

HUD MODEL LEASES QUESTIONS AND ANSWERS

Question 1: When must owners/agents (O/As) start using the model leases that contain the HUD form number, OMB approval number, OMB expiration date and reporting burden paragraphs?

Answer 1: The model leases with the HUD form number, OMB approval number, OMB expiration date and reporting burden paragraphs were posted to HUDCLIPS on May 15, 2008. On May 19, 2008, a RHIP Listserv message was sent out with the implementation instructions. O/As are to begin using the model leases for new admissions immediately and for current tenants with annual recertifications with an effective date of January 1, 2009.

Question 2: Can O/As begin using the model leases for recertifications with an effective date prior to January 1, 2009?

Answer 2: Yes. There is nothing to prohibit an O/A from using the model leases for current tenants whose recertification date is effective prior to January 1, 2009.

Question 3: How are we to start using the leases for new admissions when our software hasn't been updated?

Answer 3: The lease can be downloaded from HUDCLIPS for use for new admissions.

Question 4: If the tenant has initially fulfilled the 1-year lease requirement, must he/she fulfill this requirement again or does the month-to-month lease term apply?

Answer 4: If the tenant has fulfilled the 1-year lease requirement, the month-to-month lease term will apply.

Question 5: Most Section 8 programs require a minimum lease term of one year. We have always computed this as starting on a date and ending the day before, one year later. A lease starting on January 1st would end on December 31st. However, the lease instructions in Appendices 4 E and G state that the term would end on the "same day one year later". I do not believe that to be correct and there are PBCAs using that guidance to cite non-compliance on MORs. Is there a clarification on this?

Answer 5: The guidance in Appendices 4 E and G that the lease would end on the same day one year later has been reviewed and concurred on by the Office of General Counsel (OGC) As provided in the guidance, if the locality where the project is located allows the landlord to cover the entire month, the ending date may be extended to the last day of the month, e.g., the tenant moved in January 15, 2007, the lease term would end on January 31, 2008.

Question 6: The second paragraph of the Public reporting burden is not included on the HUD Model Lease for the Section 202/8 program; form HUD-90105-b. Should the paragraph be included?

Answer 6: Yes, the paragraph should be included. This paragraph was inadvertently left off of the HUD Model Lease for the Section 202/8 and Section 202/162 PAC programs form HUD-90105-b. The lease will be corrected and re-posted to HUDCLIPS.

Question 7: If an O/A has the lease translated to a different language used for reference purposes, should the alternative language lease include any reference to the OMB number, OMB expiration date and public reporting burden information or is the OMB information on the executed, English version of the lease sufficient?

Answer 7: The OMB information would only be included if the leases were translated and issued by HUD. Translated leases that are not issued by HUD must not include the OMB information. The executed English version would be the only lease required to have the OMB information.

Question 8: Can the lease be modified to change the word “Tenant” to the word “Resident”?

Answer 8: No. The language in the lease cannot be modified. Any modifications to the lease must be in the form of a lease addendum.

Question 9: All of the leases have blanks that are to be completed by the O/A. Can these blanks be completed within the leases themselves or must the information be placed on a lease addendum?

Answer 9: Wherever there is a blank within the lease that needs to be completed by the O/A, the O/A may complete the blank fields within the leases themselves in accordance with Appendices E and F of Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*.

Question 10: When an O/A modifies the lease using an approved lease addendum, should the OMB information be included on the addendum?

Answer 10: No, the OMB approval number, OMB expiration date and the public reporting burden information should not be on the addendum.

Question 11: Since the leases now have an expiration date, does that mean the leases cannot be used in perpetuity?

Answer 11: Yes. O/As will be required to issue new leases after the OMB date expires and a new OMB expiration date is approved.

Question 12: Must the public reporting burden language be included at the end of the lease or can it be removed?

Answer 12: The public reporting burden must be included at the end of the lease.

Question 13: Can we make copies of the posted leases with the OMB information? We were told we could not.

Answer 13: Yes, the forms can be copied. However, the language in the leases must not be modified or changed.

Question 14: Can the O/A convert the leases posted on HUDCLIPS from the pdf format to word format?

Answer 14: Yes, the owner can convert the leases to a word format.

Question 15: The leases posted on HUDCLIPS are not form fillable. Will the leases be made available in a fillable format?

Answer 15: We are working on getting the leases posted as a pdf fillable file.

Question 16: When the leases are downloaded as pdf files, the fields that need to be completed by the O/A have alphabetical characters in them. How are we supposed to use these documents?

Answer 16: As stated in Question 3 above, the forms will soon be posted in a fillable format and these alphabetical references to the instructions for completing the leases in Appendices 4-F and G will no longer be a problem. Until such time, the O/A has the option to white-out the alphabetical references.

Question 17: I am personally going to have a hard time enforcing the use of the leases and other forms based on a RHIIP Tips message and not a Housing Notice or Handbook change.

Answer 17: The Listserv is not just for providing RHIIP tips; it is a way of communicating quickly with interested stakeholders and can also include RHIIP related news items as well as information not related to the RHIIP initiative that will be of interest to our industry partners. In this case the RHIIP Listserv was used to announce the fact that HUD form numbers, OMB approval and/or OMB expiration dates had been assigned to the identified forms from Handbook 4350.3 REV-1. It is not necessary to issue a Housing Notice or Handbook change for something like this, especially where there are no substantive changes to the forms.

Question 18: Will the form fillable leases allow for additional attachments to be added in paragraph 27 of the HUD Model Lease for Subsidized Programs, in paragraph 29 of the Section 202/8 and Section 202/162 model lease and paragraph 25 of the Section 202

PRAC and Section 811 PRAC leases? For example, the O/A of an elderly project who uses the HUD Model Lease for Subsidized Programs needs to be able to include Pet Rules as an attachment in paragraph 27.

Answer 18: Yes, the form fillable leases will allow for additional attachments to be referenced as long as the attachments do not conflict with HUD regulations and requirements.

Question 19: Until the leases are available in a fillable format can the O/A just write the HUD form number, OMB approval number and OMB expiration date on the leases currently provided by their computer software?

Answer 19: No. This is not acceptable as the leases must also contain the public reporting burden paragraphs located at the end of the leases.

Question 20: Will the leases be available in word format so that they can be uploaded into our computer software?

Answer 20: The leases are now available in word format and posted on HUDCLIPS at www.hudclips.org.

Question 21: When downloading the model leases from HUDCLIPS, the formatting is slightly off in some of the leases. Can O/As correct the formatting?

Answer 21: Yes, O/As may correct any formatting needing correction/adjustment.

Question 22: Can the handbook and appendix references in the header of the lease documents be removed?

Answer 22: Yes, the handbook and appendix references in the header of the lease documents can be removed. We have requested that this information be removed from the leases posted on HUDCLIPS.

Question 23: Can the Fair Housing logo be included in the footer to the lease?

Answer 23: Yes, the Fair Housing logo can be included in the footer to the lease.

Question 24: Can the size of the font be increased or decreased or the font style changed?

Answer 24: Yes, the size of the font can be increased or decreased or the font style changed. However, the font should not be decreased to the point where it is difficult to read.

Question 25: Adding information as provided in the instructions for completion of the lease can cause the lease to be longer and the pages to be re-paginated. For example,

changing paragraph 8 of the HUD Model Lease for Subsidized Programs to incorporate a security deposit schedule or when there are a large number of household members whose names must be added. Is this acceptable?

Answer 25: Yes.

Question 26: Can the O/A transfer the model lease to his/her letterhead in order to provide company name, address, telephone numbers, etc. to ensure that legal requirements are met?

Answer 26: No, O/As should not transfer the model lease to his/her letterhead. If more information is needed relative to the location of the company, telephone numbers, etc. this can be achieved by putting a cover page on the lease.

Question 27: When the leases were initially posted there was a cover sheet. Does this cover sheet need to be a part of the lease?

Answer 27: No. The cover sheet has been removed.

Question 28: The Section 202/8, Section 202 PRAC and Section 811 PRAC leases do not have a field for the unit number? Can a unit number field be added?

Answer 28: No. As stated in the instructions for completing the leases (Appendices 4-F and 4-G) the field in paragraph 1 with the alphabetical letter “D” states: Enter the dwelling unit number and name of the project. Paragraph 1 of the leases would read: “The LANDLORD leases to the TENANT, and the TENANT leases from the LANDLORD dwelling unit in the project known as Unit 205, U.S.A. Apartments.....”

Question 29: If an O/A who has an elderly property requiring the use of the HUD Model Lease for Subsidized Programs has incorporated into the lease the pet language from the Section 202/8 lease can this language be incorporated into the lease with the OMB approval number, etc. on it?

Answer 29: The language will have to be incorporated into the lease by use of a lease addendum. As long as the language was incorporated into the lease previously and is the identical language that is in the Section 202/8 lease, the addendum will not have to be approved by the HUD Field Office.

Question 30: If an O/A has modified the lease to be in compliance with state law and the modifications have been approved by the HUD office or CA, can the O/A incorporate the approved modifications into the lease with the OMB information?

Answer 30: Any modifications to the lease must now be incorporated with the use of a lease addendum. If the O/A has already had the lease modifications approved by the HUD office or CA, he/she will not have to have the modifications approved again when moved to the lease addendum as long as there is no change in the previously approved

modification language. Any new modifications or modification language changes must be approved by the HUD office or CA.

Question 31: What do we do with properties using leases provided by the contract administrator (CA)? Some states have significantly different lease requirements and CAs have developed leases that O/As are required to use. Will the CAs instruct the O/As to use the HUD model leases and the CA will then provide an approved lease addendum?

Answer 31: O/A should be using the HUD model leases and not leases developed by CAs. HUD model leases that have been modified to include state requirements will now have to have the state requirements incorporated by use of a lease addendum. Whether or not the CA will provide the approved lease addendum or whether it will be up to the O/A to develop, we cannot answer. Normally it is the O/A's responsibility to ensure that the lease is in compliance with state laws.

However, for projects financed by a State Agency and under the jurisdiction of a Traditional Contract Administrator (TCA), the O/A will continue to use the lease provided by the State Agency as addressed in paragraph 6-5 A.2 of Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*.

Question 32: The HUD model leases for Section 202/8 and Section 202 PAC (paragraph 16) and Section 202 PRAC and Section 811 PRAC (paragraph 14) contain some optional language the O/A can elect to include in the lease. If the O/A elects not to use this language, can this optional paragraph be removed from the lease they use?

Answer 32: If the O/A elects not to use the optional language, the optional language can be removed from the lease. If the O/A elects to use the optional language, the word "Optional" can and should be removed at the beginning of the paragraph.

Question 33: How should the lease term be completed when the tenant has fulfilled the initial one year term and is now on a month-to-month lease?

Answer 33:

HUD Model Lease for Subsidized Programs, Form HUD-90105-a, paragraph 1 should be completed by inserting the beginning and ending day of the month the lease is issued to the tenant. The "initial" term in this case is for one month. The successive term would be for a "month". For example, if the lease is issued on July 1, 2008, paragraph 1 would read as follows:

1. The initial term of this Agreement shall begin on July 1, 2008 and end on August 1, 2008. After the initial term ends, the Agreement will continue for successive terms of one month each unless automatically terminated as permitted by paragraph 23 of this Agreement.

HUD Model Leases for Section 202/8 or Section 202 PACs, Section 202 PRACs and Section 811 PRACs, HUD Forms 90105-b, c and d, respectively, will require a lease

addendum modifying paragraph 1 of the leases indicating the month-to-month lease term. If the addendum only includes modification to paragraph 1 of the lease, the addendum does not have to be approved by the HUD Field Office or Contract Administrator. See Question 30 for additional information on modifications to the lease that were previously approved by the HUD office or CA.