

§ 5.2003 Definitions.

The definitions of *1937 Act*, *PHA*, *HUD*, *household*, *responsible entity*, and *other person under the tenant's control* are defined in subpart A of this part. As used in this subpart L:

Bifurcate means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.

Dating violence means violence committed by a person: Who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.

Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Immediate family member means, with respect to a person: A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in loco parentis; or any other person living in the household of that person and related to that person by blood or marriage.

Stalking means: To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; or to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or

to cause substantial emotional harm to that person, a member of the immediate family of that person, or the spouse or intimate partner of that person.

§ 5.2005 Protection of victims of domestic violence, dating violence, and stalking in public and Section 8 housing.

(a) *Domestic violence, dating violence, or stalking.* An incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated lease violation by the victim or threatened victim of the domestic violence, dating violence, or stalking, or as good cause to terminate the tenancy, occupancy rights, or assistance of the victim. Admission to the program shall not be denied on the basis that the applicant is or has been a victim of domestic violence, dating violence, or stalking, if the applicant otherwise qualifies for assistance or admission;

(b) *Criminal activity related to domestic violence, dating violence, or stalking.* Criminal activity directly related to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of tenancy, occupancy rights of, or assistance to the victim, if the tenant or immediate family member of the tenant is the victim. Nothing in this paragraph limits the authority of the PHA, owner, or management agent to evict a tenant for a lease violation unrelated to domestic violence, provided that the PHA, owner, or management agent does not subject such a tenant to a more demanding standard than other tenants, in making the determination whether to evict or terminate tenancy or occupancy rights;

(c) *Lease bifurcation.* Notwithstanding paragraph (a) of this section or any federal, state, or local law to the contrary, a PHA, owner, or management agent may bifurcate a lease, or remove a household member from a lease without regard to whether the household member is a signatory to the lease, in order to evict, remove, terminate occupancy rights, or terminate assistance

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to any tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is a tenant or lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by federal, state, or local law for termination of assistance or leases under the relevant public or Section 8 housing assistance program;

(d) *Court orders.* Nothing in paragraph (a) of this section may be construed to limit the authority of a PHA, owner, or management agent, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and to address the distribution of property among household members in a case where a family breaks up;

(e) *Threat to others.* Nothing in paragraph (a) of this section may be construed to limit the authority of a PHA, owner, or management agent to evict or terminate assistance to any tenant or lawful occupant if the PHA, owner, or management agent can demonstrate an actual or imminent threat to other tenants or those employed at or providing service to the public housing or Section 8 assisted property if that tenant or lawful occupant is not terminated from assistance. In this context, words, gestures, actions, or other indicators will be considered an “imminent threat” if a reasonable person, considering all of the relevant circumstances, would have a well-grounded fear of death or bodily harm as a result.

§5.2007 Certification of status and confidentiality.

(a)(1) A PHA, owner, or management agent presented with a claim for continued tenancy based on status as a victim of domestic violence or criminal activity related to domestic violence may request that the tenant making the claim certify in a form approved by HUD that the tenant is a victim of domestic violence, dating violence, or stalking, within 14 business days after the date that the tenant receives the

request or such longer time as the PHA, owner, or management agent may at its discretion allow. The certification:

(i) May be based solely on the personal signed attestation of the victim under penalties for perjury, as provided in section 1746 of title 28, Judiciary and Judicial Procedure, of the United States Code (28 U.S.C. 1746); or

(ii) May be based on or supported by a federal, state, tribal, territorial, or local police or court record; or

(iii) May be based on or supported by documentation signed by an employee, agent, volunteer of a victim service provider, an attorney, or medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking, or in addressing the effects of abuse, in which the professional attests under penalty of perjury under 28 U.S.C. 1746 to the professional’s belief that the incident or incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation; and

(iv) Shall include the name of the perpetrator or alleged perpetrator, if known.

(v) Shall be kept confidential by the PHA, owner, or management agent. The PHA, owner, or management agent shall not enter the information contained in the certification into any shared database or provide it to any other entity, except to the extent that disclosure is:

(A) Requested or consented to by the tenant making the certification, in writing;

(B) Required for use in an eviction proceeding, or

(C) Otherwise required by applicable law.

(2) If the tenant does not provide the certification under paragraph (a)(1) of this section within 14 business days from the date of receipt of the PHA, owner, or management agent’s request, or such longer time as the PHA, owner, or management agent at their discretion may allow, the PHA, owner, or management agent may evict the tenant or a family member that commits lease violations that otherwise would constitute good cause to evict;