

# **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

## CHAPTER 13: LEASE TERMINATIONS

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### **Introduction**

Either party to the dwelling lease agreement may terminate the lease in accordance with the terms of the lease. 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. The PHA has the authority to 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 also specify when termination of the lease is mandatory by the PHA.

When determining PHA policy on terminations of the lease, the PHA must consider state and local landlord-tenant laws in the area where the PHA is located. Such laws vary from one location to another, and these variances may be either more or less restrictive than federal law or HUD regulation.

This chapter presents the policies that govern voluntary termination of the lease by the family and the mandatory and voluntary termination of the lease by the PHA. It is presented in four parts:

### **Part I: Termination by Tenant.**

This part discusses the PHA requirements for voluntary termination of the lease by the family.

### **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.

### **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

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

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 property site office or the PHA central office or sent by pre-paid first-class mail, properly addressed.

#### **HACCP Policy**

If a family desires to move and terminate their tenancy with the HACCP, they must give at least 30 calendar days advance written notice to the HACCP of their intent to vacate. When a family must give less than 30 days notice due to circumstances beyond their control the HACCP, at its discretion, may waive the 30 day requirement. The notice of lease termination must be signed by the head of household, spouse, or cohead.

### Part II: Termination by PHA – Mandatory

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

### **13-II.A. Overview**

HUD requires mandatory termination of the lease for certain actions or inactions of the family. There are other actions or inactions of the family that constitute grounds for lease termination, but the lease termination is not mandatory. The PHA must establish policies for termination of the lease in these cases where termination is optional for the PHA.

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 8 for a complete discussion of documentation requirements.

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

### **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.

#### **HACCP Policy**

The HACCP 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 an SSN by the deadline.

See Chapter 8 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.

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

- 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(I)(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.

### **HACCP Policy**

The HACCP will deny the family if any household member is subject to either life-time registration or any registration.

In this situation, the HACCP 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 HACCP must terminate assistance for the household.

### **13-II.H. Noncompliance With Community Service Requirements [24 CFR 966.4(I)(2)(ii)(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 12.

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

### **13-II.I. Death of a Sole Family Member [Notice PIH 2012-4]**

The PHA must immediately terminate the lease following the death of the sole family member.

#### **HACCP Policy**

For deceased residents who are the sole occupant of the unit, the property management staff will initiate an intent to vacate for a 14 day notice period to begin the date the death occurs unless the death occurs during the month for which rent has already been paid in full. If the rent has been paid in full, the intent may be extended to the last day of the paid month. A 50058 form will be transmitted to HUD with an end of participation effective date equal to 14 days following date of death or last day of the paid month, whichever is later.

## **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 adopt policies concerning the use of 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 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

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

affords PHAs wide discretion in some areas, a broad range of policies could be acceptable.

The PHA, with some restrictions, also has the option to terminate the tenancies of families who are over income.

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:

***Affiliated individual*** is defined in section 16-VII.B.

***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.

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

**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.

### **HACCP Policy**

The HACCP will 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 HACCP will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the drug-related criminal activity. A record of arrest(s) will not be used as the sole basis for the



## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate the lease, the HACCP will 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 HACCP 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.

### **HACCP Policy**

The HACCP will terminate the lease when the HACCP determines that a household member is illegally using a drug or the HACCP 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 twelve months.

The HACCP will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs.

A record of arrest(s) will not be used as the sole basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate the lease, the HACCP will 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 PHA 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

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

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

### **HACCP Policy**

The HACCP will 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 HACCP management staff residing on the premises) or by persons residing in the immediate vicinity of the premises.

***Immediate vicinity means*** within a three-block radius of the premises.

The HACCP will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the criminal activity.

A record of arrest(s) will not be used as the sole basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate the lease, the HACCP will 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 PHA may, on a case-by case basis, choose not to terminate the lease.

### **Alcohol Abuse [24 CFR 966.4(I)(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.

### **HACCP Policy**

The PHA will terminate the lease if the HACCP 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 twelve months.

The HACCP will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the abuse of alcohol.

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

A record of arrest(s) will not be used as the sole basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate the lease, the HACCP will 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 HACCP 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.

#### **HACCP Policy**

The HACCP will terminate the lease if the HACCP 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.

The HACCP will consider all credible evidence, including but not limited to, any record of arrests or convictions 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 HACCP will 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 HACCP 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

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

or threatened domestic violence, dating violence, sexual assault, or stalking 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)].

### **HACCP Policy**

The HACCP will 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 9 for details pertaining to lease requirements for payments due);

Repeated court cases for non-payment of rent or other charges: three court cases for non-payment within a 12 month period shall result in a termination of tenancy. 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 and utility costs by a person living in the unit who is not listed as a family member.

Not to provide accommodations for boarders or lodgers. 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 HACCP 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 comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety

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

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

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

In making its decision to terminate the lease, the HACCP will 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 PHA 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(I)(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(I)(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 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)].

#### **HACCP Policy**

The HACCP will terminate the lease for the following reasons.

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

***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 Maryland, 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 has, during their current public housing tenancy, become subject to a registration requirement under a state sex offender registration program.

Discovery of facts after admission to the program that would have made the tenant Ineligible.

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

Failure to furnish such information and certifications regarding family composition and income as may be necessary for the HACCP to make determinations with respect to rent, eligibility, and the appropriateness of the dwelling unit size.

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

Failure to permit access to the unit by the HACCP 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 HACCP 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 HACCP pet policy.

If the family fails to sign a repayment agreement or has breached the terms of a repayment agreement entered into with the HACCP.

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

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

If a household member has engaged in or threatened violent or abusive behavior toward HACCP personnel.

Failure to abide by the provisions of the HACCP lease policy.

***Abusive or violent behavior towards HACCP personnel*** 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. This also applies to HACCP contracted vendors.

***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 HACCP will 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 HACCP 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.

### **HACCP Policy**

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

If a family is absent from the public housing unit for more than 30 consecutive days for reasons other than related to health and medical needs, and the family does not adequately verify that they are living in the unit, the HACCP will terminate the lease for other good cause. In the case of absences of the family related to health and medical needs, the maximum time allowable is 180 consecutive days.

***Abandonment of the unit.*** If the family appears to have vacated the unit without giving proper notice, the HACCP will follow state and local landlord-tenant law pertaining to abandonment before taking possession of the unit. If necessary, the

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

HACCP will secure the unit immediately to prevent vandalism and other criminal activity.

### **Over-Income Families [24 CFR 960.261 and FR 11/26/04, p. 68786]**

Subject to certain restrictions, HUD authorizes PHAs to evict or terminate the tenancies of families because they are over income. Unless required to do so by local law, the PHA may not evict or terminate the tenancy of a family solely because the family is over income if:

(1) the family has a valid contract of participation in the Family Self-Sufficiency (FSS) program, or

(2) the family is currently receiving the earned income disallowance. This rule does not require HACCPs to evict over-income residents, but rather gives HACCPs the discretion to do so thereby making units available for applicants who are income-eligible.

### **HACCP Policy**

The HACCP will not evict or terminate the tenancies of families solely because they are over income. Unless required to do so by local law, the HACCP may not evict or terminate the tenancy of a family solely because the family is over income if:

(1) the family has a valid contract of participation in the Family Self-Sufficiency (FSS) program, or

(2) the family is currently receiving the earned income disallowance. This rule does not require HACCPs to evict over-income residents, but rather gives HACCPs the discretion to do so thereby making units available for applicants who are income eligible.

### **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 for any other reason where such a solution appears viable in accordance with PHA policy.



## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

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.

### **HACCP Policy**

The HACCP will 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 address upon HACCP request.

### **Repayment of Family Debts**

#### **HACCP Policy**

If a family owes amounts to the HACCP, as a condition of continued occupancy, the HACCP will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the HACCP 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.

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

### **HACCP Policy**

The HACCP will use 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.

### **HACCP Policy**

The HACCP will consider the following facts and circumstances before deciding whether to terminate the lease for any of the HUD required lease provisions or for any other reasons:

The seriousness of the offending action, especially with respect to how it would affect other residents' safety or property.

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.

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

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

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

The effect of the HACCP'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, including the age of the individual at the time of the conduct, as well as the family's recent history, and the likelihood of favorable conduct in the future.

While a record of arrest(s) will not be used as the basis for termination, an arrest may, however, trigger an investigation to determine whether the participant actually engaged in disqualifying criminal activity. As part of its investigation, the HACCP may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The HACCP may also consider:

Any statements made by witnesses or the participant not included in the police report.

Whether criminal charges were filed.

Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal.

Any other evidence relevant to determining whether or not the participant engaged in disqualifying activity.

Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property.

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

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

### **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.

### **HACCP 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 HACCP will consider whether such household member has successfully completed a supervised drug or alcohol rehabilitation program.

For this purpose, the HACCP will require the tenant to submit evidence of the household member's successful completion of a supervised drug or alcohol rehabilitation program.

### **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.

### **HACCP 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 HACCP will determine whether the behavior is related to the disability. If so, upon the family's request, the HACCP will determine whether alternative measures are appropriate as a reasonable accommodation. The HACCP will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed lease termination. See Chapter 3 for a discussion of reasonable accommodation.

### **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.

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

### **13-III.F. Terminations Related To Domestic Violence, Dating Violence, Sexual Assault, or Stalking**

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. 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 on the basis or as a direct result 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].

#### **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 as the case 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 providing that the PHA does not subject the victim to a more demanding standard than the standard to which it holds other tenants.

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

- 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)]

In order to demonstrate an actual and imminent threat, the PHA must have objective evidence of words, gestures, actions, or other indicators. 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)].

### **HACCP Policy**

In determining whether a public housing tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking is an actual and imminent threat to other tenants or those employed at or providing service to a property, the HACCP 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.

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

Whether the threat is a physical danger beyond a speculative threat.

Whether the threat is likely to happen within an immediate time frame.

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 HACCP's determination that he or she 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**

#### **HACCP Policy**

When an individual facing termination of tenancy for reasons related to domestic violence, dating violence, sexual assault, or stalking claims protection under VAWA, the HACCP 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 HACCP 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 HACCP 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 HACCP 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 another 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 HACCP the obligation

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

to consider lease bifurcation in any circumstances involving domestic violence, dating violence, or stalking [24 CFR 966.4(e)(9)].

Specific lease language affirming the HACCP'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 HACCP 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 HACCP 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]. The HACCP must not initiate eviction procedures until 30 days after the lease bifurcation [Notice PIH 2017-08].

### **HACCP Policy**

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

If the HACCP 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 HACCP must provide any remaining tenant a chance to establish eligibility for the unit. If the remaining tenant cannot do so, the HACCP must provide the tenant reasonable time to find new housing or to establish eligibility for another housing program covered by VAWA 2013.

Should a head of household choose to remove a perpetrator of domestic violence from a household, 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. A completed form HUD-5382 shall be sufficient for documenting the absence of the perpetrator from the assisted unit.



## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

### 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.

#### **HACCP Policy**

The HACCP will conduct criminal records checks when it has come to the attention of the HACCP, 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. The HACCP may conduct random criminal record checks annually. Such checks will also include sex offender registration information. In order to obtain such information, all adult household members must sign consent forms for release of criminal conviction and sex offender registration records on an annual basis.

The HACCP 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), 24CFR 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

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

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.

### **HACCP Policy**

In all cases where criminal record or sex offender registration information would result in lease enforcement or eviction, the HACCP 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 10 business days from the date of the HACCP notice, to dispute the accuracy and relevance of the information. If the family does not contact the HACCP to dispute the information within that 10-business day period, the HACCP will proceed with the termination action.

### **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)].

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.

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

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.

### **HACCP Policy**

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

All notices of lease termination will include a copy of the forms HUD-5382 and HUD- 5380 to accompany the termination notice. Any tenant who claims that the cause for termination involves domestic violence, dating violence, sexual assault, or stalking 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(I)(3)(i)]**

The PHA must give written notice of lease termination of:

- 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

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

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

### **HACCP Policy**

The HACCP will give written immediate notice for:

- The possession, use, sale, or delivery of a firearm which is otherwise prohibited by state law within or upon the premises, by or with the knowledge and consent of, or in concert with, the person or persons named in the complaint; or
- Trafficking in cannabis, narcotics, or controlled substances within or upon the premises by or with the knowledge and consent of, or in concert with the person or persons named in the complaint, or manufacture or production of methamphetamine on the premises of federally assisted housing

The HACCP will give written notice of 10 calendar days for:

- Failure to maintain proper utility service
- Participation in any activity that threatens the health or safety of other residents, or PHA employees, or persons residing in the immediate vicinity of the premises;
- If any member of the household or other person under the resident's control has engaged in any drug-related criminal activity or violent criminal activity;

The PHA will give written notice of 14 calendar days for nonpayment of rent or other charges.

For all other lease terminations the HACCP will give 30 days written notice or, if state or local law allows less than 30 days, such shorter notice will be given.

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.

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

### **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 12-I.E.

### **HACCP 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 12-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

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

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.

### **HACCP Policy**

When a family does not vacate the unit after receipt of a termination notice, by the deadline given in the notice, the HACCP 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 HACCP will seek the assistance of the court to remove the family from the premises as per state and local law.

The HACCP may not proceed with an eviction action if the HACCP 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.

### **HACCP Policy**

A written record of every termination and/or eviction will be maintained by the HACCP at the development where the family was residing, and will contain the following information:

Name of resident, number, and identification of unit occupied

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

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