

## Chapter 12

### TERMINATION OF ASSISTANCE AND TENANCY

HUD regulations specify the reasons for which a IHA can terminate a family's assistance, and the ways in which such terminations must take place. They also dictate the circumstances under which an owner may terminate the tenancy of an assisted family. This chapter presents the policies that govern voluntary and involuntary terminations of assistance, and termination of tenancy by the owner. It is presented in three parts:

Part I: Grounds for Termination of Assistance. This part discusses various reasons that a family's assistance may be terminated, including voluntary termination by the family, termination because the family no longer qualifies to receive subsidy, and termination by the IHA based on the family's behavior.

Part II: Approach to Termination of Assistance. This part describes the policies that govern how an involuntary termination takes place. It specifies the alternatives that the IHA may consider in lieu of termination, the criteria the IHA must use when deciding what action to take, and the steps the IHA must take when terminating a family's assistance.

Part III: Termination of Tenancy by the Owner. This part presents the policies that govern the owner's right to terminate an assisted tenancy.

#### PART I: GROUNDS FOR TERMINATION OF ASSISTANCE

##### 12-I.A. OVERVIEW

HUD requires the IHA to terminate assistance for certain offenses and when the family no longer requires assistance. HUD permits the IHA to terminate assistance for certain other actions family members take or fail to take. In addition, a family may decide to stop receiving HCV assistance at any time by notifying the IHA.

##### 12-I.B. FAMILY NO LONGER REQUIRES ASSISTANCE [24 CFR 982.455]

As a family's income increases, the amount of IHA subsidy goes down. If the amount of HCV assistance provided by the IHA drops to zero and remains at zero for 180 consecutive calendar days, the family's assistance terminates automatically.

##### IHA Policy

If a participating family receiving zero assistance experiences a change in circumstances that would cause the HAP payment to rise above zero, the family must notify the IHA of the changed circumstances and request an interim reexamination before the expiration of the 180-day period.

---

## 12-I.C. FAMILY CHOOSES TO TERMINATE ASSISTANCE

The family may request that the IHA terminate the family's assistance at any time.

### IHA Policy

The request to terminate assistance should be made in writing and signed by the head of household, spouse, or cohead. Before terminating the family's assistance, the IHA will follow the notice requirements in Section 12-II.E.

## 12-I.D. MANDATORY TERMINATION OF ASSISTANCE

HUD requires the IHA to terminate assistance in the following circumstances.

### **Eviction [24 CFR 982.552(b)(2)]**

The IHA must terminate assistance whenever a family is evicted from a unit assisted under the HCV program for a serious or repeated violation of the lease.

### IHA Policy

A family will be considered *evicted* if the family moves after a legal eviction order has been issued, whether or not physical enforcement of the order was necessary.

If a family moves after the owner has given the family an eviction notice for serious or repeated lease violations but before a legal eviction order has been issued, termination of assistance is not mandatory. However, the IHA will determine whether the family has committed serious or repeated violations of the lease based on available evidence and may terminate assistance or take any of the alternative measures described in Section 12-II.C.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criterion to be used is whether the reason for the eviction was through no fault of the tenant or guests.

### **Failure to Provide Consent [24 CFR 982.552(b)(3)]**

The IHA must terminate assistance if any family member fails to sign and submit any consent form they are required to sign for a reexamination. See Chapter 7 for a discussion of consent requirements.

### **Failure to Document Citizenship [24 CFR 982.552(b)(4) and [24 CFR 5.514(c)]**

The IHA must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family; or (3) a family member, as determined by the IHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit.

---

For (3) above, such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated. See Chapter 7 for a complete discussion of documentation requirements.

**Failure to Provide Social Security Documentation [24 CFR 5.218(c)]**

The IHA must terminate assistance if a participant family fails to provide the documentation or certification required for any family member who obtains a social security number.

**Methamphetamine Manufacture or Production [24 CFR 982.553(b)(1)(ii)]**

The IHA must terminate assistance if any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.

**Lifetime Sex Offender [24CFR 5.856 and 5.905] and PIH Notice 2012-28**

In accordance with the regulations at 24 CFR 5.856 and 5.905, IHA must perform necessary criminal history background checks to determine if an applicant, or a member of an applicant's household, is subject to a lifetime registration requirement under a State sex offender registration program. This check must be carried out with respect to the State in which the housing is located and with respect to States where the applicant and members of the applicant's household are known to have resided.

IHA will make the determination, in accordance with their screening standards, whether the applicant and the applicant's household members meet the screening criteria. If these processes reveal that an applicant is a lifetime registered sex offender, or if the applicant withholds or falsifies information on the application, the IHA must deny admission to the program. Before admission can be denied, the applicant must be notified of the right to dispute the accuracy and relevance of the background check information.

IHA shall further deny any participants assistance if they or any member is subject to the lifetime sex offender restriction from assistance.

HUD recommends that at annual recertification or reexamination, the IHA ask whether the tenant or any member of the tenant's household is subject to a State lifetime sex offender registration program in any state. The IHA will verify this information using the Dru Sjodin National Sex Offender Database and/or other official federal, state, and local resources and document this information in the same manner as at admission.

If the recertification screening reveals that the tenant has falsified information or otherwise failed to disclose criminal history on his/her application and/or recertification forms, the IHA will pursue eviction or termination of assistance.

Notwithstanding the above, if the tenant or a member of the tenant's household, regardless of the date of admission, engages in criminal activity (including sex offenses) while living in HUD-assisted housing, the IHA should pursue eviction or termination of assistance to the extent allowed by HUD requirements, the lease, and state or local law.

---

## 12-I.E. MANDATORY POLICIES AND OTHER AUTHORIZED TERMINATIONS

### Mandatory Policies [24 CFR 982.553(b) and 982.551(D)]

HUD requires the IHA to establish policies that permit the IHA to terminate assistance if the IHA determines that:

- Any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member has violated the family's obligation not to engage in any drug-related criminal activity
- Any household member has violated the family's obligation not to engage in violent criminal activity
  - For the purpose of determining a violation, IHA will not consider a family to be engaged in violent criminal activity if the family member is a victim in accordance with the Violence Against Women Act (VAWA). However, nothing should be considered to limit the termination of the person who engages in the criminal act or any other program obligations.

### *Use of Illegal Drugs and Alcohol Abuse*

#### IHA Policy

The IHA will terminate a family's assistance if any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

The IHA will terminate assistance if any household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

*Currently engaged in* is defined as any use of illegal drugs during the previous three-year period.

The IHA will consider all credible evidence, including but not limited to, any record of arrests, convictions, or eviction of household members related to the use of illegal drugs or abuse of alcohol.

In making its decision to terminate assistance, the IHA will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, the IHA may, on a case-by-case basis, choose not to terminate assistance.

### *Drug-Related and Violent Criminal Activity [24 CFR 5.100]*

*Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

---

*Drug-related criminal activity* is defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.

*Violent criminal activity* means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

#### IHA Policy

The IHA will terminate a family's assistance if any household member has violated the family's obligation not to engage in any drug-related or violent criminal activity during participation in the HCV program.

The IHA will consider all credible evidence, including but not limited to, any record of arrests and/or convictions of household members related to drug-related or violent criminal activity, and any eviction or notice to evict based on drug-related or violent criminal activity.

In making its decision to terminate assistance, the IHA will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, the IHA may, on a case-by-case basis, choose not to terminate assistance.

#### **Other Authorized Reasons for Termination of Assistance [24 CFR 982.552(c)]**

HUD permits the IHA to terminate assistance under a number of other circumstances. It is left to the discretion of the IHA whether such circumstances in general warrant consideration for the termination of assistance.

#### IHA Policy

The IHA **will not** terminate a family's assistance because of the family's failure to meet its obligations under the Family Self-Sufficiency or Welfare to Work voucher programs.

The IHA **will** terminate a family's assistance if:

The family has failed to comply with any family obligations under the program. See Exhibit 12-1 for a listing of family obligations and related IHA policies.

Any family member has been evicted from federally-assisted housing in the last five years.

Any IHA has ever terminated assistance under the program for any member of the family.

Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.

The family currently owes rent or other amounts to any PHA in connection with the HCV, Certificate, Moderate Rehabilitation, public housing or federally assisted programs.

---

The family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.

The family has breached the terms of a repayment agreement entered into with the IHA or other PHA.

A family member has engaged in or threatened violent or abusive behavior toward IHA personnel.

*Abusive or violent behavior towards IHA personnel* includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

*Threatening* refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to terminate assistance, the IHA will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, the IHA may, on a case-by-case basis, choose not to terminate assistance.

#### ***Family Absence from the Unit [24 CFR 982.312]***

The family may be absent from the unit for brief periods. The IHA must establish a policy on how long the family may be absent from the assisted unit. However, the family may not be absent from the unit for a period of more than 30 consecutive or 90 calendar days for any reason. Absence in this context means that no member of the family is residing in the unit.

#### **IHA Policy**

If the family is absent from the unit for more than 30 consecutive calendar days, the family's assistance will be terminated. Notice of termination will be sent in accordance with Section 12-II.E.

#### ***Insufficient Funding [24 CFR 982.454]***

The IHA may terminate HAP contracts if the IHA determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program.

#### **IHA Policy**

The IHA will determine whether there is sufficient funding to pay for currently assisted families according to the policies in Part VIII of Chapter 16. If the IHA determines there is a shortage of funding, prior to terminating any HAP contracts, the IHA will determine if any other actions can be taken to reduce program costs. If after implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants, the IHA will terminate HAP contracts as a last resort.

---

Prior to terminating any HAP contracts, the IHA will inform the local HUD field office. The IHA will terminate the minimum number needed in order to reduce HAP costs to a level within the IHA's annual budget authority.

If the IHA must terminate HAP contracts due to insufficient funding, the IHA will do so in accordance with the following criteria and instructions:

**IHA will terminate assistance to the most recent non-disabled or non-elderly family that has become a participant in the program, until such time as the IHA has sufficient funds to assist. The IHA shall terminate elderly/disabled, homeownership, and FSS assisted families last in the process. The family will not be required to reapply for the program when sufficient funds are available, but will be provided the opportunity to be assisted. The reinstatement of assistance for families shall be provided in the reverse order of the IHA's list of termination of assistance for the lack of sufficient funds**

## Other Terminations

### IHA Policy

The IHA will deny program assistance for an applicant, or terminate program assistance for a participant, for any of the following reasons:

- The family violates any family obligation under the program as listed in 24 CFR 982.551.
- Any member of the family has ever been evicted from public housing. If any IHA has ever terminated assistance under the program for any member of the family.
- If any member of the family commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program.
- The family currently owes rent or other amounts to the IHA, to another PHA, or any federal assisted program.
- The family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.
- The family breaches an agreement with a PHA to pay amounts owed to a PHA, or amounts paid to an owner by a PHA. The IHA at its discretion may offer the family the opportunity to enter into a repayment agreement. The IHA will prescribe the terms of the agreement. (See "Repayment Agreements" chapter.)
- The family has engaged in or threatened abusive or violent behavior toward IHA personnel.

- 
- "Abusive or violent behavior towards IHA personnel" includes verbal as well as physical abuse or violence. Use of expletives that are generally considered insulting, racial epithets, or other language, written or oral, that is customarily used to insult or intimidate, may be cause for termination or denial.
  - Actual physical abuse or violence will always be cause for termination.
  - If any member of the family commits drug-related criminal activity, or violent criminal activity. (See One-strike policy below and 982.553 of the regulations)

### **One-Strike**

#### **Purpose**

All federally assisted housing is intended to provide a place to live and raise families, not a place to commit crime, to use or sell drugs or terrorize neighbors. It is the intention of Housing Authority of the City of Independence, Missouri to fully endorse and implement a policy designed to:

- Help create and maintain a safe and drug-free community
- Keep our program participants free from threats to their personal and family safety
- Support parental efforts to instill values of personal responsibility and hard work
- Help maintain an environment where children can live safely, learn and grow up to be productive citizens
- Assist families in their vocational/educational goals in the pursuit of self-sufficiency

#### **Administration**

All screening and termination of assistance procedures shall be administered fairly and in such a way as not to violate rights to privacy or discriminate on the basis of race, color, nationality, religion, familial status, disability, or other legally protected groups.

To the maximum extent possible, the IHA will involve other community and governmental entities in the promotion and enforcement of this policy.

This policy will be posted on the IHA=s bulletin board and copies made readily available to applicants and tenant upon request.

#### **Screening of Applicants**

---

In an effort to prevent future drug related and other criminal activity, as well as other patterns of behavior that pose a threat to the health, safety or right to peaceful enjoyment of the premises by other residents, and as required by the Notice 96-27, the IHA will endeavor to screen applicants as thoroughly and fairly as possible.

Such screening will apply to any member of the household who is 18 years of age or older.

### **HUD Definitions**

*Drug-related criminal activity* is the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute or use a controlled substance. Drug-related criminal activity means *on or near the premises*.

*Violent criminal activity* includes any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against a person or property, and the activity is being engaged in by any family member.

### **Standard for Violation**

The IHA will deny participation in the program to applicants and terminate assistance to participants in cases where the IHA determines there is reasonable cause to believe that the person is illegally using a controlled substance or if the person abuses alcohol in a way that may interfere with the health, safety or right to peaceful enjoyment of the premises by other residents, including cases where the IHA determines that there is a pattern of illegal use of a controlled substance or pattern of alcohol abuse.

The IHA will consider the use of a controlled substance or alcohol to be a pattern if there is more than one incident during the previous six (6) months.

Engaged in or engaging in violent criminal activity means any act within the past three (3) years by applicants or participants, household members, or guests which involved criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person of another, which did or did not result in the arrest and/or conviction of the applicant or participant, household members, or guests.

Any family member is engaging in the activity.

The existence of the above-referenced behavior by any household member or guest, regardless of the applicant or participant's knowledge of the behavior, shall be grounds for denial or termination of assistance.

In evaluating evidence of negative past behavior, the IHA will give fair consideration to the seriousness of the activity with respect to how it would affect other residents, and/or likelihood of favorable conduct in the future which could be supported by evidence of rehabilitation.

### **Drug Related and Violent Criminal Activity**

---

Ineligibility if Evicted for Drug-Related Activity: Persons evicted from public housing, Indian Housing, Section 23 or any federally assisted program because of drug-related criminal activity are ineligible for admission to the Section 8 program for a three-year period beginning on the date of such eviction.

If the family violates the lease for drug-related or violent criminal activity, the IHA will terminate assistance.

The IHA will waive the requirement regarding drug-related criminal activity if:

- The person demonstrates successful completion of a credible rehabilitation program approved by the IHA, or
- The circumstances leading to the eviction no longer exist.

### **Termination of Assistance for Participants**

If the family violates the lease for drug-related or violent criminal activity, the IHA will terminate assistance.

In appropriate cases, the IHA may permit the family to continue receiving assistance provided that family members determined to have engaged in the proscribed activities will not reside in the unit. If the violating member is a minor, the IHA may consider individual circumstances with the advice of Juvenile Court officials.

### Notice of Termination of Assistance

In any case where the IHA decides to terminate assistance to the family, the IHA must give the family written notice which states:

- The reason(s) for the proposed termination,
- The effective date of the proposed termination,
- The family's right, if they disagree, to request an Informal Hearing to be held before termination of assistance.
- The date by which a request for an informal hearing must be received by the IHA.

The IHA will simultaneously provide written notice of the contract termination to the owner so that it will coincide with the Termination of Assistance. The Notice to the owner will not include any details regarding the reason for termination of assistance.

### **Required Evidence**

*Preponderance of evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole show

---

that the fact sought to be proved is more probable than not. The intent is not to prove criminal liability, but to establish that the act(s) occurred. Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

*Credible evidence* may be obtained from police and/or court records. Testimony from neighbors, when combined with other factual evidence can be considered credible evidence. Other credible evidence includes documentation of drug raids or arrest warrants.

The IHA will pursue fact-finding efforts as needed to obtain credible evidence.

### **Confidentiality of Criminal Records**

The IHA will ensure that any criminal record received is maintained confidentially, not misused or improperly disseminated, and destroyed once the purpose for which it was requested is accomplished. Misuse of the above information by any employee will be grounds for termination of employment. If the family is determined eligible for initial or continued assistance, the criminal report shall be shredded as soon as the information is no longer needed for eligibility or continued assistance determination. If the family's assistance is denied or terminated, the criminal record information shall be shredded immediately upon completion of the review or hearing procedures and a final decision has been made. The IHA will document in the family's file the circumstances of the criminal report and the date the report was destroyed.

## **PART II: APPROACH TO TERMINATION OF ASSISTANCE**

### **12-II.A. OVERVIEW**

The IHA is required by regulation to terminate a family's assistance if certain program rules are violated. For other types of offenses, the regulations give the IHA the discretion to either terminate the family's assistance or to take another action. This part discusses the various actions the IHA may choose to take when it has discretion, and outlines the criteria the IHA will use to make its decision about whether or not to terminate assistance. It also specifies the requirements for the notice that must be provided before terminating assistance.

### **12-II.B. METHOD OF TERMINATION [24 CFR 982.552(a)(3)]**

The way in which the IHA terminates assistance depends upon individual circumstances. HUD permits the IHA to terminate assistance by:

- Terminating housing assistance payments under a current HAP contract,
- Refusing to approve a request for tenancy or to enter into a new HAP contract, or
- Refusing to process a request for or to provide assistance under portability procedures.

### **12-II.C. ALTERNATIVES TO TERMINATION OF ASSISTANCE**

#### **Change in Household Composition**

---

As a condition of continued assistance, the IHA may require that any household member who participated in or was responsible for an offense and no longer resides in the unit [24 CFR 982.552(c)(2)(ii)].

IHA Policy

As a condition of continued assistance, the head of household must certify that the culpable family member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former family member's current address upon IHA request.

**Repayment of Family Debts**

IHA Policy

If a family owes amounts to the IHA or another PHA, as a condition of continued assistance, the IHA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the PHA of the amount owed. See Chapter 16 for policies on repayment agreements.

**12-II.D. CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE**

**Evidence**

For criminal activity, HUD permits the IHA to terminate assistance if a *preponderance of the evidence* indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted [24 CFR 982.553(c)].

IHA Policy

The IHA will use the concept of the preponderance of the evidence as the standard for making all termination decisions.

*Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole show that the fact sought to be proved is more probable than not.

Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence

**Consideration of Circumstances [24 CFR 982.552(c)(2)(i)]**

The IHA is permitted, but not required, to consider all relevant circumstances when determining whether a family's assistance should be terminated.

IHA Policy

The IHA will consider the following factors when making its decision to terminate assistance:

The seriousness of the case, especially with respect to how it would affect other residents

The effects that termination of assistance may have on other members of the family who were not involved in the action or failure

---

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities

The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future

In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully

The IHA will require the participant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.

In the case of program abuse, the dollar amount of the overpaid assistance and whether or not a false certification was signed by the family.

### **Reasonable Accommodation [24 CFR 982.552(c)(2)(iv)]**

If the family includes a person with disabilities, the IHA's decision to terminate the family's assistance is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

#### IHA Policy

If a family indicates the behavior of a family member with a disability is the reason for a proposed termination of assistance, the IHA will determine whether the behavior is related to the disability. If so, upon the family's request, the IHA will determine whether alternative measures are appropriate as a reasonable accommodation. The IHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed termination of assistance. See Chapter 2 for a discussion of reasonable accommodation.

### **12-II.E. TERMINATION NOTICE [HCV GB, p. 15-7]**

If a family's assistance is to be terminated, whether voluntarily or involuntarily, the IHA must give the family and the owner written notice that specifies:

- The reasons for which assistance has been terminated
- The effective date of the termination
- The family's right to an informal hearing as described in Chapter 16

A copy of the criminal record also must be provided to the subject of the record upon request and the family has the right to review the document. [24 CFR 982.553(d)].

#### IHA Policy

When termination is initiated by the IHA, the notice to terminate will be sent to the family and the owner at least 30 calendar days prior to the effective date of the termination. However, if a family vacates the unit without informing the IHA, 30 days'

---

notice will not be given. In these cases, the notice to terminate will be sent at the time the IHA learns the family has vacated the unit.

When a family requests to be terminated from the program they must do so in writing to the IHA (see section 12-I.C.). The IHA will then send a confirmation notice to the family and the owner within 10 business days of the family's request.

#### **Notice of Termination Based on Citizenship Status [24 CFR 5.514 (c) and (d)]**

The IHA must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or eligible immigration status; (2) evidence of citizenship and eligible immigration status is submitted timely, but USCIS primary and secondary verification does not verify eligible immigration status of a family; or (3) the IHA determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3) above, such termination must be for a period of at least 24 months.

The notice of termination must advise the family of the reasons their assistance is being terminated, that they may be eligible for proration of assistance, the criteria and procedures for obtaining relief under the provisions for preservation of families, that they have the right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal, and that they have the right to request an informal hearing with the IHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Informal hearing procedures are contained in Chapter 16.

#### IHA Policy

The notice to terminate will be sent to the family and the owner at least 30 calendar days prior to the effective date of the termination.

#### **12-II.F. HOW TERMINATION OF ASSISTANCE AFFECTS THE HAP CONTRACT AND LEASE**

When the family's assistance is terminated, the lease and HAP contract terminate automatically [Form HUD-52641].

The owner may offer the family a separate unassisted lease [HCV GB, p. 15-8].

### **PART III: TERMINATION OF TENANCY BY THE OWNER**

#### **12-III.A. OVERVIEW**

Termination of an assisted tenancy is a matter between the owner and the family; the IHA is not directly involved. However, the owner is under some constraints when terminating an assisted tenancy, and the reasons for which a tenancy is terminated dictate whether assistance also will be terminated.

---

**12-III.B. GROUNDS FOR OWNER TERMINATION OF TENANCY [24 CFR 982.310 and Form HUD-52641-A, Tenancy Addendum]**

During the term of the lease, the owner is not permitted to terminate the tenancy except for serious or repeated violations of the lease, certain violations of state or local law, or other good cause.

**Serious or Repeated Lease Violations**

The owner is permitted to terminate the family's tenancy for serious or repeated violations of the terms and conditions of the lease. This includes failure to pay rent or other amounts due under the lease. However, the IHA's failure to make a HAP payment to the owner is not a violation of the lease between the family and the owner.

**Violation of Federal, State, or Local Law**

The owner is permitted to terminate the tenancy if a family member violates federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

**Criminal Activity or Alcohol Abuse**

The owner may terminate tenancy during the term of the lease if any *covered person*, meaning any member of the household, a guest or another person under the tenant's control commits any of the following types of criminal activity (for applicable definitions see 24 CFR 5.100):

- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises);
- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises;
- Any violent criminal activity on or near the premises; or
- Any drug-related criminal activity on or near the premises.

Violent criminal activity does not include victims of domestic violence that are covered under the Violence Against Women Act. (VAWA).

The owner may terminate tenancy during the term of the lease if any member of the household is:

- Fleeing to avoid prosecution, custody, or confinement after conviction for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or
- Violating a condition of probation or parole imposed under federal or state law.

The owner may terminate tenancy for criminal activity by a household member in accordance with this section if the owner determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

The owner may not terminate a victim of VAWA for criminal activity, unless doing so is compliance with VAWA.

---

The owner may terminate tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

***Evidence of Criminal Activity***

The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person if the owner determines they have engaged in the criminal activity, regardless of arrest or conviction and without satisfying the standard of proof used for a criminal conviction.

**Other Good Cause**

During the initial lease term, the owner may not terminate the tenancy for “other good cause” unless the owner is terminating the tenancy because of something the family did or failed to do. During the initial lease term or during any extension term, other good cause includes the disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises.

After the initial lease term, “other good cause” for termination of tenancy by the owner includes:

- Failure by the family to accept the offer of a new lease or revision;
- The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or
- A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rent).

After the initial lease term, the owner may give the family notice at any time, in accordance with the terms of the lease.

**Domestic Violence Provisions-VAWA (Protections for Victims of Abuse VAWA 2013)**

An incident or incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking will not be construed as serious or repeated violations of the lease or other “good cause” for termination of the assistance, tenancy, or occupancy rights of such a victim.

Criminal activity directly relating to abuse, 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 assistance, tenancy, or occupancy rights if the tenant or an affiliated individual of the tenant’s family is the victim or threatened victim of domestic violence, dating violence, sexual assault or stalking.

Notwithstanding any restrictions on admission, occupancy, or terminations of occupancy or assistance, or any Federal, State or local law to the contrary, a PHA, owner or manager may “bifurcate” a lease, or otherwise remove a household member from a lease, without regard to whether a household member is a signatory to the lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others. This action may be taken without evicting, removing, terminating assistance to, or otherwise penalizing the victim of the violence who is also 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, and local law for the termination of leases or assistance under the housing choice voucher program.

Nothing in this section may be construed to limit the authority of IHA, owner, or manager, when notified, to honor court orders addressing rights of access or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up.

Nothing in this section limits any otherwise available authority of an owner or manager to evict or the IHA to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the owner, manager, or IHA does not subject an individual who is or has been a victim of domestic violence, dating violence, sexual assault or stalking to a more demanding standard than other tenants in determining whether to evict or terminate.

Nothing in this section may be construed to limit the authority of an owner or manager to evict, or the IHA to terminate assistance, to any tenant if the owner, manager, or public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if the tenant is not evicted or terminated from assistance.

Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.

### **12-III.C. EVICTION [24 CFR 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum]**

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.

The notice of grounds may be included in, or may be combined with, any owner eviction notice to the tenant.

Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. The owner may only evict the tenant from the unit by instituting a court action. The owner must give the IHA a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give the IHA a copy of any eviction notice (see Chapter 5).

#### **IHA Policy**

If the eviction action is finalized in court, the owner must provide the IHA with documentation related to the eviction, including notice of the eviction date, as soon as possible, but no later than 5 business days following the court-ordered eviction.

---

**12-III.D. DECIDING WHETHER TO TERMINATE TENANCY [24 CFR 982.310(h)]**

An owner who has grounds to terminate a tenancy is not required to do so, and may consider all of the circumstances relevant to a particular case before making a decision. These might include:

- The seriousness of the offending action;
- The effect on the community of the termination, or of the owner's failure to terminate the tenancy;
- The extent of participation by the leaseholder in the offending action;
- The effect of termination of tenancy on household members not involved in the offending activity;
- The demand for assisted housing by families who will adhere to lease responsibilities;
- The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action;
- The effect of the owner's action on the integrity of the program.

The owner may require a family to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the owner may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions in 24 CFR 5.105.

**12-III.E. EFFECT OF TERMINATION OF TENANCY ON THE FAMILY'S ASSISTANCE**

If a termination is not due to a serious or repeated violation of the lease, and if the IHA has no other grounds for termination of assistance, the IHA may issue a new voucher so that the family can move with continued assistance (see Chapter 10).

---

<b>EXHIBIT 12-1: STATEMENT OF FAMILY OBLIGATIONS</b>
--

---

Following is a listing of a participant family's obligations under the HCV program:

- The family must supply any information that the IHA or HUD determines to be necessary, including submission of required evidence of citizenship or eligible immigration status.
- The family must supply any information requested by the IHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- The family must disclose and verify social security numbers and sign and submit consent forms for obtaining information.
- Any information supplied by the family must be true and complete.
- The family is responsible for any Housing Quality Standards (HQS) breach by the family caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond normal wear and tear caused by any member of the household or guest.

IHA Policy

Damages beyond normal wear and tear will be considered to be damages that could be assessed against the security deposit.

- The family must allow the IHA to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this plan.
- The family must not commit any serious or repeated violation of the lease.

IHA Policy

The IHA will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, a court-ordered eviction, or an owner's notice to evict.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criterion to be used is whether the reason for the eviction was through no fault of the tenant or guests.

- The family must notify the IHA and the owner in writing before moving out of the unit or terminating the lease.

IHA Policy

The family must comply with lease requirements regarding written notice to the owner. The family must provide written notice to the IHA at the same time the owner is notified.

- The family must promptly give the IHA a copy of any owner eviction notice.
- The family must use the assisted unit for residence by the family. The unit must be the family's only residence.

- 
- The composition of the assisted family residing in the unit must be approved by the IHA. The family must promptly notify the IHA in writing of the birth, adoption, or court-awarded custody of a child. The family must request IHA approval to add any other family member as an occupant of the unit.

#### IHA Policy

The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. The IHA will determine eligibility of the new member in accordance with the policies in Chapter 3.

- The family must promptly notify the IHA in writing if any family member no longer lives in the unit.
- If the IHA has given approval, a foster child or a live-in aide may reside in the unit. The IHA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when IHA consent may be given or denied. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see Chapter 3 (Sections I.K and I.M), and Chapter 11 (Section II.B).
- The family must not sublease the unit, assign the lease, or transfer the unit.

#### IHA Policy

Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.

- The family must supply any information requested by the IHA to verify that the family is living in the unit or information related to family absence from the unit.
- The family must promptly notify the IHA when the family is absent from the unit.

#### IHA Policy

Notice is required under this provision only when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30 calendar days. Written notice must be provided to the IHA at the start of the extended absence.

- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space, or HCV Homeownership Program).
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).
- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and IHA policies related to drug-related and violent criminal activity.

- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in near the premises. See Chapter 12 for a discussion of HUD and IHA policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the IHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]
- A family or any member has not violated any provisions of the Voucher or regulations.