedures as may be prescribed by Federal, State, or local law for termination of assistance or leases and in accordance with any requirements under the relevant covered housing program.

1(e)(9) 24 CFR § 5.508(h)(2)

(h) Extensions of time to submit evidence of eligible status -

(1) *When extension must be granted.* The responsible entity shall extend the time, provided in paragraph (g) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the declaration required under § 5.508(a) certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.

(2) *Thirty-day extension period.* Any extension of time, if granted, shall not exceed thirty (30) days. The additional time provided should be sufficient to allow the individual the time to obtain the evidence needed. The responsible entity's determination of the length of the extension needed shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The responsible entity's decision to grant or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period

granted (which shall not exceed thirty (30) days). If the extension is denied, the notice shall explain the reasons for denial of the extension.

(i) *Failure to submit evidence or to establish eligible status.* If the family fails to submit required evidence of eligible immigration status within the time period specified in the notice, or any extension granted in accordance with paragraph (h) of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the responsible entity shall proceed to deny, prorate or terminate assistance, or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance with the provisions of §§ 5.514, 5.516, and 5.518.

(ii) [Reserved]

1(f)(12)(i)(B) 24 CFR § Part 965, subpart G

Title 24	Housing and Urban Development	Part / Section
Subtitle B	Regulations Relating to Housing and Urban Development	100 – 4199
Chapter IX	Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development	900 – 1699
Part 965	PHA-Owned or Leased Projects - General Provisions	965.101 – 965.805
Subpart G	Smoke-Free Public Housing	965.651 – 965.655
	§ 965.651 Applicability.	
	§ 965.653 Smoke-free public housing.	
	§ 965.655 Implementation.	

1(f)(12)(i)(B) 24 CFR § 965.653(a)

§ 965.653 Smoke-free public housing.

(a) *In general.* PHAs must design and implement a policy prohibiting the use of prohibited tobacco products in all public housing living units and interior areas (including but not limited to hallways, rental and administrative offices, community centers, day care centers, laundry centers, and similar structures), as well as in outdoor areas within 25 feet from public housing and administrative office buildings (collectively, “restricted areas”) in which public housing is located.

1(l)(2)(ii) 24 CFR § 960.261

§ 960.261 Restriction on eviction of families based on income.

(a) PHAs may evict or terminate the tenancies of families who are over income, subject to paragraph (b) of this section.

(b) Unless it is required to do so by local law, a PHA may not evict or terminate the tenancy of a family solely because the family is over the income limit for public housing, if the family has

a valid contract for participation in an FSS program under 24 part 984. A PHA may not evict a family for being over the income limit for public housing if the family currently receives the earned income disallowance provided by 42 U.S.C. 1437a(d) and 24 CFR 960.255.

[69 FR 68791, Nov. 26, 2004]

1(l)(2)(iii)(e) 24 CFR § 966.3

§ 966.3 Tenants' opportunity for comment.

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

[56 FR 51576, Oct. 11, 1991]

1(l)(3)(ii) 24 CFR § 966.4(m)

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

1(l)(3)(iv) 24 CFR § 966.51(a)(1) and 1(l)(3)(v)(C) 24 CFR § 966.51(a)(2)(i)(A) and 1(l)(3)(v)(C) 24 CFR § 966.51(a)(2)(i)(B);

§ 966.51 Applicability.

(a)

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

(2)

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

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

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

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

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

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

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

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

1(l)(5)(vii)(A) 24 CFR § 902.43(a)(5)

Executive Director David has looked at the Code of Federal Regulation and can no longer find this reference.

1(l)(5)(vii)(D) 42 U.S. Code § 13662

42 U.S. Code § 13662 - Termination of tenancy and assistance for illegal drug users and alcohol abusers in federally assisted housing

(a) In general Notwithstanding any other provision of law, a public housing agency or an owner of federally assisted housing (as applicable), shall establish standards or lease provisions for continued assistance or occupancy in federally assisted housing that allow the agency or owner (as applicable) to terminate the tenancy or assistance for any household with a member—

(1)

who the public housing agency or owner determines is illegally using a controlled substance; or

(2)

whose illegal use (or pattern of illegal use) of a controlled substance, or whose abuse (or pattern of abuse) of alcohol, is determined by the public housing agency or owner to interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(b) Consideration of rehabilitation In determining whether, pursuant to subsection (a)(2), to terminate tenancy or assistance to any household based on a pattern of illegal use of a controlled substance or a pattern of abuse of alcohol by a household member, a public housing agency or an owner may consider whether such household member—

(1)

has successfully completed a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable);

(2)

has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable); or

(3)

is participating in a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable). (Pub. L. 105–276, title V, § 577, Oct. 21, 1998, 112 Stat. 2640.)

1(1)(5)(vii)(F) 24 CFR § 5.105

§ 5.105 Other Federal requirements.

The requirements set forth in this section apply to all HUD programs, except as may be otherwise noted in the respective program regulations in title 24 of the CFR, or unless inconsistent with statutes authorizing certain HUD programs:

(a) *Nondiscrimination and equal opportunity.*

(1) The Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100 *et seq.*; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations at 24 CFR part 146; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*; 24 CFR part 8; Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964-1965 Comp., p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60; Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971-1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise).

(2) *Equal access to HUD-assisted or -insured housing.* A determination of eligibility for housing that is assisted by HUD or subject to a mortgage insured by HUD shall be made in accordance with the eligibility requirements provided for such program by HUD, and such housing shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.

(b) *Disclosure requirements.* The disclosure requirements and prohibitions of 31 U.S.C. 1352 and implementing regulations at 24 CFR part 87; and the requirements for funding competitions established by the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3531 *et seq.*).

(c) *Debarred, suspended, or ineligible contractors and participants.* The prohibitions at 2 CFR part 2424 on the use of debarred, suspended, or ineligible contractors and participants.

(d) *Drug-free workplace.* The Drug-Free Workplace Act of 1988 (41 U.S.C. 701, *et seq.*) and HUD's implementing regulations at 2 CFR part 2429.

[61 FR 5202, Feb. 9, 1996, as amended at 65 FR 16715, Mar. 29, 2000; 72 FR 73491, Dec. 27, 2007; 76 FR 45167, July 28, 2011; 77 FR 5674, Feb. 3, 2012; 81 FR 64782, Sept. 21, 2016; 81 FR 80993, Nov. 17, 2016; 85 FR 61562, Sept. 29, 2020]

