

Chapter 13

LEASE TERMINATIONS

INTRODUCTION

Either party in a lease agreement may terminate the lease under certain circumstances. A public housing lease is different from a private dwelling lease in that the family's rental assistance is tied to their tenancy. When the family moves from their public housing unit, they lose their rental assistance. Therefore, there are additional safeguards to protect the family's tenancy in public housing.

Likewise, there are safeguards to protect HUD's interest in the public housing program, to assure that qualified families are provided decent, safe, and sanitary housing which is in good repair. The PHA may terminate the lease because of the family's failure to comply with HUD regulations, for serious or repeated violations of the terms of the lease, and for other good cause. HUD regulations specify some reasons for which a PHA can terminate a family's lease, and give PHAs authority to determine other reasons.

When determining PHA policy on terminations, state and local landlord-tenant laws must be considered, since such laws could vary from one location to another. These variances may be either more or less restrictive than federal law or HUD regulation.

This chapter presents the policies that govern both the family's and PHA's termination of the lease. It is presented in four parts:

Part I: Termination by Tenant. This part discusses the family's voluntary termination of the lease and the requirements the PHA places upon families who wish to terminate their lease.

Part II: Termination by PHA - Mandatory. This part describes circumstances when termination of the lease by the PHA is mandatory. This part also explains nonrenewal of the lease for noncompliance with community service requirements and families that have been over the income limit for 24 consecutive months ~~This part describes the policies that govern how, and under what circumstances, a mandatory lease termination by the PHA occurs. This part also includes nonrenewal of the lease for noncompliance with community service requirements.~~

Part III: Termination by PHA – Other Authorized Reasons. This part describes the PHA's options for lease termination that are not mandated by HUD regulation but for which HUD authorizes PHAs to terminate. For some of these options HUD requires the PHA to establish policies and lease provisions for termination, but termination is not mandatory. For other options the PHA has full discretion whether to consider the options as just cause to terminate as long as the PHA policies are reasonable, nondiscriminatory, and do not violate state or local landlord-tenant law. This part also discusses the alternatives that the PHA may consider in lieu of termination, and the criteria the PHA will use when deciding what actions to take.

Part IV: Notification Requirements. This part presents the federal requirements for disclosure of criminal records to the family prior to termination, the HUD requirements

and PHA policies regarding the timing and content of written notices for lease termination and eviction, and notification of the post office when eviction is due to criminal activity. This part also discusses record keeping related to lease termination.

PART I: TERMINATION BY TENANT

13-I.A. TENANT CHOOSES TO TERMINATE THE LEASE [24 CFR 966.4(k)(1)(ii) and 24 CFR 966.4(l)(1)]

The family may terminate the lease at any time, for any reason, by following the notification procedures as outlined in the lease. Such notice must be in writing and delivered to the project office or the PHA central office or sent by pre-paid first-class mail, properly addressed.

CDA Policy

If a family desires to move and terminate their tenancy with the CDA, they must give at least 60 calendar days advance written notice to the CDA of their intent to vacate. When a family must give less than 60 days notice due to circumstances beyond their control the CDA, at its discretion, may waive the 60 day requirement.

The notice of lease termination must be signed by the head of household, spouse, or cohead.

PART II: TERMINATION BY PHA – MANDATORY

13-II.A. OVERVIEW

HUD requires the PHA to terminate the lease in certain circumstances. In other circumstances HUD requires the PHA to establish provisions for lease termination, but it is still a PHA option to determine, on a case-by-case basis, whether termination is warranted. For those tenant actions or failures to act where HUD requires termination, the PHA has no such option. In those cases, the family's lease must be terminated. This part describes situations in which HUD requires the PHA to terminate the lease.

13-II.B. FAILURE TO PROVIDE CONSENT [24 CFR 960.259(a) and (b)]

The PHA must terminate the lease if any family member fails to sign and submit any consent form s/he is required to sign for any reexamination. See Chapter 7 for a complete discussion of consent requirements.

13-II.C. FAILURE TO DOCUMENT CITIZENSHIP [24 CFR 5.514(c) and (d) and 24 CFR 960.259(a)]

The PHA must terminate the lease if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family, resulting in no eligible family members; or (3) a family member, as determined by the PHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3), such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated.

See Chapter 7 for a complete discussion of documentation requirements.

13-II.D. FAILURE TO DISCLOSE AND DOCUMENT SOCIAL SECURITY NUMBERS [24 CFR 5.218(c), 24 CFR 960.259(a)(3), Notice PIH 2012-10]

The PHA must terminate assistance if a participant family fails to disclose the complete and accurate social security numbers of each household member and the documentation necessary to verify each social security number.

However, if the family is otherwise eligible for continued program assistance, and the PHA determines that the family's failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's control, the PHA may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed 90 calendar days from the date the PHA determined the family to be noncompliant.

CDA Policy

The CDA will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 90 calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose a SSN by the deadline.

See Chapter 7 for a complete discussion of documentation and certification requirements.

13-II.E. FAILURE TO ACCEPT THE PHA'S OFFER OF A LEASE REVISION [24 CFR 966.4(l)(2)(ii)(E)]

The PHA must terminate the lease if the family fails to accept the PHA's offer of a lease revision to an existing lease, provided the PHA has done the following:

- The revision is on a form adopted by the PHA in accordance with 24 CFR 966.3 pertaining to requirements for notice to tenants and resident organizations and their opportunity to present comments.
- The PHA has made written notice of the offer of the revision at least 60 calendar days before the lease revision is scheduled to take effect.
- The PHA has specified in the offer a reasonable time limit within that period for acceptance by the family.

See Chapter 8 for information pertaining to PHA policies for offering lease revisions.

13-II.F. METHAMPHETAMINE CONVICTION [24 CFR 966.4(l)(5)(i)(A)]

The PHA must immediately terminate the lease if the PHA determines that any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.

See Part 13-III.B. below for the HUD definition of *premises*.

13-II.G. LIFETIME REGISTERED SEX OFFENDERS [Notice PIH 2012-28]

Should a PHA discover that a member of an assisted household was subject to a lifetime registration requirement at admission and was erroneously admitted after June 25, 2001, the PHA must immediately terminate assistance for the household member.

In this situation, the PHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHA must terminate assistance for the household.

13-II.GH. NONCOMPLIANCE WITH COMMUNITY SERVICE REQUIREMENTS [24 CFR 966.4(a)(2)(ii), 24 CFR 966.4(l)(2)(iii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)(2)(ii) and (c)]

The PHA is prohibited from renewing the lease at the end of the 12 month lease term when the family fails to comply with the community service requirements as described in Chapter 11.

13-II.HI. DEATH OF A SOLE FAMILY MEMBER [Notice PIH 2012-10]

The PHA must immediately terminate program assistance for deceased single member households.

13-II.J. OVER_INCOME FAMILIES [24 CFR 960.507; FR Notice 7/26/18; Notice PIH 2019-11; FR Notice 2/14/23]

In the public housing program, an *over-income family* is defined as a family whose income exceeds the over-income limit for 24 consecutive months. When this occurs, the PHA must either:

- Terminate the family's tenancy within six months of the PHA's final notification of the end of the 24-month grace period; or
- Within 60 days of the PHA's final notification of the end of the 24-month grace period or the next lease renewal (whichever is sooner), have the family execute a new lease that is consistent with 24 CFR 960.509 and charge the family a monthly rent that is the higher of the applicable fair market rent (FMR) or the amount of monthly subsidy for the unit, including amounts from the operating and capital funds.

The PHA must establish a continued occupancy policy for over-income families in the ACOP indicating which of the above will occur.

CDA Policy

For families whose income exceeds the over-income limit for 24 consecutive months, the CDA will not terminate the family's tenancy and will charge the family the alternative non-public housing rent, as well as require the family to sign a new non-public housing lease in accordance with the continued occupancy policies below.

Over-Income Limit [Notice PIH 2019-11]

The PHA must publish over-income limits in their ACOP and update them no later than 60 days after HUD publishes new income limits each year. The over-income limit is calculated by multiplying the very low-income limit (VLI) by 2.4, as adjusted for family size.

CDA Policy

The CDA will rely on over-income limits, calculated by multiplying the very low-income limit (VLI) by 2.4, as adjusted for family size. The over-income limit will be published on the CDA's website and updated within 60 days of HUD publishing new income limits each year, and will be effective for all annual and interim reexaminations.

For families larger than eight persons, the over-income limit will be calculated by multiplying the applicable very low-income limit by 2.4.

Decreases in Income [24 CFR 960.507(c)(4)]

If, at any time during the consecutive 24-month period following the initial over-income determination, the PHA determines that the family's income is below the over-income limit, the PHA's over-income policies no longer apply to the family. If the PHA later determines that the family's income exceeds the over-income limit at a subsequent annual or interim reexamination, the family is entitled to a new 24 consecutive month period and new notices under this section.

CDA Policy

If, at any time during the 24-month period following the initial over-income determination, an over-income family experiences a decrease in income, the family may request an interim redetermination of rent in accordance with CDA policy in Chapter 9.

If, as a result, the previously over-income family is now below the over-income limit, the family is no longer subject to over-income provisions as of the effective date of the recertification. The CDA will notify the family in writing within 10 business days of the determination that over-income policies no longer apply to them. If the family's income later exceeds the over-income limit again, the family is subject to the CDA's alternative rent requirements for over-income families.

Initial Notice of Over-Income Status [24 CFR 960.507(c)(1)]

If the PHA determines the family has exceeded the over-income limit during an annual or interim reexamination, the PHA must provide written notice to the family of the over-income determination no later than 30 days after the income examination. The notice must state that the family has exceeded the over-income limit and continuing to do so for a total of 24 consecutive months will result in the PHA following its continued occupancy policy for over-income families. The PHA must afford the family an opportunity for a hearing if the family disputes within a reasonable time the PHA's determination that the family has exceeded the over-income limit.

CDA Policy

At annual or interim reexamination, if a family's income exceeds the applicable over-income limit, within 10 business days the CDA will notify the family in writing of the determination and that if the family continues to be over-income for 24 consecutive months, the family will be subject to the CDA's over-income policies. The notice will state that the family may request a hearing if the family disputes the CDA's determination in accordance with CDA policies in Chapter 14.

Second Notice of Over-Income Status [24 CFR 960.507(c)(2)]

The PHA must conduct an income examination 12 months after the initial over-income determination, unless the PHA determined the family's income fell below the over-income limit since the initial over-income determination. If the PHA determines the family continues to exceed the over-income limit for 12 consecutive months, the PHA must provide written notification of this 12-month over-income determination no later than 30 days after the income examination. The notice must state that the family has exceeded the over-income limit for 12 consecutive months and continuing to do so for a total of 24 consecutive months will result in the PHA following its continued occupancy policy for over-income families. Additionally, if applicable under PHA policy, the notice must include an estimate (based on current data) of the alternative non-public housing rent for the family's unit. The PHA must afford the family an opportunity for a hearing if the family disputes within a reasonable time the PHA's determination that the family has exceeded the over-income limit.

CDA Policy

If a family's income exceeds the applicable over-income limit after 12 consecutive months, within 10 business days, the CDA will notify the family in writing of the determination and that if the family continues to be over-income for 24 consecutive months, the family will be subject to the CDA's over-income policies. The notice will provide an estimate of the alternative non-public housing rent applicable to the family at the close of the 24 consecutive month period. The notice will also state that the family may request a hearing if the family disputes the CDA's determination in accordance with CDA policies in Chapter 14.

Final Notice of Over-Income Status [24 CFR 960.507(c)(3) and 960.509]

Unless the PHA determined the family's income fell below the over-income limit since the second over-income determination, the PHA must conduct an income examination 24 months after the initial over income determination. If the family continues to be over-income based on this determination, the PHA must provide written notification of this determination no later than 30 days after the income examination. The notice must state that the family has exceeded the over-income limit for 24 consecutive months and that the PHA will follow its continued occupancy policies for over-income families. The PHA must afford the family an opportunity for a hearing if the family disputes within a reasonable time the PHA's determination that the family has exceeded the over-income limit.

CDA Policy

If a family's income exceeds the applicable over-income limit for 24 consecutive months, the CDA will notify the family in writing of the determination within 10 business days of the date of the determination. The notice will state that the family will be charged the alternative non-public housing rent in accordance with CDA continued occupancy policies and HUD regulations and provide the family's new rent amount.

The notice will also include a new non-public housing lease and inform the family that the lease must be executed by the family and the CDA no later than 60 days from the date of the notice or at the next lease renewal, whichever is sooner. The family will continue to be a public housing program participant until the family executes the new non-public housing lease. The notice will also state that failure to execute the lease within this time period stated in the notice will result in termination of tenancy no more than six months after the date of the notice. The CDA will permit an over-income family to execute a lease beyond this time period, but before termination of tenancy, if the over-income family pays the CDA the total difference between the alternative non-public housing rent and their public housing rent dating back to the point in time that the over-income family was required to execute the new lease.

Once the family signs the new non-public housing lease, the family will no longer be a public housing participant family. The family will no longer be subject to income examinations, are precluded from participating in the resident council, and cannot participate in any programs that are only for public housing or low-income families (e.g. earned income disallowance, Family Self-Sufficiency program).

The non-public housing over-income lease will contain all required provisions listed at 24 CFR 960.509. The initial term of the lease will be for one year. Upon expiration of the initial lease term, the lease will not renew automatically, and subsequent leases will state renewal terms. At any time, the CDA may terminate tenancy in accordance with 24 CFR 960.509(b)(11) and in accordance with state and local law.

Upon execution of the lease, the tenant will be required pay the amount of monthly tenant rent (known as the alternative non-public housing rent) determined by the CDA in accordance with HUD regulations. The CDA will comply with state and local law in giving the tenant written notice stating any changes in the amount of tenant rent. Charges assessed under the lease will be due in accordance with state and local law.

The alternative non-public housing rent will be the higher of the applicable fair market rent (FMR) or the amount of monthly subsidy for the unit.

PART III: TERMINATION BY PHA – OTHER AUTHORIZED REASONS

13-III.A. OVERVIEW

Besides requiring PHAs to terminate the lease under the circumstances described in Part II, HUD requires the PHA to establish provisions in the lease for termination pertaining to certain criminal activity, alcohol abuse, and certain household obligations stated in the regulations. While these provisions for lease termination must be in the lease agreement, HUD does not require PHAs to terminate for such violations in all cases. The PHA has the discretion to consider circumstances surrounding the violation or, in applicable situations, whether the offending household member has entered or completed rehabilitation, and the PHA may, as an alternative to termination, require the exclusion of the culpable household member. The PHA must make policy decisions concerning these options.

In addition, HUD authorizes PHAs to terminate the lease for other grounds, but for only those grounds that constitute serious or repeated violations of material terms of the lease or that are for other good cause. The PHA must develop policies pertaining to what constitutes serious or repeated lease violations, and other good cause, based upon the content of the PHA lease. In the development of the terms of the lease, the PHA must consider the limitations imposed by state and local landlord-tenant law, as well as HUD regulations and federal statutes. Because of variations in state and local landlord-tenant law, and because HUD affords PHAs wide discretion in some areas, a broad range of policies could be acceptable.

The PHA also has the option to terminate the tenancies of certain over-income families.

The PHA may consider alternatives to termination and must establish policies describing the criteria the PHA will use when deciding what action to take, the types of evidence that will be acceptable, and the steps the PHA must take when terminating a family's lease.

13-III.B. MANDATORY LEASE PROVISIONS [24 CFR 966.4(l)(5)]

This section addresses provisions for lease termination that must be included in the lease agreement according to HUD regulations. Although the provisions are required, HUD does not require PHAs to terminate for such violations in all cases, therefore PHA policies are needed.

***Definitions* [24 CFR 5.100]**

The following definitions will be used for this and other parts of this chapter:

Actual and imminent threat is defined in section 16VIIB.

Affiliated individual is defined in section 16VIIB.

Bifurcate is defined in section 16VIIB

Covered person means a tenant, any member of the tenant's household, a guest, or another person under the tenant's control.

Dating violence is defined in section 16-VII.B.

Domestic violence is defined in section 16-VII.B.

Drug means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802].

Drug-related criminal activity means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with the intent to manufacture, sell, distribute, or use the drug.

Guest means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.

Household means the family and PHA-approved live-in aide. The term household also includes foster children and/or foster adults that have been approved to reside in the unit [HUD-50058, Instruction Booklet, p. 65].

Other person under the tenant's control means that the person, although not staying as a guest in the unit, is, or was at the time of the activity in question, on the premises because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not *under the tenant's control*.

Premises means the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.

Sexual assault is defined in section 16-VII.B.

Stalking is defined in section 16-VII.B.

Violent criminal activity means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

Drug Crime On or Off the Premises [24 CFR 966.4(l)(5)(i)(B)]

The lease must provide that drug-related criminal activity engaged in on or off the premises by the tenant, member of the tenant's household or guest, or any such activity engaged in on the premises by any other person under the tenant's control is grounds for termination.

CDA Policy

The CDA has the authority to terminate the lease for 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.

The CDA may also terminate the lease for drug-related civil 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.

Drug-related criminal activity, is defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug [24 CFR 5.100].

Drug means a controlled substance as defined in section 102 of the Controlled Substances Act. [21 U.S.C. 802].

The CDA will also consider criminal acts involving drug paraphernalia to be drug-related criminal activity. *Drug paraphernalia* is defined as any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under the Controlled Substances Act [21 USC 863(d)].

Pursuant to 24 CFR 966.4(l)(5)(iii), a criminal conviction is not the only credible evidence of criminal activity. The CDA will consider all credible evidence, including but not limited to, any record of conviction, arrest, police contact, or civil ordinance violation of covered persons related to the drug-related criminal activity.

In making its decision to terminate the lease, the CDA may consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the CDA may, on a case-by-case basis, choose not to terminate the lease.

Illegal Use of a Drug [24 CFR 966.4(l)(5)(i)(B)]

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 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.

CDA Policy

The CDA has the authority to terminate the lease when the CDA determines that a household member is illegally using a drug or the CDA 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.

A pattern of illegal drug use means more than one incident of any use of illegal drugs during the previous 24 months.

Drug means a controlled substance as defined in section 102 of the Controlled Substances Act. [21 U.S.C. 802].

Pursuant to 24 CFR 966.4(l)(5)(iii), a criminal conviction is not the only credible evidence of criminal activity. The CDA will consider all credible evidence, including but not limited to, any record of conviction, arrest, police contact, or civil ordinance violation of household members related to the use of illegal drugs.

In making its decision to terminate the lease, the CDA may consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the CDA may, on a case-by-case basis, choose not to terminate the lease.

Threat to Other Residents [24 CFR 966.4(l)(5)(ii)(A)]

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

CDA Policy

The CDA has the authority to terminate the lease when a covered person engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including CDA staff and contractors) or by persons residing in the vicinity of the premises.

Pursuant to 24 CFR 966.4(l)(5)(iii), a criminal conviction is not the only credible evidence of criminal activity. The CDA will consider all credible evidence, including but not limited to, any record of conviction, arrest, police contact, or civil ordinance violation of covered persons related to the criminal activity.

In making its decision to terminate the lease, the CDA may consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the CDA may, on a case-by-case basis, choose not to terminate the lease.

Alcohol Abuse [24 CFR 966.4(l)(5)(vi)(A)]

PHAs must establish standards that allow termination of tenancy if the PHA determines that a household member has 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.

CDA Policy

The CDA has the authority to terminate the lease if the CDA determines that a household member has engaged in abuse or a pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

A pattern of such alcohol abuse means more than one incident of any such abuse of alcohol during the previous 24 months.

The CDA will consider all credible evidence, including but not limited to, any record of conviction(s), arrest(s), police contact(s), or civil ordinance violation(s) of household members related to the abuse of alcohol or a pattern of abuse of alcohol.

In making its decision to terminate the lease, the CDA may consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the CDA may, on a case-by-case basis, choose not to terminate the lease.

Furnishing False or Misleading Information Concerning Illegal Drug Use or Alcohol Abuse or Rehabilitation [24 CFR 966.4(l)(5)(vi)(B)]

PHAs must establish standards that allow termination of tenancy if the PHA determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

CDA Policy

The CDA has the authority to terminate the lease if the CDA determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

Drug means a controlled substance as defined in section 102 of the Controlled Substances Act. [21 U.S.C. 802].

The CDA will consider all credible evidence, including but not limited to, any record of conviction, arrest, police contact, or civil ordinance violation of household members related to the use of illegal drugs or the abuse of alcohol, and any records or other documentation (or lack of records or documentation) supporting claims of rehabilitation of illegal drug users or alcohol abusers.

In making its decision to terminate the lease, the CDA may consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the CDA may, on a case-by-case basis, choose not to terminate the lease.

Other Serious or Repeated Violations of Material Terms of the Lease – Mandatory Lease Provisions [24 CFR 966.4(l)(2)(i) and 24 CFR 966.4(f)]

HUD regulations require certain tenant obligations to be incorporated into the lease. Violations of such regulatory obligations are considered to be serious or repeated violations of the lease and grounds for termination. Incidents of actual or threatened domestic violence, dating violence, sexual assault, ~~or~~ stalking, **or human trafficking** may not be construed as serious or repeated violations of the lease by the victim or threatened victim ~~of such violence or stalking~~ [24 CFR 5.2005(c)(1)].

CDA Policy

The CDA has the authority to terminate the lease for the following violations of tenant obligations under the lease:

Failure to make payments due under the lease, including nonpayment of rent (see Chapter 8 for details pertaining to lease requirements for payments due);

Repeated late payment of rent or other charges.

Failure to fulfill the following household obligations:

Not to assign the lease or to sublease the dwelling unit. Subleasing includes receiving payment to cover rent or utility costs by a person living in the unit who is not listed as a family household member

Not to provide accommodations for boarders or lodgers, or permit visitors or guests to reside in the unit, or to create any other housing arrangement that changes the structure of the family household composition as established by the lease

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

To abide by necessary and reasonable regulations promulgated by the CDA 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

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

To dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner

To comply with requirements of applicable building codes, zoning codes, housing codes, health codes, fire codes, and HUD regulations affecting health, safety, and property

To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appurtenances including elevators

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

To pay reasonable charges (other than for normal 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

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

Not to use the premises or any other CDA-owned property for unlawful or other activity which impairs the physical or social environment of the neighborhood

In making its decision to terminate the lease, the CDA may consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the CDA may, on a case-by-case basis, choose not to terminate the lease.

13-III.C. OTHER AUTHORIZED REASONS FOR TERMINATION [24 CFR 966.4(l)(2) and (5)(ii)(B)]

HUD authorizes PHAs to terminate the lease for reasons other than those described in the previous sections. These reasons are referred to as “other good cause.”

Other Good Cause [24 CFR 966.4(l)(2)(ii)(B) and (C)]

HUD regulations state that the PHA may terminate tenancy for other good cause. The regulations provide a few examples of other good cause, but do not limit the PHA to only those examples. The Violence against Women ~~Reauthorization Act of 2013~~ **explicitly** prohibits PHAs from considering incidents of actual or threatened domestic violence, dating violence, sexual assault, ~~or~~ **stalking, or human trafficking** as “other good cause” for terminating the assistance, tenancy, or occupancy rights of the victim or threatened victim of such violence [24 CFR 5.2005(c)(1)].

CDA Policy

The CDA has the authority to terminate the lease for the following reasons:

Fugitive Felon or Parole Violator. 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

Persons subject to sex offender registration requirement. If any member of the household, during their current public housing tenancy, is subject to a registration requirement under a state sex offender registration program

Discovery after admission of facts that made the tenant ineligible

Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with reexamination of income

Failure to furnish such information and certifications regarding family composition and income within 10 business days as may be necessary for the CDA to make determinations with respect to rent, eligibility, and the appropriateness of dwelling size

Failure to transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by the CDA that such a dwelling unit is available

Failure to permit access to the unit by the CDA after proper advance notification for the purpose of performing routine inspections and maintenance, for making improvements or repairs, or to show the dwelling unit for re-leasing, or without advance notice if there is reasonable cause to believe that an emergency exists

Failure to promptly inform the CDA of the birth, adoption, or court-awarded custody of a child. In such a case, promptly means within 10 business days of the event

Failure to abide by the provisions of the CDA pet policy

If the family has breached the terms of a repayment agreement entered into with the CDA

If a family member has violated federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises

If a household member has engaged in or threatened violent or abusive behavior toward CDA residents, personnel, or contractors

Abusive or violent behavior towards CDA residents, personnel, or contractors includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to terminate the lease, the CDA may consider alternatives as described in Section 13-III.D and other factors described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the CDA may, on a case-by-case basis, choose not to terminate the lease.

Family Absence from Unit [24 CFR 982.551(i)]

It is reasonable that the family may be absent from the public housing unit for brief periods. However, the PHA needs a policy on how long the family may be absent from the unit. Absence in this context means that no member of the family is residing in the unit.

CDA Policy

The family must supply any information or certification requested by the CDA to verify that the family is living in the unit, or relating to family absence from the unit, including any CDA-requested information or certification on the purposes of family absences. The family must cooperate with the CDA for this purpose.

The family must promptly notify the CDA when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30 calendar days. In such a case promptly means within 10 business days of the start of the extended absence.

If a family is absent from the public housing unit for more than 90 consecutive days and the family does not adequately verify that they are living in the unit, the CDA will terminate the lease for other good cause. Even with notification, the CDA will not allow a family to be absent from the unit for more than 90 days. Such absence will be considered grounds for lease termination.

Abandonment. If the family appears to have vacated the unit without giving proper notice, the CDA will follow state and local landlord-tenant law pertaining to abandonment before taking possession of the unit. If necessary, the CDA will secure the unit immediately to prevent vandalism and other criminal activity.

In accordance with state law, Wis. Stats. Sec 704.05(5), the CDA will not store any items of personal property left behind when the family removes from the unit. The CDA will dispose of all items left behind in a manner that it deems appropriate. Prescription medication and prescription medical equipment are an exception. The CDA will hold prescription medication and/or prescription medical equipment for seven days from the date that the CDA discovers them. The CDA will return the item(s) if the family asks for return within that seven day period. After seven days, the CDA will dispose of the item(s) in a manner that it deems appropriate.

Over-Income Families [24 CFR 960.261; FR Notice 7/26/18; Notice PIH 2019-11]

~~The Housing Opportunity Through Modernization Act (HOTMA) of 2016 placed an income limitation on public housing tenancies. The over-income requirement states that after a family's adjusted income has exceeded 120 percent of area median income (AMI) (or a different limitation established by the secretary) for two consecutive years, the PHA must either terminate the family's tenancy within six months of the determination, or charge the family a monthly rent that is the higher of the applicable fair market rent (FMR) or the amount of monthly subsidy for the unit, including amounts from the operating and capital funds, as determined by regulations.~~

~~Notice PIH 2019-11 also requires that PHAs publish over-income limits in their ACOP and update them no later than 60 days after HUD publishes new income limits each year. The over-income limit is calculated by multiplying the very low income limit (VLI) by 2.4, as adjusted for family size.~~

~~PHAs also have discretion, under 24 CFR 960.261, to adopt policies allowing termination of tenancy for families whose income exceeds the limit for program eligibility. Such policies would exempt families participating in the Family Self-Sufficiency (FSS) program or currently receiving the earned income disallowance.~~

CDA Policy

~~At annual or interim reexamination, if a family's adjusted income exceeds the applicable over-income limit, the CDA will document the family file and begin tracking the family's over-income status.~~

~~If one year after the applicable annual or interim reexamination the family's income continues to exceed the applicable over-income limit, the CDA will notify the family in writing that their income has exceeded the over-income limit for one year, and that if the family continues to be over-income for 12 consecutive months, the family will be subject to the CDA's over-income policies.~~

~~Until such time as the final rule related to alternative rent amounts becomes legally effective, the PHA will not terminate the assistance of over-income families or charge such families an alternative rent. The PHA will continue to offer such families the choice between income-based or flat rent at each annual reexamination.~~

~~Once alternative rent requirements for over-income families become legally effective, the CDA will charge any family whose income has exceeded the over-income limit for at least two years. If two years after the applicable annual or interim reexamination the family's income continues to exceed the applicable over-income limit, the CDA will charge the family a rent that is the higher of the applicable fair market rent (FMR) or the~~

~~amount of monthly subsidy for the unit. The CDA will notify the family in writing of their new rent amount. The new rent amount will be effective 30 days after the CDA's written notice to the family.~~

~~If, at any time, an over-income family experiences a decrease in income, the family may request an interim redetermination of rent in accordance with CDA policy. If, as a result, the previously over-income family is now below the over-income limit, the family is no longer subject to over-income provisions as of the effective date of the recertification. The CDA will notify the family in writing that over-income policies no longer apply to them. If the family's income later exceeds the over-income limit again, the family is entitled to a new two-year grace period.~~

~~The CDA will not evict or terminate the tenancies of families whose income exceeds the income limit for program eligibility as described at 24 CFR 960.261.~~

~~Over-income families are exempt from participating in the Family Self-Sufficiency (FSS) program or from receiving the earned income disallowance.~~

~~The CDA will rely on over-income limits, calculated by multiplying the very low income limit (VLI) by 2.4, as adjusted for family size. The over-income limit will be published on the CDA's website and updated within 60 days of HUD publishing new income limits each year, and will be effective for all annual and interim reexaminations.~~

13-III.D. ALTERNATIVES TO TERMINATION OF TENANCY

Exclusion of Culpable Household Member [24 CFR 966.4(l)(5)(vii)(C)]

As an alternative to termination of the lease for criminal activity or alcohol abuse HUD provides that the PHA may consider exclusion of the culpable household member. Such an alternative can be used, by PHA policy, for any other reason where such a solution appears viable.

Additionally, under the Violence against Women ~~Reauthorization Act of 2013~~, the PHA may bifurcate a lease in order to terminate the tenancy of an individual who is a tenant or lawful occupant of a unit and engages in criminal activity directly related to domestic violence, dating violence, sexual assault, ~~or~~ stalking, ~~or~~ human trafficking.

CDA Policy

On a case-by-case basis, the CDA may consider requiring the 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.

As a condition of the family's continued occupancy, the head of household must certify that the culpable household member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former household member's current living address upon CDA request.

Repayment of Family Debts

CDA Policy

If a family owes amounts to the CDA, as a condition of continued occupancy, the CDA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the CDA of the amount owed. See Chapter 16 for policies on repayment agreements.

13-III.E. CRITERIA FOR DECIDING TO TERMINATE TENANCY

A PHA that has grounds to terminate a tenancy is not required to do so, except as explained in Part II of this chapter, and may consider all of the circumstances relevant to a particular case before making a decision.

Evidence [24 CFR 982.553(c)]

For criminal activity, HUD permits the PHA to terminate the lease if a *preponderance of the evidence* indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted, and without satisfying the standard of proof used for a criminal conviction.

CDA Policy

The CDA may evict a resident by judicial action for criminal activity in accordance with 24 CFR 966.4(l)(5)(iii) if the CDA 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.

The CDA will use the concept of the preponderance of the evidence as the standard for making all termination decisions.

Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

Consideration of Circumstances [24 CFR 966.4(l)(5)(vii)(B)]

Although it is required that certain lease provisions exist for criminal activity and alcohol abuse, HUD provides that the PHA may consider all circumstances relevant to a particular case in order to determine whether or not to terminate the lease.

Such relevant circumstances can also be considered when terminating the lease for any other reason.

CDA Policy

The CDA may consider the following factors before deciding whether to terminate the lease for any of the HUD required lease provisions or for any other reasons, but the CDA is not required to make a finding as to each factor:

The seriousness of the offending action, especially with respect to how it would affect other residents

The extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor, a person with disabilities, or (as discussed further in section 13-III.F) a victim of domestic violence, dating violence, sexual assault, ~~or~~ stalking **or human trafficking**

The effects that the eviction will have on other family members who were not involved in the action or failure to act

The effect on the community of the termination, or of the CDA's failure to terminate the tenancy

The effect of the CDA's decision on the integrity of the public housing program

The demand for housing by eligible families who will adhere to lease responsibilities

The extent to which the leaseholder has shown personal responsibility and whether they have taken all reasonable steps to prevent or mitigate the offending action

The length of time since the violation occurred, the family's recent history, and the likelihood of favorable conduct in the future

In the case of program abuse, the dollar amount of the underpaid rent and whether or not a false certification was signed by the family

Consideration of Rehabilitation [24 CFR 966.4(l)(5)(vii)(D)]

HUD authorizes PHAs to take into consideration whether a household member who had used illegal drugs or abused alcohol and is no longer engaging in such use or abuse is participating in or has successfully completed a supervised drug or alcohol rehabilitation program.

CDA Policy

In determining whether to terminate the lease for illegal drug use or a pattern of illegal drug use, or for abuse or a pattern of abuse of alcohol, by a household member who is no longer engaging in such use or abuse, the CDA 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.

For this purpose the CDA will 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.

Reasonable Accommodation [24 CFR 966.7]

If the family includes a person with disabilities, the PHA's decision to terminate the family's lease is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

CDA Policy

If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of lease, the CDA will ask for information to determine whether the behavior is related to the disability and whether the accommodation could alleviate the problem. Upon the family's request, the CDA will determine whether alternative measures are appropriate as a reasonable accommodation. The CDA will only consider accommodations that can reasonably be expected to address the behavior, action, or non-action that is the basis of the proposed lease termination. See Chapter 2 for the procedures for processing a request for reasonable accommodation.

If a request for an accommodation has been made, the CDA will consider disability-related circumstances when proposing lease termination. The CDA may provide an exception to CDA rules, policies, practices, or services, but the CDA will not lower or waive the essential eligibility or lease requirements of the Public Housing program, as doing so would alter the fundamental nature of the program. Even for a family that includes a person with disabilities, the CDA is not required to grant exceptions for the following:

- Individuals currently using controlled substances illegally.
- Individuals who abuse alcohol to the detriment of others.
- Convicted sexual offenders who are required to register under the law.
- Individuals who have been evicted from federally assisted housing due to drug-related criminal activity within the previous three years, unless a CDA approved rehabilitation program has been successfully completed.

Even with accommodation, the CDA is not required to admit the following:

- Individuals who are not “otherwise qualified” for the Public Housing program.
- Individuals who would cause undue financial and administrative burdens, or would require a fundamental alteration in the nature of the program.
- Individuals whose request for accommodation is not necessary or will not be effective.

Nondiscrimination Limitation [24 CFR 966.4(l)(5)(vii)(F)]

The PHA’s eviction actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105.

13-III.F. TERMINATIONS RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, ~~OR~~ STALKING OR HUMAN TRAFFICKING

This section addresses the protections against termination of tenancy that the Violence against Women Act ~~of 2013~~ (VAWA) provides for public housing residents who are victims of domestic violence, dating violence, sexual assault, ~~or~~ stalking or human trafficking. For general VAWA requirements and PHA policies pertaining to notification, documentation, and confidentiality, see section 16-VII of this ACOP, where definitions of key VAWA terms are also located.

VAWA Protections against Termination [24 CFR 5.2005(c)]

VAWA provides that no person may deny assistance, tenancy, or occupancy rights to public housing to a tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or affiliated individual is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking [FR Notice 8/6/13].

VAWA further provides that incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking may not be construed either as serious or repeated violations of the lease by the victim or threatened victim of such violence or as good cause for terminating the tenancy or occupancy rights of the victim of such violence [24 CFR 5.2005(c)(1), FR Notice 8/6/13].

- Although the VAWA 2022 statute does not specifically include human trafficking in the list of victims protected under VAWA, in 2022 HUD began including human trafficking as part of the list of victims protected under VAWA (as seen in Notices PIH 2022-06, PIH 2022-22, and PIH 2022-24). In the absence of a final rule implementing VAWA 2022 and to mirror HUD's recent usage, this policy includes human trafficking in addition to domestic violence, dating violence, sexual assault, and stalking anywhere such a list appears.

PHAs and owners may not coerce, intimidate, threaten, interfere with, or retaliate against any person who exercises or assists or encourages a person to exercise any rights or protections under VAWA [FR Notice 1/4/23].

Limits on VAWA Protections [24 CFR 5.2005(d) and (e), FR Notice 8/6/13]

While VAWA prohibits a PHA from using domestic violence, dating violence, sexual assault, ~~or~~ stalking, **or human trafficking** as the cause for a termination or eviction action against a public housing tenant who is the victim of the abuse, the protections it provides are not absolute. Specifically:

- VAWA does not limit a PHA's otherwise available authority to terminate assistance to or evict a victim for lease violations not premised on an act of domestic violence, dating violence, sexual assault, ~~or~~ stalking, **or human trafficking** providing that the PHA does not subject the victim to a more demanding standard than the standard to which it holds other tenants.
- VAWA does not limit a PHA's authority to terminate the tenancy of any public housing tenant if the PHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant's tenancy is not terminated.

HUD regulations define *actual and imminent threat* to mean words, gestures, actions, or other indicators of a physical threat that (a) is real, (b) would occur within an immediate time frame, and (c) could result in death or serious bodily harm [24 CFR 5.2005(d)(2) and (e)]. 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
- The length of time before the potential harm would occur [24 CFR 5.2005(e)]

Even when a victim poses an actual and imminent threat, however, HUD regulations authorize a PHA to terminate the victim's assistance "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" [24 CFR 5.2005(d)(3)]. Additionally, HUD regulations state that restrictions "predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents" [24 CFR 5.2005(d)(3)].

CDA Policy

In determining whether a public housing tenant who is a victim of domestic violence, dating violence, sexual assault, ~~or~~ stalking, **or human trafficking** is an actual and imminent threat to other tenants or those employed at or providing service to a property, the CDA will consider the following, and any other relevant, factors:

Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, sexual assault, ~~or~~ stalking, **or human trafficking**

Whether the threat is a physical danger beyond a speculative threat

Whether the threat is likely to happen within a short period of time

Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location, transferring the victim to another unit, or seeking a legal remedy to prevent the perpetrator from acting on the threat

If the tenant wishes to contest the CDA's determination that ~~they he or she are~~ **is** an actual and imminent threat to other tenants or employees, the tenant may do so as part of the grievance hearing or in a court proceeding.

Documentation of Abuse [24 CFR 5.2007]

CDA Policy

When an individual facing termination of tenancy for reasons related to domestic violence, dating violence, sexual assault, ~~or~~ stalking, **or human trafficking** claims protection under VAWA, the CDA will request in writing that the individual provide documentation supporting the claim in accordance with the policies in section 16-VII.D of this ACOP.

The CDA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice. In such cases the CDA will document the waiver in the individual's file.

Terminating or Evicting a Perpetrator of Domestic Violence

Although VAWA provides protection from termination for victims of domestic violence, it does not provide such protection for perpetrators. In fact, VAWA gives the PHA the explicit authority to bifurcate a lease, or remove a household member from a lease, “in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing” [FR Notice 8/6/13]. Moreover, HUD regulations impose on the PHA the obligation to consider lease bifurcation in any circumstances involving domestic violence, dating violence, ~~or~~ stalking, or human trafficking [24 CFR 966.4(e)(9)].

Specific lease language affirming the PHA’s authority to bifurcate a lease is not necessary, and the authority supersedes any local, state, or federal law to the contrary. However, if the PHA chooses to exercise its authority to bifurcate a lease, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law for eviction, lease termination, or termination of assistance. This means that the PHA must follow the same rules when terminating or evicting an individual as it would when terminating or evicting an entire family [FR Notice 3/16/07].

CDA Policy

The CDA will bifurcate a family’s lease and terminate the tenancy of a family member if the CDA determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the tenancy or program assistance of the remaining, nonculpable family members.

In making its decision, the CDA will consider all credible evidence, including, but not limited to, a signed certification (form HUD-5382) or other documentation of abuse submitted to the CDA by the victim in accordance with this section and section 16-VII.D. The CDA will also consider the factors in section 13.III.E. Upon such consideration, the CDA may, on a case-by-case basis, choose not to bifurcate the lease and terminate the tenancy of the culpable family member.

If the CDA does bifurcate the lease and terminate the tenancy of the culpable family member, it will do so in accordance with the lease, applicable law, and the policies in this ACOP. If the person removed from the lease was the only tenant eligible to receive assistance, the CDA must provide any remaining tenant a chance to establish eligibility for the unit. If the remaining tenant cannot do so, the CDA must provide the tenant reasonable time to find new housing or to establish eligibility for another housing program covered ~~by~~ under VAWA 2013.

PART IV: NOTIFICATION REQUIREMENTS, EVICTION PROCEDURES AND RECORD KEEPING

13-IV.A. OVERVIEW

HUD regulations specify the requirements for the notice that must be provided prior to lease termination. This part discusses those requirements and the specific requirements that precede and follow termination for certain criminal activities which are addressed in the regulations. This part also discusses specific requirements pertaining to the actual eviction of families and record keeping.

13-IV.B. CONDUCTING CRIMINAL RECORDS CHECKS [24 CFR 5.903(e)(ii) and 24 CFR 960.259]

HUD authorizes PHAs to conduct criminal records checks on public housing residents for lease enforcement and eviction. PHA policy determines when the PHA will conduct such checks.

CDA Policy

The CDA will conduct criminal records checks when it has come to the attention of the CDA, either from local law enforcement or by other means that an individual has engaged in the destruction of property, engaged in violent activity against another person, or has interfered with the right to peaceful enjoyment of the premises of other residents. Such checks will also include sex offender registration information.

The PHA may not pass along to the tenant the costs of a criminal records check.

13-IV.C. DISCLOSURE OF CRIMINAL RECORDS TO FAMILY [24 CFR 5.903(f), 24 CFR 5.905(d) and 24 CFR 966.4(l)(5)(iv)]

In conducting criminal records checks, if the PHA uses the authority of 24 CFR 5.903 and 5.905 to obtain such information, certain protections must be afforded the tenant before any adverse action is taken. In such cases if the PHA obtains criminal records information from a state or local agency showing that a household member has been convicted of a crime, or is subject to a sex offender registration requirement, relevant to lease enforcement or eviction, the PHA must notify the household of the proposed action and must provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.

CDA Policy

In all cases where criminal record or sex offender registration information would result in lease enforcement or eviction, the CDA will notify the household in writing of the proposed adverse action and will provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.

The family will be given 3 business days from the date of the CDA notice, to dispute the accuracy and relevance of the information. If the family does not contact the CDA to dispute the information within that 3 business day period, the CDA will proceed with the termination action.

Should the tenant not exercise their right to dispute prior to any adverse action, the tenant still has the right to dispute in the grievance hearing or court trial.

13-IV.D. LEASE TERMINATION NOTICE [24 CFR 966.4(l)(3)]

Form, Delivery, and Content of the Notice

Notices of lease termination must be in writing. The notice must state the specific grounds for termination, the date the termination will take place, the resident's right to reply to the termination notice, and their right to examine PHA documents directly relevant to the termination or eviction. If the PHA does not make the documents available for examination upon request by the tenant, the PHA may not proceed with the eviction [24 CFR 966.4(m)].

CDA Policy

If the CDA offers remote hearings (e.g. telephone conferencing call-in or videoconferencing), the notice will also state that the resident may request a remote hearing.

If the CDA will require that the hearing be conducted remotely, at the time the notice is sent to the resident informing them of the right to request a hearing, the resident will be notified that the hearing will be conducted remotely. The resident will be informed of the processes involved in a remote hearing and that the CDA will provide technical assistance, if needed, before the hearing. The technical assistance that may be provided by the CDA is in the form of outlining the necessary procedures for access to the telephone conferencing call-in or videoconferencing platform. Procedures for remote hearings are further described in 14-III.G.

Further, during the period of time for which HUD determines that a national emergency requires additional time for families to secure funding, all termination notifications for nonpayment of rent must include, at a minimum, the language provided in the Appendix of Notice PIH 2021-29.

When the PHA is required to offer the resident an opportunity for a grievance hearing, the notice must also inform the resident of their right to request a hearing in accordance with the PHA's grievance procedure. In these cases, the tenancy shall not terminate until the time for the tenant to request a grievance hearing has expired and the grievance procedure has been completed.

When the PHA is not required to offer the resident an opportunity for a grievance hearing because HUD has made a due process determination and the lease termination is for criminal activity that threatens health, safety or right to peaceful enjoyment or for drug-related criminal activity, the notice of lease termination must state that the tenant is not entitled to a grievance hearing on the termination. It must specify the judicial eviction procedure to be used by the PHA for eviction of the tenant, and state that HUD has determined that the eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations. The notice must also state whether the eviction is for a criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the PHA, or for a drug-related criminal activity on or off the premises.

CDA Policy

~~The CDA will attempt to deliver notices of lease termination directly to the tenant or an adult member of the household. If such attempt fails, the notice will be sent by first-class mail the same day.~~

The CDA will deliver notices of lease termination in accordance with state statutes and local ordinances. All notices of lease termination will include information about the protection against termination provided by the Violence against Women Reauthorization Act of 2013 (VAWA) for victims of domestic violence, dating violence, sexual assault, ~~or~~ stalking, or human trafficking (see section 16-VII.C). The CDA will also include a copy of the form HUD-5382 and a notice of VAWA rights to accompany the termination notice. Any tenant who claims that the cause for termination involves (a) criminal acts of physical violence against family members or others or (b) incidents of domestic violence, dating violence, sexual assault, ~~or~~ stalking, or human trafficking of which the tenant or affiliated individual of the tenant is the victim will be given the opportunity to provide documentation in accordance with the policies in sections 13-III.F and 16-VII.D.

Timing of the Notice [24 CFR 966.4(l)(3)(i); 24 CFR 966.8; Notice PIH 2021-29]

The PHA must give written notice of lease termination of:

- During the period of time for which HUD determines that a national emergency requires additional time for families to secure federal funding that is available due to a Presidential declaration of a national emergency, at least 30 days from the date the tenant receives the notice in the case of failure to pay rent
- When such HUD determined emergency is not present, 14 calendar days in the case of failure to pay rent
- A reasonable period of time considering the seriousness of the situation (but not to exceed 30 calendar days)

If the health or safety of other residents, PHA employees, or persons residing in the immediate vicinity of the premises is threatened

If any member of the household has engaged in any drug-related criminal activity or violent criminal activity

If any member of the household has been convicted of a felony

- 30 calendar days in any other case, except that if a state or local law allows a shorter notice period, such shorter period shall apply

CDA Policy

The CDA will give written notice of:

- 30 calendar days (during nationwide emergency orders) or 14 calendar days for nonpayment of rent (upon expiration of nationwide emergency orders).
- 14 calendar days if the health or safety of other residents, CDA employees, CDA contractors, or persons residing in the immediate vicinity of the premises is threatened.
- 14 calendar days if any member of the household has engaged in any drug-related criminal activity or violent criminal activity.
- 14 calendar days if any member of the household has been convicted of a felony.
- 14 calendar days for all other lease terminations. .

The Notice to Vacate that may be required under state or local law may be combined with or run concurrently with the notice of lease termination.

CDA Policy

Notice to Vacate is required by state law and the CDA fulfills this requirement by combining Notice to Vacate with HUD's required Notice of Lease Termination.

Notice of Nonrenewal Due to Community Service Noncompliance [24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)]

When the PHA finds that a family is in noncompliance with the community service requirement, the tenant and any other noncompliant resident must be notified in writing of this determination. Notices of noncompliance will be issued in accordance with the requirements and policies in Section 11-I.E.

CDA Policy

If after receiving a notice of initial noncompliance the family does not request a grievance hearing, or does not take either corrective action required by the notice within the required timeframe, a termination notice will be issued in accordance with the policies above.

If a family agreed to cure initial noncompliance by signing an agreement, and is still in noncompliance after being provided the 12-month opportunity to cure, the family will be issued a notice of continued noncompliance. The notice of continued noncompliance will be sent in accordance with the policies in Section 11-I.E. and will also serve as the notice of termination of tenancy.

Notice of Termination Based on Citizenship Status [24 CFR 5.514 (c) and (d)]

In cases where termination of tenancy is based on citizenship status, HUD requires the notice of termination to contain additional information. In addition to advising the family of the reasons their assistance is being terminated, the notice must also advise the family of any of the following that apply: the family's eligibility for proration of assistance, the criteria and procedures for obtaining relief under the provisions for preservation of families, the family's right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal, and the family's right to request an informal hearing with the PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Please see Chapter 14 for the PHA's informal hearing procedures.

13-IV.E. EVICTION [24 CFR 966.4(l)(4) and 966.4(m)]

Eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. The PHA may only evict the tenant from the unit by instituting a court action, unless the 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.

CDA Policy

When a family does not vacate the unit after receipt of a termination notice, by the deadline given in the notice, the CDA will follow state and local landlord-tenant law in filing an eviction action with the local court that has jurisdiction in such cases.

If the eviction action is finalized in court and the family remains in occupancy beyond the deadline to vacate given by the court, the CDA will seek the assistance of the court to remove the family from the premises as per state and local law.

The PHA may not proceed with an eviction action if the PHA has not made available the documents to be used in the case against the family, and has not afforded the family the opportunity to examine and copy such documents in accordance with the provisions of 24 CFR 966.4(l)(3) and (m).

13-IV.F. NOTIFICATION TO POST OFFICE [24CFR 966.4(l)(5)(iii)(B)]

When the PHA evicts an individual or family for criminal activity, including drug-related 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.

13-IV.G. RECORD KEEPING

For more information concerning general record keeping, see Chapter 16.

CDA Policy

A written record of every termination and/or eviction will be maintained by the CDA in the resident's file and will contain the following information:

Name of resident, number and identification of unit occupied

Date of the notice of lease termination and any other notices required by state or local law; these notices may be on the same form and will run concurrently

Specific reason(s) for the notices, citing the lease section or provision that was violated, and other facts pertinent to the issuing of the notices described in detail (other than any criminal history reports obtained solely through the authorization provided in 24 CFR 5.903 and 5.905)

Date and method of notifying the resident

Summaries of any conferences held with the resident including dates, names of conference participants, and conclusions

