



## Technical Assistance Resource: Subleases and Occupancy Agreements

[Section A](#) provides relevant text from the [CoC Program Interim Rule](#). [Section B](#) provides resources located on the HUD Exchange, including a link to a HUD sample lease and sublease agreement.

### A) CoC Program Interim Rule

There are 2 sections of the [CoC Program Interim Rule](#) that provide guidance relative to subleases and occupancy agreements –578.49 covering eligible leasing costs and 578.77 covering calculation of occupancy charges and rent. The definitions section outlines additional lease requirements by program model type.

§ 578.49 Leasing.

(a) Use.

(1) Where the recipient or subrecipient is leasing the structure, or portions thereof, grant funds may be used to pay for 100 percent of the costs of leasing a structure or structures, or portions thereof, to provide housing or supportive services to homeless persons for up to 3 years. Leasing funds may not be used to lease units or structures owned by the recipient, subrecipient, their parent organization(s), any other related organization(s), or organizations that are members of a partnership, where the partnership owns the structure, unless HUD authorized an exception for good cause.

(2) Any request for an exception must include the following:

(i) A description of how leasing these structures is in the best interest of the program;

(ii) Supporting documentation showing that the leasing charges paid with grant funds are reasonable for the market; and

(iii) A copy of the written policy for resolving disputes between the landlord and tenant, including a recusal for officers, agents, and staff who work for both the landlord and tenant.

(b) Requirements.

(1) Leasing structures. When grants are used to pay rent for all or part of a structure or structures, the rent paid must be reasonable in relation to rents being charged in the area for comparable space. In addition, the rent paid may not exceed rents currently being charged by the same owner for comparable unassisted space.

(2) Leasing individual units. When grants are used to pay rent for individual housing units, the rent paid must be reasonable in relation to rents being charged for comparable units, taking into account the location, size, type, quality, amenities, facilities, and management services. In



addition, the rents may not exceed rents currently being charged for comparable units, and the rent paid may not exceed HUD-determined fair market rents.

(3) Utilities. If electricity, gas, and water are included in the rent, these utilities may be paid from leasing funds. If utilities are not provided by the landlord, these utility costs are an operating cost, except for supportive service facilities. If the structure is being used as a supportive service facility, then these utility costs are a supportive service cost.

(4) Security deposits and first and last month's rent. Recipients and subrecipients may use grant funds to pay security deposits, in an amount not to exceed 2 months of actual rent. An advance payment of the last month's rent may be provided to the landlord in addition to the security deposit and payment of the first month's rent.

(5) Occupancy agreements and subleases. Occupancy agreements and subleases are required as specified in § 578.77(a).

(6) Calculation of occupancy charges and rent. Occupancy charges and rent from program participants must be calculated as provided in § 578.77.

(7) Program income. Occupancy charges and rent collected from program participants are program income and may be used as provided under § 578.97.

(8) Transition. Beginning in the first year awards are made under the Continuum of Care program, renewals of grants for leasing funds entered into under the authority of title IV, subtitle D of the Act as it existed before May 20, 2009, will be renewed either as grants for leasing or as rental assistance, depending on the characteristics of the project. Leasing funds will be renewed as rental assistance if the funds are used to pay rent on units where the lease is between the program participant and the landowner or sublessor. Projects requesting leasing funds will be renewed as leasing if the funds were used to lease a unit or structure and the lease is between the recipient or subrecipient and the landowner.

#### § 578.77 Calculating occupancy charges and rent.

(a) Occupancy agreements and leases. Recipients and subrecipients must have signed occupancy agreements or leases (or subleases) with program participants residing in housing.

(b) Calculation of occupancy charges. Recipients and subrecipients are not required to impose occupancy charges on program participants as a condition of residing in the housing. However, if occupancy charges are imposed, they may not exceed the highest of:

- (1) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child-care expenses);
- (2) 10 percent of the family's monthly income; or



(3) If the family is receiving payments for welfare assistance from a public agency and a part of the payments (adjusted in accordance with the family's actual housing costs) is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated for housing costs.

(4) Income. Income must be calculated in accordance with 24 CFR 5.609 and 24 CFR 5.611(a). Recipients and subrecipients must examine a program participant's income initially, and if there is a change in family composition (e.g., birth of a child) or a decrease in the resident's income during the year, the resident may request an interim reexamination, and the occupancy charge will be adjusted accordingly.

(c) Resident rent.

(1) Amount of rent.

(i) Each program participant on whose behalf rental assistance payments are made must pay a contribution toward rent in accordance with section 3(a)(1) 95 of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(a)(1)).

(ii) Income of program participants must be calculated in accordance with 24 CFR 5.609 and 24 CFR 5.611(a). (2) Review. Recipients or subrecipients must examine a program participant's income initially, and at least annually thereafter, to determine the amount of the contribution toward rent payable by the program participant. Adjustments to a program participant's contribution toward the rental payment must be made as changes in income are identified.

(3) Verification. As a condition of participation in the program, each program participant must agree to supply the information or documentation necessary to verify the program participant's income. Program participants must provide the recipient or subrecipient with information at any time regarding changes in income or other circumstances that may result in changes to a program participant's contribution toward the rental payment.

§ 578.3 Definitions.

**Permanent housing** means community-based housing without a designated length of stay, and includes both permanent supportive housing and rapid rehousing. To be permanent housing, the program participant must be the tenant on a lease for a term of at least one year, which is renewable for terms that are a minimum of one month long, and is terminable only for cause.

**Transitional housing** means housing, where all program participants have signed a lease or occupancy agreement, the purpose of which is to facilitate the movement of homeless individuals and families into permanent housing within 24 months or such longer period as HUD determines necessary. The program participant must have a lease or occupancy agreement for a term of at least one month that ends in 24 months and cannot be extended.

## B) HUD Exchange Resources

The HUD Exchange has a resource entitled [CoC Program Leasing and Rental assistance Projects: Examples of Lease Agreements](#). Within this resource is a link to a sample [Lease and Sublease Agreement](#). **Please note that the sample provided is an example of an agreement that would meet the CoC Program leasing requirements and is not intended to be used without revision.**

Another resource available on HUD Exchange is a slideshow entitled [Leasing and Rental Assistance: Focus on Leasing](#). The slides contain the following graphic illustrating the relationship between unit/structure owners, recipients/subrecipients, and program participants.

