

## Chapter 12

### TERMINATION OF ASSISTANCE AND TENANCY

HUD regulations specify the reasons for which a PHA 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 AHA 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 AHA may consider in lieu of termination, the criteria the AHA must use when deciding what action to take, and the steps the AHA 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 AHA to terminate assistance for certain offenses and when the family no longer requires assistance. HUD permits the AHA 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 AHA.

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

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

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 AHA 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 AHA terminate the family's assistance at any time.

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 AHA will follow the notice requirements in Section 12-II.E.

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

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

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

The AHA 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. Incidents of actual or threatened violence, dating violence, or stalking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking.

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 filed an unlawful detainer against the family, but before a legal eviction order has been issued, termination of assistance is not mandatory. However, the AHA 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 and other factors as described in Sections 12-II.E. Upon consideration of such alternatives and factors, the AHA may, on a case-by-case basis, choose not to terminate assistance.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, unauthorized household members, 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 AHA 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 complete discussion of consent requirements.

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

The AHA 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 AHA, 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 AHA 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, joins the family, or reaches 6 years of age.

#### **Methamphetamine Manufacture or Production [24 CFR 983.553(b)(1)(ii)]**

The AHA 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.

#### **Failure of Students to Meet Ongoing Eligibility Requirements [24 CFR 982.552(b)(5) and FR 4/10/06]**

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have dependent children, and is not residing with his/her parents in an HCV assisted household, the AHA must terminate the student's assistance if, at the time of reexamination, either the student's income or the income of the student's parents (if applicable) exceeds the applicable income limit.

If a participant household consists of both eligible and ineligible students, the eligible students shall not be terminated, but must be issued a voucher to move with continued assistance in accordance with program regulations and AHA policies, or must be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit.

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

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

HUD requires the AHA to establish policies that permit the AHA to terminate assistance if the AHA 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

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

The AHA will terminate a family's assistance if any household member, live-in aide, or guest 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 AHA 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 six months.

The AHA 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 AHA 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 AHA 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.

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

This includes drug related criminal activity, which may have occurred either on or off the premises and includes activities of any family member, live-in aide or guest.

Any family member who engages in drug-related criminal activity according to a preponderance of the evidence, or who allows a live-in aide or guest to engage in such activities, will have his or her assistance terminated. Evidence of such activity includes the following:

- Conviction of a felony involving drugs (e.g., felony possession of a controlled substance);

- Conviction of a misdemeanor for the same activity;

- A pattern of arrests for drug use or possession or sale; or

- A preponderance of evidence exists that a pattern of drug use or possession or use of alcohol that interferes with the health and safety or disturbs the peaceful enjoyment of the premises of others.

In making its decision to terminate assistance, the AHA 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 AHA 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 AHA to terminate assistance under a number of other circumstances. It is left to the discretion of the AHA whether such circumstances in general warrant consideration for the termination of assistance. The Violence Against Women Reauthorization Act of 2005 explicitly prohibits PHAs from considering incidents or actual threatened domestic violence, dating violence, or stalking as reasons for terminating the assistance of a victim of such violence.

The AHA **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 AHA **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 AHA policies.

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

Any AHA 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.

Any family member has committed any criminal activity which may threaten the health, safety or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity.

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

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

*Abusive or violent behavior towards AHA 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.

If the AHA determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program, the family's assistance will be terminated. Families will have their assistance terminated in reverse order of receiving assistance from the Housing Choice Voucher program. Those HAP contracts with the most recent dates will be terminated first.

Participants in the following programs will not be terminated due to overleasing:

- Family Self-Sufficiency
- Welfare to Work
- Mainstream
- Families with Conversion vouchers

In making its decision to terminate assistance, the AHA will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D and Section 12-II.E. Upon consideration of such alternatives and factors, the AHA 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 AHA 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 180 consecutive calendar days for any reason. Absence in this context means that no adult member of the family is residing in the unit.

If the family is absent from the unit for more than 180 consecutive calendar days, the family's assistance will be terminated. Notice of termination will be sent in accordance with Section 12-II.E.

A family may be absent for a period of less than 30 calendar days without notifying the Housing Authority unless the absence will interfere with the scheduled annual recertification or annual unit inspection in which case the family must call and make appropriate arrangements. When an absence will be for 30 calendar days or more, the family must notify the Housing Authority in accordance with the following:

**Planned Absences:** The family must provide 14 calendar days advance written notice of planned absences (e.g., vacations, stays in convalescent care facilities).

**Unplanned Absences:** The family must advise the Housing Authority within the first 14 calendar days of the absence if the absence is expected to last 30 calendar days or more (e.g., hospital stays, jail or prison sentences).

Notification must include the reason for the absence, the anticipated date of return to the unit, and an address and telephone number where the family can be reached during the absence. A reason must be given if the family is unable to anticipate a date of return to the unit. Within 14 calendar days of receipt of this notice, the Housing Authority will send to the family a written notification that the family must advise the Authority within three calendar days of the family's return to the unit and will advise the family that housing

assistance payments will terminate if the family is absent for more than 180 calendar consecutive days.

The Housing Authority also may require additional information or certification that the family is absent from the unit or has returned to it. Failure to provide written notification or other requested information to the Authority related to a family's absence or return to the assisted unit are grounds for termination of housing assistance. The family may only have one long-term absence, i.e., of 180 days, away from the unit per year.

The Housing Authority must terminate the Housing Assistance Payment (HAP) contract for an assisted unit if the family is absent from the assisted unit for more than 180 consecutive calendar days. The family must request to be recertified within 14 calendar days of the termination of the HAP contract to continue to be a Section 8 participant. If a request is not received, the family will be notified that the family has been deemed to have voluntarily given up their Section 8 assistance.

If the family's HAP contract was terminated for an absence due to special circumstances, which include, but are not limited to, hospitalization, convalescent care, or disability, (but not including incarceration), the family may submit a new Request for Tenancy Approval or request readmission or resumption of assistance for the previously assisted unit if the family is recertified and able to return to the unit prior to the expiration of the Voucher.

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

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

The AHA 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 AHA the discretion to either terminate the family's assistance or to take another action. This part discusses the various actions the AHA may choose to take when it has discretion, and outlines the criteria the AHA 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 AHA terminates assistance depends upon individual circumstances. HUD permits the AHA 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 AHA may require that any household member who participated in or was responsible for an offense no longer resides in the unit [24 CFR 982.552(c)(2)(ii)].

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 AHA request.

### **Repayment of Family Debts**

If a family owes amounts to the AHA, as a condition of continued assistance, the AHA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the AHA 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 AHA 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)].

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

The AHA 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 or (as discussed further in Section 12-II.E) a victim of domestic violence, dating violence, or stalking

- 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 AHA may require the family 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.

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

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

If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of assistance, the AHA will determine whether the behavior is related to the disability. If so, upon the family's request, the AHA will determine whether alternative measures are appropriate as a reasonable accommodation. The AHA 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. TERMINATING THE ASSISTANCE OF DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING VICTIMS AND PERPETRATORS [Pub.L. 109-162, Pub.L. 109-271]**

The Violence Against Women Reauthorization Act of 2005 (VAWA) provides that "criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be a cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that domestic violence, dating violence, or stalking."

VAWA also gives the AHA the authority to "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, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant."

VAWA does not limit the authority of the AHA to terminate the assistance of any participant if the AHA "can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance."

When a participant family is facing termination of assistance because of the actions of a participant, household member, guest, or other person under the participant's control and a participant or immediate family member of the participant's family claims that she or he is the victim of such actions and that the actions are related to domestic violence, dating violence, or stalking, the AHA will require the individual to submit documentation affirming that claim.

The documentation must include:

A signed statement by the victim that provides the name of the perpetrator and certifies that the incidents in question are bona fide incidents of actual or threatened domestic violence, dating violence, or stalking, or

A police or court record documenting the actual or threatened abuse, or

A statement signed by an employee, agent, or volunteer of a victim service provider; an attorney; a medical professional; or another knowledgeable professional from whom the victim has sought assistance in addressing the actual or threatened abuse. The professional must attest under penalty of perjury that the incidents in question are bona fide incidents of abuse, and the victim must sign or attest to the statement.

The required certification and supporting documentation must be submitted to the AHA within 14 business days after the PHA issues its written request. The 14-day deadline may be extended at the AHA's discretion. If the individual does not provide the required certification and supporting documentation within 14 business days, or the approved extension period, the AHA may proceed with assistance termination.

If the AHA can demonstrate an actual and imminent threat to other participants or those employed at or providing service to the property if the participant's tenancy is not terminated, the AHA will bypass the standard process and proceed with the immediate termination of the family's assistance.

Although VAWA provides assistance termination protection for victims of domestic violence, it does not provide protection for perpetrators. VAWA gives the AHA the explicit authority to "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...without terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant." This authority supersedes any local, state, or other federal law to the contrary. If the AHA chooses to exercise this authority, however, it will follow any procedures prescribed by HUD or by applicable local, state, or federal law regarding termination of assistance [Pub.L. 109-271].

When the actions of a participant or other family member result in a PHA decision to terminate the family's assistance and another family member claims that the actions involve criminal acts of physical violence against family members or others, the AHA will request that the victim submit the above required certification and supporting documentation in accordance with the stated time frame. If the certification and supporting documentation are submitted within the required time frame, or any approved extension period, the AHA will terminate the perpetrator's assistance. If the victim does not provide the certification and supporting documentation, as required, the AHA will proceed with termination of the family's assistance.

If the AHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if the participant's tenancy

is not terminated, the AHA will bypass the standard process and proceed with the immediate termination of the family's assistance.

### **AHA Confidentiality Requirements**

All information provided to the AHA regarding domestic violence, dating violence, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence and may neither be entered into any shared data base nor provided to any related entity, except to the extent that the disclosure (a) is requested or consented to by the individual in writing, (b) is required for use in an eviction proceeding, or (c) is otherwise required by applicable law.

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

If a family's assistance is to be terminated, whether voluntarily or involuntarily, the AHA 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

If a criminal record is the basis of the termination, a copy of the record must accompany the notice. A copy of the criminal record also must be provided to the subject of the record [24 CFR 982.553(d)].

When termination is initiated by the AHA, 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 AHA, 30 days notice will not be given. In these cases, the notice to terminate will be sent at the time the AHA 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 AHA (see section 12-I.C.). The AHA will then send a confirmation notice to the family and the owner within 14 calendar days of the family's request, but no later than the termination effective date (as requested by the family).

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

The AHA 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 AHA 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 AHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Informal hearing procedures are contained in Chapter 16.

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.G. 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 AHA 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, except when the violations are related to incidents of actual or threatened domestic violence, dating violence, or stalking against that participant. However, the AHA'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.

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 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; except when the violations are related to incidents of actual or threatened domestic violence, dating violence, or stalking against that participant.

### **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.

### **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 AHA a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give the AHA a copy of any eviction notice (see Chapter 5).

If the eviction action is finalized in court, the owner must provide the AHA with documentation related to the eviction, including notice of the eviction date, as soon as possible, but no later than 7 calendar 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 nature of the offending action;
- 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.

An owner's decision to terminate tenancy for incidents related to domestic violence, dating violence, or stalking is limited by the Violence Against Women Reauthorization Act of 2005 (VAWA). (See Section 12-II.E.)

#### **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 AHA has no other grounds for termination of assistance, the AHA may issue a new voucher so that the family can move with continued assistance (see Chapter 10).

## **EXHIBIT 12-1: STATEMENT OF FAMILY OBLIGATIONS**

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

### **Providing Complete and Accurate Information**

1. The family must supply all sources of income for all family members (including any money received on behalf of or by children, e.g., child support, social security, wages, etc.).
2. The family must supply all required forms and documentation including Social Security numbers and citizenship/immigration status as requested.
3. Any new family member must be reported within 14 calendar days of moving into the unit. Proposed additions to the household are subject to the AHA's approval and screening process. Anyone receiving mail at the assisted address or spending more than one week at a time (or 30 days/nights in a calendar year) is considered to be a member of the household.
4. The family must notify the Housing Authority in writing within 14 calendar days if any family member no longer lives in the unit. The family must provide verification of the new address if requested.
5. The family must supply, in a timely manner, any information the AHA requests for an annual, interim or special reexamination of family income or composition, or for an investigation of potential family obligation violations.
6. All information supplied by the family must be true and complete. Information submitted will be subject to third party verification.
7. The family must not owe rent or other monies to the AHA or to another Housing Authority, unless the family has signed and is current with payments on a Repayment Agreement.

### **Drugs, Alcohol or Violent Criminal Activity**

8. The family must not commit fraud, bribery or any other corrupt or criminal act in connection with the program.
9. At any time, the AHA may terminate assistance if any member of the family, live-in aide or guest engages in:
  - a) Illegal drug related activity
  - b) Violent criminal activity
  - c) Criminal behavior that results in becoming a state-registered lifetime sex offender.
  - d) Alcohol use that interferes with the health and safety of others.
  - e) 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.

10. The AHA may deny or terminate assistance if the preponderance of evidence indicates that a family member, live-in aide or guest has engaged in such activity, regardless of whether the activity resulted in arrest or conviction.

#### Complying With the Lease

11. The family must not commit serious or repeated lease violations. The AHA 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, written notice from the owner of the serious/repeated lease violation, police reports, arrest logs, neighbor complaints, or other third party information. Violations can include: non-payment of rent, failure to allow the owner to make necessary repairs, unauthorized people in the household, disturbing the quiet and peaceful enjoyment of the premises by others, or criminal activity.
12. The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease.
13. The family must allow the AHA to inspect the unit at reasonable times and after reasonable notice.
14. The family is responsible for any Housing Quality Standards breach caused by the family, including 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.
15. The family must live in the unit for the lease term. The family must give proper notice to the owner, with a copy to the AHA, in order to move.
16. The family must give the AHA a copy of any eviction notice received from the owner.
17. The family must report all absences longer than 60 days in length.
18. The family must use the assisted unit for residence by the family. The unit must be the family's only residence.
19. The family must not receive housing assistance in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family. The family cannot own or have any interest in the unit.
20. The family cannot sublease, rent, assign or transfer the unit. 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.
21. An assisted family or member of the family must not receive 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.