



**Massachusetts Department of Housing and Community Development
Division of Housing Stabilization**

To: DHS Field Staff
From: Ita Mullarkey, Acting Associate Director *IM*
Date: December 7, 2012
RE: Housing Stabilization Notice 2012-09A, Guidance on Meaning of Fault in Fires, Floods,
Natural Disasters, and “No-Fault” Evictions

Introduction

This Housing Stabilization Notice (HSN) is intended to provide guidance in the field to Department of Housing and Community Development (DHCD) Division of Housing Stabilization (DHS) Homeless Coordinators regarding the meaning of a “no fault” eviction for purposes of Emergency Assistance (EA) temporary emergency shelter eligibility.

In the Fiscal Year 2013 budget, the Legislature restricted EA eligibility to families who became homeless for one of four reasons. One of the four EA-qualifying statutory categories is “no fault” fire, flood, or natural disaster. Another of the four statutory categories is what the statute terms a “no fault” eviction. Because these two categories both involve the analysis of fault, they are addressed together in this HSN. The relevant budget language states:

[P]rovided further, that families that shall be eligible for assistance throughout a temporary emergency family shelter shall include: . . . (ii) families that, through no fault of their own, are homeless due to fire, flood, or natural disaster;¹ (iii) families that, through no fault of their own, have been subject to eviction from their most recent housing due to: (a) foreclosure;² (b) condemnation;³ (c) conduct by a guest or former household member who is not part of the household seeking emergency shelter and over whose conduct the remaining household members had no control;⁴ or (d) nonpayment of rent caused by a documented medical condition⁵ or diagnosed disability⁶ or caused by a documented loss of income⁷

¹ See 760 C.M.R. § 67.06 (1) (a) 2..

² See 760 C.M.R. § 67.06 (1) (a) 3. a.

³ See 760 C.M.R. § 67.06 (1) (a) 3. b..

⁴ See 760 C.M.R. § 67.06 (1) (a) 3. c., (f) (3).

⁵ See 760 C.M.R. § 67.06 (1) (a) 3. d. (i), (f) 4. a..

⁶ See 760 C.M.R. § 67.06 (1) (a) 3. d. (ii), (f) 4. b..

⁷ See 760 C.M.R. § 67.06 (1) (a) 3. d. (iii), (f) 5..

within the last 12 months directly as a result of a change in household composition or a loss of income source through no fault of the family[.]⁸

As defined by the Legislature, the “no fault” evictions are restricted to certain specified subcategories. Moreover, although the Legislature uses the term “no fault” eviction to describe this category of eligibility, in fact, many of the evictions mentioned are more in the nature of excused fault evictions than traditional “no fault” evictions, and several categories of “no fault” evictions are not included.⁹ This HSN provides guidance on interpreting and applying the statutory requirements. This HSN supersedes and renders obsolete HSN 2012-09.

Summary

A “no fault” eviction due to foreclosure or condemnation occurs when an EA applicant who is (or was) a tenant is being evicted (or was evicted) because of (1) foreclosure on the property where the tenant has been renting, (2) condemnation by eminent domain taking of the property where the tenant is renting, or (3) condemnation of the property where the tenant is renting for safety violations (State Building Code, State Sanitary Code, or local land use requirements) not caused by the tenant.

An EA applicant who is or was a property owner may also be evicted for a “no fault” reason in cases of (4) condemnation by eminent domain taking of the property, (5) condemnation of the property where the property owner is residing for safety violations (State Building Code, State Sanitary Code, or local land use requirements) not caused by the property owner, as in a damage to the property caused by severe weather or a disgruntled tenant, or (6) foreclosure where a property owner has been living who lost the property through nonpayment of the mortgage due to an excused fault. Although the Legislature does not specifically mention the traditional “no fault” eviction reasons of expiration of a lease without a renewal offer or termination of a month-to-month tenancy (tenancy at will) for no stated reason, it appears that the failure to mention such “no fault” evictions was an unintended oversight that the Legislature meant to include by using the term “families that, through no fault of their own, have been subject to eviction from their most recent housing.” Under this guidance, such families made

⁸ Fiscal Year 2013 Budget, line item 7004-0101. *See* 760 C.M.R. § 67.06 (1) (a) 2. & 3.

⁹ Therefore, as used in this HSN, “no fault” eviction will only be used in regard to evictions caused by no fault of the EA applicant or his or her household members or guests, such as evictions of tenants due to foreclosure on the property owner. Those types of fault-based evictions that the Legislature has determined should be excused because of the specific circumstances leading to the eviction will be called “excused fault evictions.”

homeless through such traditional “no fault” evictions will be considered homeless due to a form of “no fault” eviction deemed eligible for EA by the Legislature.

An EA applicant who was evicted for an excused fault reason for conduct of a household member or guest not a part of the applicant household must not have been able to exercise control over the individual whose conduct caused the eviction. Control can be exercised through the power to exclude an individual from the premises,¹⁰ so it is the obligation of the tenant to make sure that every household member and guest of the household abides by the law and the terms of the lease. DHS recognizes limited exceptions to the power to control household members and guests, as discussed in greater detail below, when (a) the tenant is a victim of domestic violence, (b) the conduct of a household member or guest is caused by mental illness, or (c) the conduct is caused by a minor household member or guest currently or previously subject to a CHINS plan with which the parent is in compliance.¹¹ Families of secondary tenants who leave a residence where they have been residing as household members after service of a notice to quit on the primary tenant shall be treated as evicted applicants pursuant to this HSN.

Eviction for nonpayment of rent is excused in two cases: (a) nonpayment caused by medical condition or diagnosed disability and (b) significant reduction in household income.

Discussion

Basis

The Fiscal Year 2013 Budget restricted eligibility for EA to families who become homeless for a limited number of reasons. Two of the permissible categories of homeless families eligible to receive EA are “families that . . . are homeless due to fire, flood, or natural disaster” and “families that, through no fault of their own, have been subject to eviction from their most recent housing”¹²

Flood, Fire, and Natural Disaster

An applicant is not at fault when he or she loses his or her home through flood, fire, or natural disaster unless (a) the damage was caused directly by the applicant or a household member or guest of the applicant (for example by negligently or intentionally starting a fire by improper disposal of cigarettes); or (b) the loss of the home was caused by a flood, fire, or natural disaster outside the control of the applicant, but would not have occurred except for the

¹⁰ 760 C.M.R. § 67.06 (A) (6) (c) (i).

¹¹ 760 C.M.R. § 67.06 (1) (f) 3. c.

¹² Fiscal Year 2013 Budget, line item 7004-0101.

negligent maintenance of the home by the applicant or a household member or guest of the applicant (for example, a fire caused by faulty electrical wiring inside the walls that went undetected because the applicant had removed fire and smoke alarms). Verification of the occurrence of a flood, fire, or natural disaster shall be as detailed in 760 C.M.R. § 67.06 (1) (e) 1.. See HSN 2012-08, *Guidance on Basic Verifications for Intake, Lenient Application in Case of Flood, Fire, or Natural Disaster*. If the documentation for verification of the occurrence of the flood, fire, or natural disaster is not sufficient to demonstrate that the applicant's lack of fault for the flood, fire, or natural disaster, additional third-party verifications must be obtained within the presumptive eligibility period to demonstrate that the loss of the home was not at the fault of the applicant.

Evictions When the Tenant Leaves without a Decision by the Court

Eviction is a process that begins with the service of a notice to quit and ends with the tenant leaving the property, either voluntarily or by forcible action by the constable or sheriff (called levying on the execution). As discussed in HSN 2012-05, any time a tenant leaves a rented unit after the service of a notice to quit, the tenant is considered to have been evicted if the reason for eviction stated in the notice to quit, summary process summons and complaint, or motion for issuance of execution is a disqualifying reason under 760 C.M.R. § 67.06 (2). Tenants who leave voluntarily at any time during the eviction process, unless they agree to leave by a date certain in a court-authorized agreement for judgment, will also be considered to have become homeless because they abandoned the unit, even if the reason stated in the notice to quit, summary process summons and complaint, or motion for issuance of execution is a "no fault" or "excused fault" reason that would otherwise qualify the family for EA pursuant to 760 C.M.R. § 67.06 (1) (a) 3.

As discussed in greater detail in HSN 2012-05, the reasons for eviction stated in the notice to quit, the summary process summons and complaint, and any post-agreement for judgment or motion for issuance of execution constitute evidence of the reason for the eviction and raise a presumption that these are the actual reasons for the eviction. When the court issues a written decision after a trial or a hearing on a motion for issuance of execution, the grounds for eviction stated in that decision are considered binding on the tenant. Otherwise, however, a current or former tenant applying for EA can rebut the evidence provided by the notice to quit,

summons and complaint, and/or motion for issuance of execution by providing substantial evidence to the contrary.

Eligible Forms of “No Fault” Eviction

The legislation is very clear that only certain types of “no fault” eviction qualify a family for EA. The classic “no fault” evictions occur when a landlord refuses to renew a lease or a month-to-month tenancy and tells the tenant to leave at the end of the relevant term. This type of “no fault” eviction, although not explicitly mentioned in the 2013 budget legislation, entitles a family to EA, if otherwise eligible, as discussed in greater detail below.¹³

Foreclosure for Tenants

A tenant who is evicted because the tenant’s landlord was foreclosed on will generally not be “at fault” if the tenant is subsequently evicted by the new owner after the foreclosure. It does not matter if the reason for the eviction is that the new landlord wishes to clear out the property for renovations or for occupancy by new tenants. The tenant will be considered “not at fault” even if the tenant indirectly caused the foreclosure by failing to pay rent to the landlord, which in turn caused the landlord to default on the mortgage, unless the landlord already had a nonpayment of rent action pending against the tenant. Because of the Federal Protecting Tenants in Foreclosure Act of 2009 (which is currently set to expire on December 31, 2014) and Massachusetts tenant-in-foreclosure protections (G.L. c. 186, §13A, c. 186A), many tenants in foreclosed properties should be able to stay in their units and eventually re-lease with the new property owner. EA applicants who report that they are tenants in a unit that has been foreclosed on should be screened to determine whether they might be able to remain in the unit pursuant to applicable state and federal statutory protections.

A family reporting that it is being evicted and that the unit it has been renting has been foreclosed on *is not necessarily being evicted because of the foreclosure*. Even when a property is foreclosed on, the tenant continues to have to pay rent (or use and occupancy) and abide by appropriate occupancy standards. The Homeless Coordinator will need to review the eviction documentation (notice to quit and summons and complaint) to determine the reason for the eviction. For example, if a tenant knows that the property is subject to foreclosure and doesn’t know whom to pay the rent to for a period, and spends the money instead of escrowing it, the tenant could be evicted for nonpayment of rent by the lender or the new owner. If there is any

¹³ Fiscal Year 2013 Budget, line item 7004-0101. See 760 C.M.R. § 67.06 (1) (a) 3. e..

reason for eviction other than as a direct result of the foreclosure itself, the eviction is not a qualifying “no fault” eviction for foreclosure. For more information on how to review the notice to quit and summons and complaint, please review Housing Stabilization Notice (HSN) 2012-05, Guidance on Eligibility Issues Relating to Housing before Homelessness.

Also, please note that in many evictions after foreclosure, the parties will enter into an agreement for judgment requiring the tenant to abide by certain terms, often to move out by a certain date and to pay rent and abide by the lease in the meanwhile. An eviction pursuant to a motion for issuance of execution for violation of the agreement for judgment is an eviction for cause and not a “no fault” eviction, even if the original summary process summons and complaint state only the foreclosure as grounds for the eviction. *See* HSN 2012-05.

Foreclosure on the Property Owner

Foreclosure will generally be due to the property owner’s failure to make mortgage payments, or possibly to abide by other conditions of the mortgage agreement. Therefore, when a property owner is evicted as part of a foreclosure process, he or she will generally not be considered eligible for EA on the basis of a “no fault” foreclosure eviction. In cases where the property owner can prove that his or her eviction from the foreclosed property is based on failure to make mortgage payments caused by reasons considered excused reasons for nonpayment of rent, as discussed below, the property owner will be considered eligible for EA on the basis of an excused fault eviction. In such cases, the calculation of rent burden will be based on the required monthly mortgage payments, including escrowed taxes and insurance, but not including any utility allowance.

Condemnation, Eminent Domain

There are two different types of condemnation that might result in eviction. The more common type is condemnation for safety violations, which is discussed below. The less common type is condemnation for eminent domain. That is when the government takes private property for public purposes for just compensation, such as for a road project. Condemnation for eminent domain will always be without fault for both tenants and property owners. Often, the condemnation will result in a lump sum payment to the property owner that will put the property owner over the asset maximum for EA eligibility. However, if the property is “underwater” (the amount owed on the mortgage is more than the current property value) or otherwise heavily

encumbered, the condemnation may not provide the property owner with a significant lump sum payout.

Condemnation, Safety Violations

A unit can also be condemned for safety violations of the State Building Code, the State Sanitary Code, or local land-use requirements. When a property is condemned for safety violations, typically the residents are required to vacate immediately under emergency provisions, rather than through the standard summary process eviction procedure. Either way, the process is considered an eviction for purposes of EA eligibility. The cause of the safety violations will not typically be clear from the government documentation regarding the condemnation. Therefore, in any condemnation for safety violations, the Homeless Coordinator will need to review the facts and circumstances to determine whether the applicant is “at fault.”

If the unsafe conditions in the unit were caused by destruction of property by the tenant or an individual under the tenant’s control (a household member or guest), then the condemnation will be due to the fault of the tenant.¹⁴ In the case of a property owner, the property owner is responsible for general maintenance of the property, including the common areas. If the reason for the condemnation is deterioration of the property due to age and ordinary wear and tear over time, the owner will be “at fault” for the condemnation. On the other hand, if the unsafe condition of the property is caused: (1) by destruction of property by a tenant or tenant’s family member or guest outside the control of the landlord, or (2) by a sudden event outside of the owner’s control, such as a fire or storm (although in these cases, the basis of eligibility will typically be “fire, flood, or natural disaster”) or a car accidentally crashing into a house, then the owner will not be at fault for the condemnation. Often, even when there is significant property damage or deferred-maintenance-based reduction of value leading to the condemnation, the property will still retain significant value that will put the property owner over the asset maximum for EA eligibility. However, if the property is “underwater” (the amount owed on the mortgage is more than the current property value) or otherwise heavily encumbered, the condemnation may not provide the property owner with a significant lump sum payout.

No Fault Eviction at the Expiration of a Lease or after Termination of a Month-to-Month Tenancy for No Stated Reason

¹⁴ In this case, if the destruction of property is caused by a former household member or guest over whom the tenant did not have control, as detailed below in regard to eviction for conduct of a household member or guest, *see* 760 C.M.R. § 67.06 (1) (f) 3., DHS will treat the condemnation as equivalent to a “no fault” condemnation.

Families evicted after the expiration of a lease with no offer of a lease renewal or upon termination of a month-to-month tenancy for no stated reason will generally be considered EA eligible as evicted through no fault of their own. 760 C.M.R. § 67.06 (1) (a) 3. e. The reasons for eviction of such families should be evaluated pursuant to HSN 2012-05, *Guidance on Eligibility Issues Relating to Housing before Homelessness*. Even though the notice to quit and the summary process summons and complaint may indicate that the eviction is without fault, review of the facts and circumstances and contact with the property owner or manager may demonstrate that the actual reason underlying the eviction was a reason that would render the family ineligible for EA. In addition, a family that fails to pay use and occupancy equivalent to at least the rent due under the lease or tenancy agreement after the termination of the tenancy and until the physical removal of the family, shall not be considered evicted for “no fault” under this provision. Such families will be considered under the standards applicable to families evicted for nonpayment of rent.

Excused Fault Evictions, Conduct by a Household Member or Guest

Ordinarily, a tenant has the ability to control the tenant’s household members and guests by holding them to certain standards of behavior (including compliance with the lease and applicable law), under pain of being excluded from the property.¹⁵ A tenant can exclude a household member by removing him or her from the household composition recognized by the landlord. A tenant can exclude a guest (of the tenant him- or herself or of another household member) by prohibiting that person from visiting in the unit or on the common areas of the building and surrounding property.

An applicant tenant cannot be evicted based on the conduct of an individual who is not a household member unless that individual is an invited guest of the household. Often, a notice to quit and summons and complaint will allege that eviction is warranted due to conduct of a household guest. The allegations of the notice to quit and summons and complaint constitute evidence that the individual was a household guest and raise a rebuttable presumption that the individual was a household guest. Nevertheless, unless the court finds that the individual was in fact a guest, the tenant may rebut the presumption upon presentation of substantial evidence that the individual was not a guest at the time of the conduct underlying the eviction. If the applicant contends that an individual who was once a guest of a member of the household was not a guest

¹⁵ See 760 C.M.R. § 67.06 (1) (f) 3.

at the time of the incident underlying the eviction, the applicant may provide evidence that the individual was not a guest at the relevant time by showing police reports indicating that the individual was asked to leave the premises by a member of the household, no trespass orders obtained by the household pursuant to G.L. c. 266, § 120, or domestic abuse or harassment prevention restraining orders pursuant to G.L. c. 209A or 258E. The process for rebutting the presumption is described in greater detail in HSN 2012-05.

An eviction based on the conduct of a former household member or guest is excused only in the following limited circumstances when, despite the legal right of the tenant to exclude that individual from the unit and common areas, the tenant could not truly control that individual's behavior. The following situations constitute the limited exceptions when conduct of a former household member or guest will be excused:

- When the tenant is the victim of domestic violence and the abusive conduct of the perpetrator is the reason for the eviction, which may be verified by the means of verification for homelessness due to domestic violence qualifying for EA benefits;¹⁶
- When the individual whose conduct caused the eviction was mentally ill and all reasonable efforts had been taken to insure that the individual would be able to comply with the law and the terms of the lease by reasonable accommodations through medication and treatment, verified by the same documentation sufficient to excuse nonpayment of rent due to diagnosed disability, described below;¹⁷
- When the individual whose conduct caused the eviction was a minor in the custody of the tenant but subject currently or previously to an order pursuant to the Children in Need of Services (CHINS) laws, G.L. c. 119, §§ 21, 39E-J, and the tenant has complied with all the requirements and recommendations of any CHINS plan and the minor has been authorized by the Department of Children & Families to continue residing with the tenant pursuant to a finding that the minor, after program participation, will obey the lawful and reasonable commands of his or her parents or guardians.¹⁸

¹⁶ See 760 C.M.R. § 67.06 (1) (f) 3. c. (i).

¹⁷ See 760 C.M.R. § 67.06 (1) (f) 3. c. (ii).

¹⁸ See 760 C.M.R. § 67.06 (1) (f) 3. c. (iii).

When a family becomes eligible for EA on the basis of an excused fault eviction based on the conduct of a household member or guest, that individual may not later be added to the family composition as an additional minor household member or as a proposed additional adult household member (PAAHM) pursuant to HSN 2010-01.

Excused Fault Evictions, Nonpayment of Rent, Medical Condition or Disability

- *Medical Condition, extraordinary expenses.* Budget line item 7004-0101 excuses nonpayment evictions based on a documented medical condition or diagnosed disability. For nonpayment of rent to be excused by a documented medical condition, that medical condition must have incurred significant expenses to the household, directly causing the inability to pay rent. 760 C.M.R. § 67.06 (1) (f) 4. a. A medical condition that indirectly caused a nonpayment eviction by causing a job loss that in turn led to an eviction is treated under the loss of income category.
 - * To qualify for this exception, the applicant must have written verification of a medical condition on the part of a household member that has been diagnosed by a health care professional and that led to extraordinary medical expenses that are causally related to the inability to pay the rent that led to the eviction. Verification of the medical condition shall be in accordance with 760 C.M.R. § 67.06 (1) (e) 6., (f) 4. a.
 - * To qualify for this exception, the applicant must provide written verification of extraordinary medical expenses in the form of receipts for payment of such expenses.
 - * A health care professional must verify in writing that these medical expenses were necessary for the maintenance of household member's health and were not covered by health insurance, including Medicaid. 760 C.M.R. § 67.06 (1) (e) 6.
 - * To constitute an extraordinary expense, the expense must be substantial—more than ten percent (10%) of family's annual income before the expense was incurred. 760 C.M.R. § 67.06 (1) (e) 6. b.
 - * The extraordinary medical expenses must result in an undue imputed rent burden over fifty percent (50%) of the household income. For these

purposes, the imputed rent burden will include: (a) rent, (b) utilities (based on regional average utility expenditures used for Section 8/Housing Choice rent determinations), and (c) the qualified extraordinary medical expenses, divided by twelve (12) to provide an average imputed monthly maintenance expense. *See* 760 C.M.R. § 67.06 (1) (e) 6. b.

- *Disability.* For nonpayment of rent to be excused by a diagnosed disability, that disability must have directly caused the inability of the head of household to pay rent. A medical condition that indirectly caused a nonpayment eviction by causing a job loss that in turn led to an eviction is treated under the loss of income category. The Department of Transitional Assistance (DTA) Emergency Aid to the Elderly, Disabled, and Children program (EAEDC) addresses disability that affects the recipient's ability to support him- or herself. The EAEDC definition of *disability* is an appropriate basis for determining the meaning of *disability* as a reason to excuse nonpayment of rent because ability to support oneself is closely correlated with the ability of a tenant to pay rent. *See* 760 C.M.R. § 67.06 (1) (f) 4. b.; 106 C.M.R. 320.200 (A).

- * To fall within this exception, the applicant must have written verification of a medical condition diagnosed by a health care professional as a disability that is causally related to the inability to pay the rent that led to the eviction. Verification of the medical condition shall be in accordance with 760 C.M.R. § 67.06 (1) (e) 6.

- * To qualify as a diagnosed disability under this provision, the condition must meet the definition of "disability" contained in 760 C.M.R. § 67.06 (1) (f) 4. b., provided, however, a history of alcohol or substance use shall not constitute a qualifying disability. *See* G.L. c. 121B, § 1, *handicapped person of low income*; 106 C.M.R., § 320.200 (A).

- * The health care professional must attest in writing to his or her professional opinion, based upon knowledge of all the relevant facts, that (1) the diagnosed disability led to the inability to pay rent, (2) the entire rent arrearage at the time of eviction was unpaid because of the applicable disability, and (3) either (a) the money that would otherwise have gone

towards rent payments was spent otherwise on other expenses compelled by the disability, so that it was not available to cure the arrearage and prevent the eviction, *see* G.L. c. 186, §§ 11–12, c. 239, § 9, or (b) the applicant's disability was such that he or she was unable because of the disability to take the actions necessary to cure the arrearage timely and unable to obtain a stay of execution due to the disability pursuant to G.L. c. 239, § 9, or, such stay having been granted, the applicant can demonstrate that the stay has terminated due to expiration of time and without the fault of the applicant. *See* 760 C.M.R. § 67.06 (1) (e) 6. 3.

Excused Fault Evictions, Nonpayment of Rent, Loss of Income

- Budget line item 7004-0101 excuses eviction for nonpayment of rent when the nonpayment is due to loss of income. 760 C.M.R. § 67.06 (1) (a) 3. d., (f) 5.
 - * This form of excused fault only applies in market rate housing and in forms of subsidized housing when the tenant's portion of the rent is not adjustable based on the income of the family.
 - * The reduction in income may be caused (a) when a family member who provided financial support through benefits or earned income leaves the family, or (b) when the benefits or earned income of a family member is reduced through no fault of the family member. The burden is on the applicant to demonstrate that the loss of income was without fault on the part of the family member whose income was reduced. The loss of income must have occurred within the twelve (12) month period immediately before the date of application. 760 C.M.R. § 67.06 (1) (a) 3. d.
 - * Written verifications of family income before and after the reduction in income and the reasons for reduction of income are required and, in case of removal of a family member, this must be proved by acknowledgment from the landlord (a) that the individual in question was an authorized household member within the past twelve (12) months, (b) the date that the individual was removed from the household composition, and (c) that the individual is no longer an authorized member of the household allowed to reside in the unit.

- * The monthly reduction in income must be substantial—more than ten percent (10%) of family’s monthly income before the reduction. When considering a loss of income, any compensating increase in the family’s total income that occurred before the eviction should also be considered if the increase in income occurred within sixty (60) days after the loss of income. For example, if the applicant was laid off, the homeless coordinator should compare the family’s income with the original job to the family’s income with unemployment benefits, or with a new job, even if there is a gap of up to sixty (60) days. *See* 760 C.M.R. § 67.06 (1) (f) 5.
- * A loss of income from employment is at the fault of the employee if the applicant or a member of the household, without good cause, as determined by 760 C.M.R. §§ 67.02 (3), 701.380: (i) reduced his or her earnings from employment, (ii) voluntarily terminated his or her employment, (iii) was terminated by his or her employer for cause. The homeless coordinator may consider the receipt of unemployment benefits without objection by former to be evidence that a termination was not for cause. The homeless coordinator shall consider a final decision of the Department of Unemployment Assistance to be evidence of whether a termination was for cause. *See* 760 C.M.R. § 67.06 (1) (f) 5. c.
- * The reduction in income must result in an undue rent burden—cost of rent and utilities (based on regional average utility expenditures used for Section 8/Housing Choice rent determinations) over fifty percent (50%) of the household income. *See* 760 C.M.R. § 67.06 (1) (f) 5. b.

When a family becomes eligible for EA on the basis of an excused fault eviction for nonpayment of rent due to loss of income from departure of a household member, that individual may not later be added to the family composition as an additional minor household member or as a proposed additional adult household member (PAAHM) pursuant to HSN 2010-01.

Verifications and Disqualifications Still Apply

Eligibility for EA temporary emergency shelter on the basis a no fault or excused fault eviction is one of several alternative qualifications for eligibility. A family must still be otherwise EA eligible. Just because an applicant family may meet the requirements for

homelessness due to no fault or excused fault eviction does not negate the disqualifying factors involved in review of an EA application. An EA applicant family must still meet the other eligibility requirements of 760 C.M.R. § 67.02 and 760 C.M.R. § 67.06 (1), including the lack of feasible alternative housing. In addition, as with all other EA applications, none of the disqualifying factors listed in 760 C.M.R. § 67.02 (2), (3), (6), (8), or (11) or in 760 C.M.R. § 67.06 (2) may apply.

Verifications for evictions that are required by 760 C.M.R. § 67.06 (1) (e) 2. and HSN 2012-05, Guidance on Eligibility Issues Relating to Housing before Homelessness, should be reviewed, in conjunction with the guidance of this HSN, in determining whether an eviction is a qualifying eviction that is (i) not at the fault of a family or (ii) based on an excused fault.

Conclusion

Loss of housing due to flood, fire, or natural disaster will not be a qualifying reason for homelessness if the loss was the applicant's fault, either by causing a fire directly or by negligent maintenance that magnified the effect of the disaster and rendered the home uninhabitable.

If a tenant is evicted due to foreclosure, it will generally be considered a "no fault" eviction, but eviction of a property owner due to foreclosure will generally be a "for fault" eviction. A condemnation as a part of an eminent domain taking will be a qualifying eviction not at the fault of a tenant or a property owner. A condemnation for safety violations will require a factual inquiry to determine the reason for the condemnation before a Homeless Coordinator can determine whether the applicant is qualified as not "at fault" or disqualified as "at fault" for the condemnation. Evictions after the expiration of a lease or when a month-to-month tenancy is terminated for no stated reason will also generally be considered qualifying "no fault" evictions.

An eviction due to the conduct of a current or former tenant applicant him- or herself will always be a disqualifying "at fault" eviction rendering the applicant ineligible. An eviction due to conduct of a household member or guest is a qualified "excused fault" eviction, if the applicant can demonstrate lack of control over a household member or guest by demonstrating that the household member or guest's conduct was attributable to domestic violence, a treated disability, or to a minor child when the parent is in compliance with a CHINS plan. An eviction based on nonpayment of rent may be a qualified excused fault eviction only when it is caused by extraordinary medical expenses, a disabling condition, or a significant reduction of household income.