

Subsidized Housing Cheat Sheet – v. 12-14-22

Subsidy	Clues- what's the subsidy?	Notice Requirements*	Pre-Eviction Process	Program-Specific Defenses
Public Housing	<p>-Tenant typically recertifies annually on site.</p> <p>-Lease has public housing addendum or references “flat rent” and “income-based rent.”</p> <p>-Should show up in National Housing Preservation Database. https://preservationdatabase.org/</p>	<p>Timing:</p> <ul style="list-style-type: none"> 30 days’ notice for nonpayment and opportunity to apply for rental assistance. 24 CFR 966.8. (Normal times- 14 days. 24 CFR 966.4(l)(3)(i)(A)). State law minimum notice in any other case. 24 CFR 966.4(l)(3)(C) <p>Contents:</p> <ul style="list-style-type: none"> “The notice of lease termination to the tenant shall state specific grounds for termination, and shall inform the tenant of the tenant’s right to make such reply as the tenant may wish. The notice shall also inform the tenant of the right (pursuant to § 966.4(m)) to examine PHA documents directly relevant to the termination or eviction. When the PHA is required to afford the tenant the opportunity for a grievance hearing, the notice shall also inform the tenant of the tenant’s right to request a hearing in accordance with the PHA’s grievance procedure.” 24 CFR 966.4(l)(3)(ii). When tenant is not allowed a hearing (one strike), the notice must state that the tenant is not entitled to a grievance, specify the judicial eviction procedure to be used, and state what type of qualifying criminal activity the eviction is for. 24 CFR 966.4(l)(3)(v). 	<ul style="list-style-type: none"> Tenant is entitled to pre-eviction grievance process which consists of informal meeting and formal grievance hearing. 42 USC 1437d(k); 24 C.F.R. 966.53; 966.54; 966.56. Grievance not required for termination of tenancy that involves: <ul style="list-style-type: none"> (A) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PHA; (B) Any violent or drug-related criminal activity on or off such premises; or (C) Any criminal activity that resulted in felony conviction of a household member. 24 CFR 966.51. When the PHA is required to afford the tenant the opportunity for a hearing under the PHA grievance procedure for a grievance concerning the lease termination (see § 966.51(a)(1)), the tenancy shall not terminate (even if any notice to vacate under State or local law has expired) until the time for the tenant to request a grievance hearing has expired, and (if a hearing was timely requested by the tenant) the grievance process has been completed. 24 C.F.R. § 966.4(l)(3)(iv). Regardless of whether grievance required, tenant entitled to review PHA documents relevant to eviction. 24 CFR 966.4(m). 	<ul style="list-style-type: none"> Lease automatically renews and good cause is required to terminate lease. Good cause means serious or repeated violation of the material terms of the lease, being over income for the program, or other good cause. 24 CFR 966.4(a)(2); 24 CFR 966.4(l)(2). Tenant is entitled to rent abatement where defects hazardous to life, health, or safety cannot be repaired in a reasonable time, and PHA does not provide alternative accommodations. 24 CFR 966.4(h)(4).

			<ul style="list-style-type: none"> If eviction based on criminal record, entitled to copy of record. 24 CFR 966.4(l)(5)(iv). 	
Housing Choice Voucher Program (“HCVP” or “Tenant-Based Section 8”)	-Tenant rents from private landlord and can move their voucher around -Tenant recertifies annually at PHA and has a worker at PHA	Timing: <ul style="list-style-type: none"> State law minimum notice. 24 CFR 982.310(e)(2)(i). Contents: <ul style="list-style-type: none"> “The owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before commencement of the eviction action.” 24 CFR 982.310(e)(1)(i). 	No pre-eviction process unless lease specifies one.	<ul style="list-style-type: none"> During the term of the lease, owner can terminate for serious violation or repeated violation of the terms and condition of the lease, violation of landlord-tenant law, or other good cause (must be something family did or failed to do). 24 CFR 982.310(a). At lease expiration, other good cause can include business or economic reason, owner’s desire to use unit for personal use, etc. 24 CFR 982.310(d). Tenant cannot be evicted for PHA’s nonpayment of its portion of rent. 24 CFR 982.310(b) (see also Section 8 Tenancy Addendum https://www.hud.gov/sites/dfiles/OCHC O/documents/52641A.pdf).
Project-Based Voucher Program (“PBV”)	-Tenant rents from private landlord, often multifamily property, but cannot move their voucher around (after first year can switch to HCV program) -Tenant recertifies annually at PHA and has a worker at PHA (note: if this is a dual subsidy unit they may also recertify on the property)	Same requirements as HCVP program above.	No pre-eviction process unless lease specifies one.	<ul style="list-style-type: none"> Same as HCVP program above EXCEPT “good cause” does not include business or economic reason, or owner’s desire to use unit for personal or family use. In other words, landlord cannot evict at end of lease term for these reasons (basically good cause protection). 24 CFR 983.257(a). PBV Tenancy Addendum applies https://www.hud.gov/sites/documents/52530c.pdf
Low-Income Housing Tax	-Tenant recertifies their income every year on site	No special notice requirements	No pre-eviction process unless there is a second subsidy like public housing that requires one.	<ul style="list-style-type: none"> Good cause is required to terminate tenancy (including nonrenewal) until 3 years following expiration of extended

Credit ("LIHTC")	-Tenant pays below-market rent, but rent does not adjust based on income unless they have a secondary subsidy -Lease may have "LIHTC" addendum -May be combined with another subsidy -Will show up in NHPD and HUD LIHTC database -Should be a recorded deed restriction			use period, typically 30 years. 26 USC 42(h)(6)(E)(ii)(I). <ul style="list-style-type: none"> • A tenant can be evicted from a LIHTC unit if the unit is occupied exclusively by a full time student except if the student is receiving TANF, the student was previously in foster care, the student is enrolled in a job training program, the student is a single parent with dependent children, or the students are married and file a joint tax return. 26 USC 42(i)(3)(D). HOWEVER in a dual subsidy unit the least restrictive rules apply (ex. PH, PBV, or HCV). See https://www.hud.gov/sites/documents/OCCUPPROTECTIONSHUDASSTHSG.PDF • Tenant's income can go up to 140% of applicable income limit (usually 50 or 60% AMI) without affecting subsidy. Rising above 140% is not good cause for eviction, rather the property must lease the next available comparable unit to a qualifying low-income renter. 26 CFR 1.42-15(b)-(c). • Properties should be using LHC LIHTC Tenancy Addendum which specifies good cause protection.
Permanent Supportive Housing (Continuum of Care)	-This is a tenant-based subsidy, meaning tenant can move with subsidy. -Client may say she is with START Corporation or another social services agency -If client is on PSH and rents from a mom-and-pop landlord (as opposed to a multifamily	-No special notice requirements if no special lease addendum signed.	Regs are ambiguous, but likely no pre-eviction process required (vs. pre-termination from program). "In terminating assistance to a participant, the recipient or subrecipient must provide a formal process that recognizes the rights of individuals receiving assistance to due process of law." 24 CFR 578.91(b)	Most likely no good cause or other special requirements for eviction (vs. program termination). "The recipient or subrecipient may terminate assistance to a participant who violates program requirements or conditions of occupancy." 24 CFR 578.91(a)

	provider) it is likely a CoC subsidy.		<p>BUT recipient means “an applicant that signs a grant agreement with HUD” and subrecipient means a “private nonprofit organization, State, local government, or instrumentality of State or local government that receives a subgrant from the recipient to carry out a project.” 24 CFR 578.3</p>	<p>“Recipients and subrecipients that are providing permanent supportive housing for hard-to-house populations of homeless persons must exercise judgment and examine all extenuating circumstances in determining when violations are serious enough to warrant termination” 24 CFR 578.91(C)</p> <p>BUT recipient means “an applicant that signs a grant agreement with HUD” and subrecipient means a “private nonprofit organization, State, local government, or instrumentality of . . . government that receives a subgrant from the recipient to carry out a project.” 24 C.F.R. § 578.3</p> <p>If in PSH client has disability and may require reasonable accommodation: “The appellant's mere participation in the Louisiana Permanent Supportive Housing Program is confirmation that the [landlord] was, and always has been, aware of the appellee's disabling condition.” <u>Renewal Homes v. Laneheart</u>, 2017-0199 (La. App. 4 Cir. 10/18/17); 316 So. 3d 936, 942</p>
Permanent Supportive Housing (Shelter + Care) **	<p>-This is a tenant-based subsidy, meaning tenant can move with subsidy.</p> <p>-Usually this is a subsidy through the city or parish government.</p> <p>-If client has worker, worker should know the subsidy type.</p>	-No special notice requirements.	<p>Regs are ambiguous, but likely no pre-eviction process required (vs. pre-termination from program).</p> <p>“In terminating assistance to a participant, the recipient must provide a formal process that recognizes the rights of individuals receiving assistance to due process of law.” 24 CFR 582.320(b)</p> <p>BUT “Recipient means an applicant approved to receive a S+C grant.” 24 CFR 582.5</p>	<p>Most likely no good cause or other special requirements for eviction (vs. program termination).</p> <p>“Participants must enter into an occupancy agreement for a term of at least one month. The occupancy agreement must be automatically renewable upon expiration, except on prior notice by either party.” 24 CFR 582.315(a)</p>

				<p>“The recipient may terminate assistance to a participant who violates program requirements or conditions of occupancy.” 24 CFR 582.320(a)</p> <p>BUT “Recipient means an applicant approved to receive a S+C grant.” 24 CFR 582.5</p> <p>If in PSH client has disability and may require reasonable accommodation: “The appellant's mere participation in the Louisiana Permanent Supportive Housing Program is confirmation that the [landlord] was, and always has been, aware of the appellee's disabling condition.” <u>Renewal Homes v. Laneheart</u>, 2017-0199 (La. App. 4 Cir. 10/18/17); 316 So. 3d 936, 942</p>
Permanent Supportive Housing (State PBV)	<p>-This is a project-based subsidy, meaning if tenant needs to move they need to apply to another project-based voucher unit through the state.</p> <p>-If client has worker, worker will know if the subsidy is through the state.</p> <p>-If client lives at LIHTC property it is likely state PBV.</p>	<p>-See PBV section above.</p>	<p>-See PBV section above.</p>	<p>-See PBV section above.</p> <p>If in PSH client has disability and may require reasonable accommodation: “The appellant's mere participation in the Louisiana Permanent Supportive Housing Program is confirmation that the [landlord] was, and always has been, aware of the appellee's disabling condition.” <u>Renewal Homes v. Laneheart</u>, 2017-0199 (La. App. 4 Cir. 10/18/17); 316 So. 3d 936, 942</p>

Section 8 Project-Based Rental Assistance (PBRA)	<p>-Client lives in “low income” housing, rent adjusts based on 30% income, and client recertifies ON SITE not at PHA.</p> <p>-May use HUD form lease.</p> <p>-Includes senior “Section 202” housing.</p> <p>-Should show up on National Housing Preservation Database and HUD S8 database.</p>	<p>All programs <u>except</u> S8 New Construction, S8 Substantial Rehabilitation, S8 State Housing Agency Program, S8 HAP State Agency program (rare in our area); and S8 New Construction Set-Aside for Section 515 Rural Housing projects (rare in our area). 24 CFR Parts 880, 881, 883, 884.:</p> <p>Timing:</p> <ul style="list-style-type: none"> • 30 days for nonpayment of rent. 24 CFR 247.4(c) • State law minimum notice for material noncompliance with rental agreement, material failure to carry out obligations under state law. 24 CFR 247.4(c). • At least 30 days’ notice for “other good cause” 24 CFR 247.4(c). <p>Service:</p> <ul style="list-style-type: none"> • Notice must be served by first class mail AND domiciliary service or tacking. 24 CFR 247.4(b). <p>Contents:</p> <ul style="list-style-type: none"> • Must (1) State that the tenancy is terminated on a date specified therein; (2) state the reasons for the landlord’s action with enough specificity so as to enable the tenant to prepare a defense; (3) advise the tenant that if he or she remains in the leased unit on the date specified for termination, the landlord may seek to enforce the termination only by bringing a judicial action, at which time the tenant may present a defense 24 C.F.R. § 247(a). • For nonpayment cases notice must specify the dollar amount of balance and date of such computation. 	<p>No pre-eviction required process UNLESS lease specifies one (HUD form lease specifies a meeting with management).</p> <p>HUD Handbook 4350.3 (if applicable) requires notice of opportunity for meeting with management before termination.</p>	<ul style="list-style-type: none"> • Tenant has entitlement to continued occupancy and can only be terminated for the following reasons: <p>(1) Material noncompliance with the rental agreement,</p> <p>(2) Material failure to carry out obligations under any state landlord and tenant act,</p> <p>(3) Criminal activity by a covered person in accordance with sections 5.858 and 5.859, or alcohol abuse by a covered person in accordance with section 5.860. If necessary, criminal records can be obtained for lease enforcement purposes under section 5.903(d)(3).</p> <p>(4) Other good cause.</p> <p>24 C.F.R. § 247.3(a).</p> <ul style="list-style-type: none"> • Cannot evict for “other good cause” unless landlord has given tenant prior notice that conduct will be a basis of termination. 24 CFR 247.3(b). • Applicable criminal activity under part (3) includes: <ul style="list-style-type: none"> ○ Drug-related criminal activity on or near premises; ○ Pattern of illegal drug use by household member that interferes with health, safety, peaceful enjoyment of other residents; ○ Pattern of alcohol use by household member that interferes with health, safety, peaceful enjoyment of other residents;
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Section 8 Project-Based Rental Assistance (PBRA) Cont'd...		Section 8 New Construction (Part 880) and Substantial Rehabilitation (Part 881) <ul style="list-style-type: none"> Substantially the same requirements as part 247 above, outlined in 24 CFR 880.607. Section 880 management rules apply to Substantial Rehabilitation- see 24 CFR 881.601. For nonpayment cases under disaster rule, must include information about rental assistance. 24 CFR 880.607(c)(6). 	No pre-eviction required process UNLESS lease specifies one (HUD form lease specifies a meeting with management).	<ul style="list-style-type: none"> Substantially the same requirements as part 247 above, outlined in 24 CFR 880.607(b).
HOME Investments Partnership Program (HOME)	-May show up on NHPD database. -Should be recorded deed restriction.	-30 days' notice is required for all evictions and nonrenewals of tenancy. 24 CFR 92.253(c).	No pre-eviction process required unless lease specifies one.	<ul style="list-style-type: none"> May not terminate or refuse to renew "except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional housing or failure to follow any required transitional housing supportive services plan; or for other good cause. Good cause does not include an increase in the tenant's income or refusal of the tenant to purchase the housing." 24 CFR 92.253(c).

Dept. of Agriculture - Section 515 Rural Development	-Should show up on NHPD database. -Tenant unit may be subsidized (at 30% income), or unsubsidized (flat below-market rent).	No special notice requirements.	No pre-eviction process required unless lease specifies one.	<ul style="list-style-type: none">• Cure notice and opportunity to cure required before eviction. 7 CFR 3560.159.• Tenancy can only be terminated for good cause:<ul style="list-style-type: none">○ Material noncompliance with lease or occupancy rules○ Good cause such as actions that threaten health, safety, or enjoyment of others, actions that cause substantial physical damage causing adverse financial effect on property, actions prohibited by state and local laws.7 CFR 3560.159.• At lease expiration tenant can only be terminated for one of the reasons above or because tenant is no longer eligible for occupancy. 7 CFR 3560.159(b).
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* VAWA protections apply to all of these federal subsidy programs. 24 CFR 5.2005.

** The Shelter Plus Care program and the Supportive Housing Program were consolidated with other “legacy” homeless services programs under the Continuum of Care (“CoC”) program through the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009. 42 U.S.C. 11381, *et seq.* While individual program regulations still apply, HUD also issued interim regulations for Continuum of Care recipients and subrecipients in 2012. 24 CFR 578.