

## Chapter 6 Part 1a. References in this Chapter

### 1(A)(a)(1) and 1(A)(a)(2) 24 CFR § 966.4 Lease Requirements

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(1).

(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).

**4(C) 24 CFR § 5.2007**

§ 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.

#### 4(C) HUD Determined Due Process State

<https://www.hud.gov/sites/documents/GCH-0058LOPS.PDF>

Legal Opinion: GCH-0058 Index: 2.245 Subject: PH Due Process Determination: Nebraska June 1, 1992 DUE PROCESS DETERMINATION for the STATE OF NEBRASKA TABLE OF CONTENTS I. Jurisdiction. II. Elements of Due Process. III. Overview of Nebraska Eviction Procedures. IV. Analysis of Nebraska Eviction Procedures for Each of the Regulatory Due Process Elements. V. Conclusion. ANALYSIS I. Jurisdiction: State of Nebraska. II. Elements of Due Process Section 6(k) of the United States Housing Act of 1937 (42 U.S.C. 1437d(k), as amended by section 503(a) of the National Affordable Housing Act of 1990, Pub. L. 101-625, approved November 28, 1990), provides that: For any grievance concerning an eviction or termination of tenancy that involves any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other tenants or employees of the public housing agency or any drug-related criminal activity on or near such premises, the agency may . . . exclude from its grievance procedure any such grievance, in any jurisdiction which requires that prior to eviction, a tenant be given a hearing in court which the Secretary determines provides the basic elements of due process . . . . The statutory phrase "elements of due process" is defined by HUD at 24 CFR § 966.53(c) as: . . . an eviction action or a termination of tenancy in a State or local court in which the following procedural safeguards are required: NEBRASKA: DUE PROCESS DETERMINATION (1) Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction; (2) Right of the tenant to be represented by counsel; (3) Opportunity for the tenant to refute the evidence presented by the PHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have; and (4) A decision on the merits. HUD's determination that a State's eviction procedures satisfy this regulatory definition is called a "due process determination." The present due process determination is based upon HUD's analysis of the laws of the State of Nebraska to determine if eviction procedures under those laws require a hearing with all of the regulatory "elements of due process," as defined in 966.53(c). HUD finds that the requirements of Nebraska law governing a civil action for the restitution of real property in the county or district courts of Nebraska under the Nebraska Uniform Residential Landlord and Tenant Act (N.R.L.T.A.) ( 76-1401 et seq. of the Revised Statutes of Nebraska (N.R.S.)) include all of the elements of basic due process, as defined in 24 CFR 966.53(c). This conclusion is based upon the Nebraska Constitution, the N.R.L.T.A., the Nebraska Rules of Civil Procedure, the Nebraska Rules of Evidence and case law. III. Overview of Nebraska Eviction Procedures Under the N.R.L.T.A., a civil action for the restitution of real property may be commenced in either the county courts or the district courts of the State of Nebraska. N.R.S. 76-1409. The N.R.L.T.A states the substantive requirements for a restitution action brought in the State of Nebraska. N.R.S. 76-1401 et seq. The procedural requirements are found in N.R.L.T.A., the Nebraska Rules of Evidence and the Nebraska Rules of Civil Procedure. The Nebraska Rules of Evidence and Rules of Civil Procedure are set forth by Nebraska statute. See N.R.S. 27-101 to 27-1103 and 25-101 et seq. According to the promulgating order of the Supreme Court of Nebraska, the rules of civil procedure apply in the "district court and in all other 2 NEBRASKA: DUE PROCESS DETERMINATION courts of Nebraska to the extent they are not inconsistent with other statutes." The N.R.S. states the procedures for commencement of a possessory action. N.R.S. 76-1440 to 76-1447. Due Process Clause of the Nebraska Constitution Article I, Section 3 of the Nebraska Constitution provides that: No person shall be deprived of life, liberty, or property, without due process of law. IV. Analysis of Nebraska Eviction Procedures for Each of the

Regulatory Due Process Elements The following analysis considers whether each element of HUD's regulatory due process definition is satisfied in a restitution action commenced in the county or district courts of the State of Nebraska. This determination will focus on the use of an action for restitution for those evictions which may be excluded from a PHA's grievance procedure pursuant to a HUD due process determination: evictions for drug-related criminal activity or criminal activity that threatens health or safety of a tenant or PHA employee. A. Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction (24 CFR 966.53(c)(1)) N.R.S. 71-1536(i)(4) provides that a tenant of a Nebraska housing authority whose tenancy is terminated: shall be sent a written notice of termination setting forth the reasons for such termination, and any tenant served with a notice shall be given the opportunity to contest the termination in an appropriate hearing if required by state or federal law . . . . Such notice may provide that if the tenant fails to pay his or her rent or comply with any covenant or condition of his or her lease, of the rules and regulations of such authority, or cure a violation of default thereof, as the case may be, as specified in such notice or follow the procedure for a hearing as set forth in the notice, all within the time or times set forth in such notice, 3 NEBRASKA: DUE PROCESS DETERMINATION the tenancy shall be automatically terminated and no other notice or notices need be given of such termination or the intent to terminate the tenancy, and upon such termination, and without any notice other than as provided for in this subsection, an authority may file suit against any tenant for recovery of possession, of the premises and may recover the same as provided by law. N.R.S. 71-1436(i)(4) further provides that: if a tenant has created or maintained a threat constituting a serious and clear danger to the health or safety of other tenants or authority employees, an authority may, after three days written notice and without a hearing, file suit against any such tenant for recovery of possession of the premises. A serious and clear danger to the health or safety of other tenants or authority employees shall include, but is not limited to, any of the following activities of the tenant or of any other person on the premises with the consent of the tenant: (a) Physical assault or the threat of physical assault; (b) illegal use of a firearm or other weapon or the threat to use an illegal firearm or other weapon; or (c) possession of a controlled substance by the tenant or any other person on the premises with the consent of the tenant if the tenant knew of or should have known of the possession by such other person of a controlled substance . . . . In the State of Nebraska, a civil action for the restitution of real property is commenced when the person seeking possession files a petition for restitution with the clerk of the district or county court. N.R.S. 76-1441. The petition must: (1) state with particularity the facts upon which the plaintiff seeks recovery; (b) describe with reasonable accuracy the premises; and 4 NEBRASKA: DUE PROCESS DETERMINATION (c) comply with the notice provisions of 25-21,2191 and 76-1401 to 76-1449 of N.R.L.T.A.. N.R.S. 76-1441. A summons with a copy of the petition attached must be served upon the defendant within 3 days from the date the court clerk issued the summons. N.R.S. 76-1442; N.R.S. 25-2204. The summons must state: the cause of the complaint, the time and place of trial of the action for possession . . . and notice that if the defendant fails to appear judgment shall be entered against him. (N.R.S. 76-1442) Under Nebraska law, service of the summons and attached petition may be made by any person. N.R.S. 76-1442. The person making the service must file an affidavit with the court stating with particularity the manner in which service was made. N.R.S. 76-1442. Thus, under the procedural requirements of the N.R.L.T.A., a tenant receives adequate notice of the grounds for an action brought for the restitution of real property. N.R.S. 76-1441. See also, *Housing Authority of the City of Lincoln v. Wolfe*, 324 N.W.2d 891, 893 (Neb. Sup. Ct. 1982). Adequate notice of the grounds for terminating the

tenancy and for eviction is also required by the due process clause of the Nebraska Constitution (Article I, Section 3). The Nebraska due process clause states that "no person shall be deprived of life, liberty, or property without due process of law." 1 Section 25-21,219 (Forcible entry and detainer; jurisdiction; exception) does not have any notice requirements. It would seem that the section referenced should be 25-21,21 (Forcible entry and detainer; notice to leave premises; when and how served.) This section provides that: it shall be the duty of the party, desiring to commence an action under 25-21,219 to 21, 235, the forcible entry and detainer procedures to notify the adverse party to leave the premises for the possession of which the action is about to be brought. This notice shall be served at least three days before commencing the action by leaving a written copy with such adverse party, or at his usual place of abode, if he cannot be found. 5 NEBRASKA: DUE PROCESS DETERMINATION B. Right to be represented by counsel (24 CFR 966.53(c)(2)) Many provisions of the code of civil procedure refer to the role of counsel, e.g., Neb. R. Evid., Rule 27 (depositions); N.R.S. 25-2702 (appearances, representation, attorney, qualification). These provisions assume and imply that litigants have the right to be represented by counsel. The right to be represented by counsel is also afforded by the due process clause of the Nebraska Constitution (Article I, Section 3). C. Opportunity for the tenant to refute the evidence presented by the PHA, including the right to confront and cross-examine witnesses (24 CFR 966.53(c)(3)) In accordance with the Nebraska Rules of Evidence and Rules of Civil Procedure, the defendant has the right to interrogate witnesses and present evidence. N.R.S. 27-611; N.R.S. 25-1107. Appearance of witnesses may be compelled by subpoena. "The clerks of the several courts and judges of the county courts shall on application of any person having a cause or any matter pending in the court, issue a subpoena for witnesses . . . ." N.R.S. 25-1223. Further, depositions of witnesses not available at trial are admissible if taken in accordance with the Rules of Evidence. See, Neb. R. Evid., Rule 27; see also, *State v. Priest*, 223 N.W. 635 (Neb. Sup. Ct. 1929) (deposition admissible where the defendant had been provided notice and was represented by counsel who had the opportunity to cross-examine). Thus, a tenant in an action for restitution of real property has adequate opportunity to refute evidence presented by the plaintiff. The right to refute evidence presented by the plaintiff is also guaranteed by the due process clause of the Nebraska Constitution (Article I, Section 3). D. Opportunity to present any affirmative legal or equitable defense which the tenant may have (24 CFR 966.53(c)(3)) The defendant may appear "on or before the day fixed for his appearance . . . and answer and assert any legal or equitable defense . . . ." N.R.S. 76-1445. 6 NEBRASKA: DUE PROCESS DETERMINATION N.R.S. 25-811 provides that: the answer shall contain (1) a general or specific denial of each material allegation of the petition controverted by the defendant; and (2) a statement of any new matter constituting a defense, counterclaim or setoff, in ordinary and precise language . . . . E. A decision on the merits (24 CFR 966.53(c)(4)) HUD finds that Nebraska law requires a determination on the merits - a decision based upon the facts and the law. The Nebraska Rules of Civil Procedure, N.R.S. 25-1101, provides that "issues arise on the pleadings where a fact or conclusion of law is maintained by one party and controverted by the other. These are of two kinds: (1) of law; (2) of fact." N.R.S. 25-1103 provides that "a trial is a judicial examination of the issues, whether of law or of fact in an action." (See also *Krepcik v. Interstate Transit Lines*, 38 N.W.2d 533, 536 (Neb. Sup. Ct., 1949)). N.R.S. 25-1301 provides that "a judgement is the final determination of the rights of the parties in action." Where a court decides a case upon its merits after introduction of evidence, it is a trial. *Shipley v. McNeel*, 32 N.W.2d 639, 641 (Neb. Sup. Ct. 1948). A decision on the merits is also required by the due process clause of the Nebraska Constitution (Article I, Section 3). Based on the above, HUD

concludes that Nebraska law requires a decision on the merits. V. Conclusion Nebraska law governing a restitution action for possession of real property in the Nebraska county or district courts requires that the tenant have the opportunity for a pre-eviction hearing in court which provides the basic elements of due process as defined in 24 CFR 966.53(c) of the HUD regulations. By virtue of this due process determination by HUD under section 6(k) of the U.S. Housing Act of 1937, a PHA in Nebraska may evict a public housing tenant pursuant to an action for restitution of possession of real property in the county or district courts, for any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of 7 NEBRASKA: DUE PROCESS DETERMINATION other tenants or employees of the PHA, or any drug-related criminal activity on or near the premises. The PHA is not required to first afford the tenant the opportunity for an administrative hearing on the eviction. 8

## **5 Abandoned Property NE § 69-2303**

69-2303.

Personal property remaining on premises; landlord; duties; notice; contents; delivery.

(1) Except as otherwise provided in subsection (5) of section 76-1414, when personal property remains on the premises after a tenancy has terminated or expired and the premises have been vacated by the tenant, the landlord shall give written notice as provided in subsection (2) of this section to such tenant and to any other person the landlord reasonably believes to be the owner of the property.

(2)(a) The notice required by subsection (1) of this section shall describe the property in a manner reasonably adequate to permit the owner of the property to identify it. The notice may describe all or a portion of the property, but the limitation of liability provided by section 69-2309 shall not protect the landlord from any liability arising from the disposition of property not described in the notice, except that a trunk, valise, box, or other container which is locked, fastened, or tied in a manner which deters immediate access to its contents may be described as such without describing its contents.

(b) The notice shall state that reasonable costs of storage may be charged before the property is returned, the location where the property may be claimed, and the date on or before which such property must be claimed.

(c) The date specified in the notice shall be a date not less than seven days after the notice is personally delivered or, if mailed, not less than fourteen days after the notice is deposited in the mail.

(d) The notice shall be given within six months of the date of expiration of the lease of the property or the date of discovery of the abandonment, whichever is later.

(3) The notice shall be personally delivered or sent by first-class mail, postage prepaid, to the person to be notified at his or her last-known address and, if there is reason to believe that the notice sent to that address will not be received by him or her, also delivered or sent to such other address, if any, known to the landlord at which such person may reasonably be expected to receive the notice.

Source

- Laws 1991, LB 36, § 3;
- Laws 1995, LB 175, § 1;
- Laws 2016, LB221, § 2.

## **7 EIV's Deceased Tenants Report – PIH Notice 2010-50**

[https://www.hud.gov/sites/documents/DOC\\_8990.PDF](https://www.hud.gov/sites/documents/DOC_8990.PDF)

Special Attention of: Notice PIH 2010-50 (HA) Public Housing and Section 8 Program Administrators, Public Housing Hub Office Directors; Public Housing Issued: December 30, 2010 Field Office Directors; Program Center Coordinators; Resident Management Corporations; Resident Councils; Expires: December 31, 2011 Participants of Public Housing, Housing Choice Voucher Voucher, Project-Based Certificate, and Project-Based Voucher Programs; Section 8 Property Owners and Landlords Cross References: 24 CFR 5.233, HUD OIG Audit Report Number 2010-FW-0001, Notice PIH-2010-09 Notice PIH-2010-15 Notice PIH 2010-19 Notice PIH 2010-25 SUBJECT: Effective Use of the Enterprise Income Verification (EIV) System's Deceased Tenants Report to Reduce Subsidy Payment & Administrative Errors 1. Purpose: This Notice explains the procedures Public Housing Agencies (PHAs) are required to implement to deal with families with deceased household members. The implementation of the procedures outlined in this Notice will ensure that PHAs submit accurate data to HUD via the Public and Indian Housing Information Center (PIC) and that PHAs do not make subsidy overpayments on behalf of deceased single member households. Where overpayments have been made, the PHA will recoup the overpayment from the landlord/owner of the rental property under the programs noted in Section 3 of this Notice, with the exception of the Public Housing program. 2. Summary of Revisions: Section 7 of this Notice modifies PIH-2010-09 to include reference to Notice PIH-2010-15, which outlines requirements for safeguarding personally identifiable information, such as social security numbers. Section 8 of this Notice modifies PIH-2010-09 to remove the requirement that the PHA notify the live-in aide to vacate the unit by the end of the month; and Section 15 of this Notice modifies PIH-2010-09 to clarify minimum and maximum time frames allotted for the removal of personal belongings from a public housing unit when the sole household member dies; to provide examples of how to correctly apply this guidance; and remind PHAs that they must comply with local and state tenant/landlord laws. Section 14 of this Notice modified PIH 2010-09 to remind PHAs of the timely PIC reporting requirement for updated forms HUD-50058 in accordance with Notice PIH-2010- 25. U.S. Department of Housing and Urban Development Office of Public and Indian Housing 2 3. Applicability: This Notice applies to the following HUD-PIH rental assistance programs: Public Housing, Section 8 Moderate Rehabilitation, Project-Based Voucher, Project-Based Certificate; and Housing Choice Voucher programs. 4. Background: In January and September, 2008, the Department encouraged PHAs to utilize the Deceased Tenants Report available in the Enterprise Income Verification (EIV) system. In a letter sent to all PHA Executive Directors, the Department urged PHAs to use the report on a monthly basis to assist in identifying families with deceased household members, and reduce the occurrence of paying housing assistance on behalf of deceased single member households. The Department also urged all PHAs to take appropriate corrective actions to address families with deceased household members and update the form HUD-50058 (Family Report) to reflect accurate household composition and transmit the updated form HUD-50058 in a timely manner. HUD has continued to provide informal guidance and training via satellite and webcast, related to effective use of the EIV system, including the Deceased Tenants Report. Many PHAs have taken corrective actions to transmit more accurate data to HUD via PIC, and have reduced the number of deceased single member households continuing to receive ineligible rental assistance. PHAs with zero deceased household members reported on the Deceased Tenants Report are to be commended for their efforts. However, there are some PHAs that have

not followed HUD's informal guidance. According to HUD's Office of Inspector General (OIG), audit report number 2010-FW0001, issued on November 29, 2009, PHAs have paid approximately \$7 million in questionable housing assistance payments for deceased tenants in single member households. The OIG also determined that PHAs did not update family composition on the form HUD50058 in a timely manner, which resulted in incorrect information in PIC. In accordance with the new regulatory requirement at 24 CFR 5.233(a)(2)(ii), which became effective on January 31, 2010, under the Final Rule: Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification System-Amendments, published at 74 FR 68924 on December 29, 2009, all PHAs are required to use the EIV system to reduce administrative and subsidy payment errors in accordance with HUD administrative guidance. Accordingly, HUD is issuing this formal guidance to ensure that PHAs: a) Use EIV's deceased tenant information for effective decision making, corrective action implementation, and reporting activities; b) Implement policies and procedures to minimize erroneous subsidy payments on behalf of deceased single member households; and c) Provide accurate and reliable information to HUD via PIC.

5. Effective Date: This Notice is effective upon issuance.

6. Monitoring Deceased Tenants: In accordance with PIH Notice 2010-19 issued on May 17, 2010, PHAs must generate the Deceased Tenants Report at least once a month. The purpose of generating the Deceased Tenants Report monthly is to eliminate and/or recover improper 3 payments being made on behalf of deceased Section 8 tenants and ensure PHAs are aware of unoccupied public housing units which should be prepared for occupancy and made available for occupancy by the next eligible family. PHAs who administer Section 8 programs are required to generate the report prior to disbursing the upcoming monthly housing assistance payment (HAP) to owners. PHAs who administer the public housing program are required to generate the report when generating the new monthly rent roll to flag deceased tenants. PHAs must review the report and follow up with the listed families immediately and take the necessary corrective actions outlined in this Notice.

7. How to Access the Deceased Tenants Report: The Deceased Tenants Report identifies deceased household members (whose identity has been confirmed by the Social Security Administration (SSA))\* who are included in the family's composition (including single member deceased households) as reported on Section 3 (Family Composition) of the form HUD-50058. The death information is provided by the SSA. Single member deceased households are denoted with a red asterisk (\*) after the member's deceased date (see example one below). If the deceased date is listed as N/A, this means the date of death is not available (see example two below). \*The individual's social security number (SSN), date of birth, and surname reported on the form HUD-50058 must match SSA's database. Deceased information is not displayed for any individual whose EIV identity verification status is failed (including individuals with a PIC-generated alternate identification number).

Example 1: Example 2: Single Member Households. Effective April 19, 2010, EIV's Deceased Tenants Report was modified to isolate deceased single member households in addition to the previous consolidated report which contained deceased single and multiple member households. This implemented system modification will reduce PHA administrative burden in identifying deceased single member households. Follow the following steps to access the Deceased Tenants Report: 1: To access the Deceased Tenant Report, log onto the EIV system at: [https://hudapps.hud.gov/HUD\\_Systems](https://hudapps.hud.gov/HUD_Systems). If you do not have access to the EIV system, complete and submit the EIV Access Authorization Form and Rules of Behavior and User Agreement (form HUD-52676) to the EIV Coordinator in your local HUD office. For more information, go to: <http://www.hud.gov/offices/pih/programs/ph/rhiip/uivsystem.cfm>.

4 2: Once

logged into the system, scroll down the left side of the screen and double click on the Deceased Tenants Report link (located under the Verification Reports header). Select the program for which you desire to generate the report for (Public Housing, Section 8 or all PIH programs). You may also select a specific reexamination month; however, the system automatically defaults to All (which HUD recommends that you use). If you are responsible for more than one PHA, be sure to select the appropriate PHA code in the PHA drop down menu. 3: Double click the Get Report button. The report will then display on the screen and can easily be downloaded into Excel or printed for your convenience. Note: WARNING: This report contains full social security numbers of tenants. You must ensure that this report is adequately safeguarded to prevent improper disclosure of personally identifiable information (PII) as provided in PIH Notice 2010-15, U.S. Department of Housing and Urban Development (HUD) Privacy Protection Guidance for Third Parties. Report Selection Criteria for Deceased Tenants Report Program Type: Select either All PIH Programs, Section 8, or Public Housing Reexamination Month: The default selection is All. However, the user may select a specific month. PHA: The default selection is your PHA. If you have multiple PHAs assigned to your user ID, be certain to select the applicable PHA you wish to generate the report.

The screenshot shows a web application interface for generating a report. On the left is a vertical navigation menu with a red background and white text. The menu items include: 'Welcome NICOLE X FAISON', 'Back to Secure Systems', 'Income Discrepancy Report', 'Income Discrepancy Report', 'Income Information', 'By Head of Household', 'By Reexamination Month', 'New Hires Report', 'Verification Reports', 'Existing Tenant Search', 'Multiple Subsidy Report', 'Identity Verification Report', and 'Deceased Tenants Report' (which is highlighted with a black border). The main content area has a breadcrumb trail: 'Verification Reports >> Deceased Tenants Report >> Report Selection'. Below the breadcrumb is a 'Report Selection' section with a red header. It contains three rows of form fields: 'Program Type:' with a dropdown menu showing 'All PIH Programs', 'Reexamination Month:' with a dropdown menu showing 'All', and 'Select Region:' with a dropdown menu showing 'PHA' and a text input field containing 'AK001 AHFC'. Below these fields is a 'Get Report' button.

## Sample Deceased Tenants Report

PHA	Deceased Tenants Report for												
	for Program Type - Section 8 for Reexamination Month - ALL												
	Total Number Of Households Evaluated	Total Number Of Household Members Evaluated	Households With Deceased Members	% of Households With Deceased Members	# of Single Member Deceased Households	% of Single Member Deceased Households	Deceased Members	Members Deceased Less Than 1 Year		Members Deceased More Than 1 Year		Members Deceased With No Deceased Date	
							Count	%	Count	%	Count	%	
	8,798	18,896	40	00.45%	18	45.00%	40	40	100.00%	0	00.00%	0	00.00%

[Printer Friendly Version](#)  
[Download to Excel](#)

1 - 40 of 40 Households

Note: \* = Deceased single member household. Immediate action required by PHA.

Deceased Tenants Report as of 12/14/2009							
HOH SSN	HOH Name	HOH DOB	Member SSN	Member Name	Member DOB	Member Deceased Date	Date Received by EIV
	ALLAN	11/17/1930	ALLAN		11/17/1930	09/14/2009 *	10/08/2009
	JANNIE	12/08/1948	JANNIE		12/08/1948	09/15/2009	10/08/2009
	ROBERT	01/21/1955	ROBERT		01/21/1955	03/09/2009 *	10/08/2009
	WILLIAM	09/09/1955	WILLIAM		09/09/1955	06/10/2009 *	10/08/2009

8. Administrative Actions Required by PHAs: When the Deceased Tenants Report identifies an individual as being deceased, PHAs are required to take the following actions: a) Immediately send a letter to the head of household (HOH) or emergency contact person (if the HOH is deceased and there is no other adult household member) to confirm the death of the listed household member. b) Section 8 Programs only – Notify the owner in writing of the deceased HOH. 9. Corrective Actions Required by PHAs for Single Member Households: a) Public Housing Program only: Conduct a home visit to determine if anyone is residing in the unit. (Optional for Section 8 program) If there are unauthorized persons (including a live-in aide) in the unit of a deceased single member household you must pursue judicial intervention to have them lawfully removed from the unit. You may be found liable for a wrongful eviction if you change the locks on the unit to prevent the unauthorized occupants from entering the unit. Follow your local Tenant and Landlord laws to regain possession of the unit. b) Section 8 Programs only: For deceased single member households or a household where the remaining household member is a live-in aide, PHAs are required to discontinue HAP to the owner no later than the first of the following month after the month in which the death occurred. See Section 16 of this Notice for determining amount of owner housing assistance overpayments. Note: PHAs are required to immediately terminate program assistance for deceased single member households which will result in termination of the HAP contract and HAP to the owner in accordance with the aforementioned provisions. The owner is not entitled to HAP for any month following the month in which the death occurred. There are no exceptions to this policy. 6 10. What to do when the remaining household member is a live-in aide : When the HOH dies and the only remaining household member is the live-in aide, the live-in aide is not entitled or eligible for any rental assistance or continued occupancy in a subsidized unit. By definition, the live-in aide would not be living in the subsidized unit except to provide the necessary supportive services on behalf of the elderly or disabled HOH. The PHA may not designate the live-in aide as the new HOH or change the relation code (line item 3h on the form HUD-50058) of the live-in aide to make him or her an eligible household member (eligible for assistance) nor pay HAP on behalf of the live-in aide for any month after the month in which the HOH died. 11. What to do if the HOH is deceased and the remaining household members are minors: PHAs should have an established policy for dealing with situations when the HOH dies during tenancy and the remaining

household members are minors. A common practice of PHAs includes (but is not limited to) allowing a temporary adult guardian to reside in the unit until a court-appointed guardian is established. In accordance with its screening policies, the PHA may add the new guardian as the new HOH. PHAs are encouraged to work with the local Department of Social Services to ensure that the best interests of the children are addressed.

12. What to do if an identified household member is incorrectly reported to be deceased: There are very few instances when an error has been made in the SSA's Death Match File (DMF), where an individual is reported as deceased, but actually living. In the event that a household member is misidentified as deceased on the Deceased Tenants Report, PHAs should immediately notify the individual in writing and advise the individual to contact SSA so that SSA may correct its records. The individual may contact SSA at (800) 772-1213, or visit his/her local SSA office for assistance. The PHA should also provide the individual with his/her section of the EIV Income Report, which shows the death information. PHAs are authorized to provide EIV information only to the individual the information pertains to. The PHA may provide the minor's information to the minor's adult parent or guardian. Last, PHAs are required to make a note in the tenant file that the individual has been identified as deceased; however, the PHA has confirmed that the individual is actually alive. Note: Only SSA can correct erroneous death information.

13. Time frame for removal of individual from the Deceased Tenants Report: The individuals that appear on the Deceased Tenants Report are based on current information reported on the form HUD-50058. The Deceased Tenants Report is updated every weekend. A deceased individual will be removed from the report when:

- The PHA transmits an updated form HUD-50058, that does not contain the previously identified deceased household member in Section 3 (Family Composition) of the form HUD-50058; or
- HUD obtains the updated and corrected information from SSA's DMF.

Example 1: Mr. Jones was listed on the Deceased Tenants Report dated December 14, 2009, with a deceased date of November 20, 2009. On December 1, 2009, the PHA confirmed that Mr. Jones was actually alive and advised Mr. Jones to visit his local SSA office to have the error corrected. SSA corrected the DMF on December 20, 2009. When HUD conducted computer matching with SSA on January 6, 2010, HUD obtained new SSA data which indicated that Mr. Jones was not deceased. The Deceased Tenants Report was updated on the weekend of January 8, 2010. When the PHA accessed the Deceased Tenants Report on January 11, 2010, Mr. Jones was no longer on the report.

Example 2: Mr. Williams was listed on the Deceased Tenants Report dated December 14, 2009, with a deceased date of June 10, 2009. On January 6, 2010, the PHA confirmed that Mr. Williams was deceased. The PHA then completed and submitted an end of participation (EOP) form HUD-50058 on January 7, 2010. The Deceased Tenants Report was updated on the weekend of January 8, 2010. When the PHA accessed the Deceased Tenants Report on January 11, 2010, Mr. Williams was no longer on the report.

14. Type of Action and Effective Date to Record on Form HUD-50058: Below prescribes the applicable type of action and effective date the PHA is required to record on form HUD50058 to report changes of family composition and income. In accordance with Notice PIH 2010-25, PHAs are required to submit an updated form HUD-50058 to PIC no later than 60 calendar days from the effective date of the action recorded on line 2b of the form HUD50058.

- Deceased Single Member Households. Once the PHA has confirmed the death of the HOH of a single member household or a household where the surviving household member is the live-in aide, the PHA is required to complete and submit a form HUD-50058 with the following: Line 2a – Type of Action= 6 (End of Participation) Line 2b – Effective Date of Action= Date of Death from Deceased Tenants Report, or as noted below. (If date is listed as "N/A", enter the date of death as confirmed by Obituary,

Death Record, or other information obtained.) Section 8 programs: PHAs may list the date of death as the last day of the month in which the death occurred. The landlord is entitled to receive the full HAP amount for the month in which the tenant death occurred. Public Housing program: PHAs are required to list the EOP date as the date on which the family or designee of the deceased tenant's estate returned the keys and signed a vacate notice; or the date the public housing lease was terminated; or the date the PHA legally regained possession of the unit, whichever occurs first.

8 b. Multiple Household Members with Deceased Head of Household – Surviving Adult Household Member. Once the PHA has confirmed the death of the HOH, the PHA is required to complete and submit a form HUD-50058 with the following: Line 2a – Type of Action= 3 (Interim Reexamination) Line 2b – Effective Date of Action= Date of Death from Deceased Tenants Report (if date is listed as “N/A”, enter the date of death as confirmed by Obituary, Death Record, or other information obtained.) Line 3a (Member 01) - delete the deceased HOH's information and enter the information of the adult household member who has been designated HOH. Line 3a – delete the information of the other adult household member, whose information you entered on Line 3a (Member 01) Line 3w– enter the Social Security Number (SSN) of the former (deceased) HOH.

c. Multiple Household Members with Deceased Head of Household – with Surviving Minor Household Members. Once the PHA has confirmed the death of the HOH, the PHA is required to complete and submit a form HUD-50058 with the following: Line 2a – Type of Action= 3 (Interim Reexamination) Line 2b – Effective Date of Action= Date of Death from Deceased Tenants Report (if date is listed as “N/A”, enter the date of death as confirmed by Obituary, Death Record, or other information obtained.) Line 3a (Member 01) - delete the deceased HOH's information and enter the adult household member's information of the temporary or permanent guardian. Line 3w– enter the Social Security Number (SSN) of the former (deceased) HOH.

d. Other Household Changes. If, in scenario B or C above, there is also a change in family income and composition resulting in a change in the family's total family share and/or unit size, the effective date on line 2b should be the effective date of the new total family share in accordance with PHA-established policies.

15. Removal of Personal Belongings from Public Housing Unit (Applicable to the Public Housing program only): Upon notification of the death, either by HUD's EIV system or a third party, the family or designee of the deceased tenant's estate should be allotted a minimum of fourteen (14) consecutive days to remove personal belongings from the unit in accordance with the guidance below. This guidance is designed to afford families a reasonable time frame to remove personal belongings from the public housing unit and enable the PHA to prepare the unit, as quickly as possible, for occupancy by the next eligible family in need of affordable housing.

9 While there is no HUD requirement for the time frame allotted to the family or designee of the deceased tenant's estate, HUD recommends an allotted time frame of fourteen (14) consecutive days, beginning the day after the date of notification, for the family or designee of the descendant's estate to remove personal belongings from the public housing unit unless:

1. There is a state or local law which requires a shorter or longer time frame to remove personal belongings. In those instances, the PHA must comply with local and/or state law; or
2. The rent has been paid for the month in which the death occurs, in advance of the date of death. In those instances, the family or designee of the deceased tenant's estate should be allotted time through the end of the month in which the rent has been paid, or fourteen consecutive days from the date the PHA is notified of the death, whichever is greater.

a. Example 1: As of August 1, 2010, Joe Jones has paid rent through August 31, 2010. Mr. Jones died on August 22, 2010, and the PHA is notified of the death by Mr. Jones' sister on August 23, 2010. The family or designee of the deceased tenant's estate has until September 6,

2010, to remove personal belongings from the unit, unless state or local landlord laws authorize a shorter or longer time period. b. Example 2: As of August 1, 2010, Mary Smith has paid rent through September 30, 2010. Ms. Smith died on August 22, 2010, and the PHA is notified of the death by a 3rd party on August 24, 2010. The family or designee of the deceased tenant's estate has until September 30, 2010, to remove personal belongings from the unit, unless state or local landlord laws authorize a shorter or longer time period. c. Example 3: As of August 1, 2010, John Doe has not paid rent for August 2010. Mr. Doe died on August 10, 2010, and the PHA is notified of the death by Mr. Doe's friend on August 12, 2010. The family or designee of the deceased tenant's estate has until August 26, 2010, to remove personal belongings from the unit, unless state or local landlord laws authorize a shorter or longer time period. PHAs are reminded to comply with local and state established tenant-landlord laws with respect to lease termination, possession of premises upon death and removal of personal belongings from the public housing unit.

16. Retroactive Repayment of HAP by Owners: If an owner receives HAP for any month in which the owner is ineligible to receive HAP because of a deceased tenant, the PHA must immediately notify the owner in writing of the ineligible HAP and require the owner to repay the overpayment to the PHA within 30 days. If the owner does not comply, the PHA may deduct the amount due to the PHA from any amounts due to the owner under any other HAP contract. If there is no other HAP contract with the owner, the PHA may seek and obtain additional relief by judicial order or action in accordance with state and local laws.

10 Example: The Deceased Tenants Report dated December 14, 2009, indicates that Mr. Robert died on March 9, 2009. The landlord/owner is not eligible for HAP in any month following March 2009. The PHA erroneously paid the landlord/owner HAP of \$500 each month during the period of April 2009 through December 2009. The landlord/owner must repay the PHA \$4,500 (\$500 X 9 months). In instances where a deceased single member household has been deceased for a period greater than one (1) month and the owner received HAP, the PHA may determine that the owner has breached the HAP contract. As such, the PHA may exercise any of its rights and remedies under the HAP contract, or any other available rights and remedies for such breach. The PHA must notify the owner of such determination, including a brief statement of the reasons for the determination. The notice by the PHA to the owner may require the owner to take corrective action, as verified or determined by the PHA, by a deadline prescribed in the notice. The PHA's rights and remedies for owner breach of the HAP contract may include recovery of overpayments, suspension of HAP, abatement or other reduction of HAP, termination of HAP, and termination of all HAP contracts. The PHA may seek and obtain additional relief by judicial order or action, including specific performance, other injunctive relief or order for damages.

17. Penalties for Non-Compliance with Use of EIV's Deceased Tenants Report: Section 8 Programs: If the PHA overpaid HAP on behalf of a single member deceased household and fails to collect the overpayment from the owner, the PHA is required to reimburse 100 percent of the overpayment to the HCV HAP account from the Administrative Fee Equity account, Central Office Cost Center (COCC) account, or other non-Federal funds. In addition, if such errors impacted any funding baseline determinations, funding for the affected renewal periods may be adjusted. Note: A PHA cannot reimburse prior year HAP costs with current year HAP funding because the funding carries forward but does not carry back. HUD will monitor each PHA's Deceased Tenants Report on a quarterly basis. If at any time the report identifies deceased single member households who have been deceased for a period exceeding six months, and HUD determines that the PHA has not taken the necessary corrective action, the PHA may be subject to a withholding of its monthly administrative fee each month that the number of single deceased

household members is greater than zero. Public Housing Program: HUD will monitor each PHA's Deceased Tenants Report on a quarterly basis. If at any time, the report identifies deceased single member households who have been deceased for a period exceeding six months, and HUD determines that the PHA has not take the necessary corrective action, the PHA may be subject to a monetary penalty, as determined by the Assistant Secretary, each month that the number of single deceased household members deceased for a period of one year or longer is greater than zero. HUD may offset the PHA's monthly operating subsidy by the amount of the imposed penalty or require the PHA to pay the amount of the penalty from non-Federal funds, directly to HUD. 11 For any imposed penalty, HUD will notify the PHA in writing of such penalty and afford the PHA a 30-day period to appeal HUD's decision. Appeals must be postmarked no later than 30 days from the date of the penalty Notice and sent by certified mail or carrier service (UPS, FEDEX, DHL, etc.) to: U.S. Department of Housing and Urban Development Office of Public and Indian Housing Real Estate Assessment Center Attention: Nicole Faison 451 7th Street, SW, Room PCFL1 Washington, DC 20410 Appeals by fax or email will not be processed. HUD will provide a written response to your appeal request within 60 days of receiving the appeal request. 18. EIV System Training: HUD offers free EIV system training via webcast and can be viewed by staff at any time at: <http://portal.hud.gov/portal/page/portal/HUD/press/multimedia/videos>. Past and future training opportunities, including training materials are available at: <http://www.hud.gov/offices/pih/programs/ph/rhiip/training.cfm>. As a condition of initial and continued EIV system access, all system users are required to view HUD Headquarters provided EIV system training and annual Security Awareness training. EIV system users must self-certify within the EIV system at the log-in page that the training has been completed. Staff is not required to possess a Certificate of Completion for EIV training in order to gain or continue accessing the EIV system, or be certified by the User Administrator on a semi-annual basis. 19. For inquiries about this Notice contact: your local HUD field office or Nicole Faison of HUD Headquarters' Office of Public and Indian Housing: Real Estate Assessment Center at (202) 475-7963, or via email at [PIH.RHIIP.TA@HUD.GOV](mailto:PIH.RHIIP.TA@HUD.GOV). 20. Paperwork Reduction Act: The information collection requirements contained in this Notice have been approved by the Office of Management and Budget (OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3520) and assigned OMB control number(s) 2577-0083. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. /s/ Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing