Chapter 12

TERMINATION OF ASSISTANCE AND TENANCY

INTRODUCTION

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

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

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

TCHAO 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 TCHAO of the changed circumstances and request an interim reexamination before the expiration of the 180-day period.

2-I.C. FAMILY CHOOSES TO TERMINATE ASSISTANCE

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

TCHAO 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, TCHAO will document the reason the family is withdrawing from assistance, determine that no outstanding amounts are owed by the family and an EIV will be run to ensure that no discrepancies in income exists. TCHAO will follow the notice requirements in Section 12-II.F.

12-I.D. MANDATORY TERMINATION OF ASSISTANCE

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

Eviction [24 CFR 982.552(b)(2), 24 CFR 5.2005(c)(1)]

The PHA 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. As discussed further in Chapter 12-II.E, 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.

TCHAO 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 PHA 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 Chapter 12-II.C and other factors as described in Chapter 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, the PHA 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, 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 or not the reason for the eviction was the fault of the tenant or guests.

Failure to comply with the Family Transfer Agreement and/or agreement made with the landlord for damages.

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

The PHA 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 PHA 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 PHA, 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 Disclose and Document Social Security Numbers [24 CFR 5.218(c), Notice PIH 2010-3]

The PHA must terminate assistance if a participant family fails to disclose the complete and accurate social security numbers of each household member and the documentation necessary to verify each social security number.

However, if the family is otherwise eligible for continued program assistance, and the PHA determines that the family's failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's

control, the PHA may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed 90 calendar days from the date the PHA determined the family to be noncompliant.

TCHAO Policy

The PHA will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 90 calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline.

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

The PHA 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, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the PHA must the 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 PHA 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.

Death of the Sole Family Member [24 CFR 982.311(d) and Notice PIH 2010-9]

The PHA must terminate program assistance for deceased single member households on the last day of the month in which the death occurred.

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

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

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

- Any household member, visitor 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 rights of others.
- Any household member, visitor or guest'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, visitor or guest has violated any of the family's obligations, particularly the obligation not to engage in any drug-related criminal activity.

- Any household member, visitor or guest has violated the family's obligation not to engage in violent criminal activity.
- Any household member is a registered lifetime sex offender. At the discretion of the PHA, the PHA may continue the assistance if the family immediately and permanently removes the member who is the lifetime registered sex offender.
- Any family fails to timely submit via the internet, in person, (or mail) all required annual re-examination paperwork and documentation prior to the effective date of their annual.

Repayment of Family Debts

TCHAO Policy

If a family, this includes all household members 18yrs and older, owes a debt to TCHAO, as a condition of continued assistance, TCHAO will require the family to repay the full amount within 30 days or enter into a repayment agreement after receiving notice from TCHAO of the amount owed. TCHAO will not enter into a Repayment Agreement if the amount owed is over $4,999. The family will be required to pay the amount if full in order to stay on the program. This will also count as a one-time Repayment Agreement.

TCHAO may terminate the family who has a debt owed of $5,000 or more.

Effective September 2015, and continuing thereafter, families are limited to only **one (1) repayment agreement during the lifetime of their participation in the TCHAO HCV program.**

If the family refuses to repay the debt, does not enter into a repayment agreement, breaches a repayment agreement, or if the family has previously or is currently on a repayment agreement as of Sept. 2015 (lifetime repayment agreement), TCHAO will terminate housing assistance.

Families must be up-to-date on their repayment agreement before a move will be approved.

Families must pay all debts in full before porting out to another jurisdiction.

After two (2) failed appointment notifications requesting the family to come in to discuss and resolve the debt owed to TCHAO the family will be terminated.

Use of Illegal Drugs and Alcohol Abuse

TCHAO Policy

TCHAO will terminate a family's assistance if any household member 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 rights of others.

TCHAO will terminate assistance if any household members or guest's abuse or pattern of abuse of alcohol threatens the health, safety, or rights of others.

Currently engaged in is defined as any use of illegal drugs during the time the participant was on the program.

TCHAO 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, TCHAO will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, the PHA 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.

TCHAO Policy

The TCHAO will terminate a family's assistance if any household member, visitor 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.

The TCHAO will consider all credible evidence, including but not limited to, any record of arrests and/or convictions 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 TCHAO will consider alternatives as described in Chapter 12-II.C and other factors described in Chapter 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, the TCHAO may, on a case-by-case basis, choose not to terminate assistance.

Other Authorized Reasons for Termination of Assistance

[24 CFR 982.552(c), 24 CFR 5.2005(c)]

HUD permits the PHA to terminate assistance under a number of other circumstances. It is left to the discretion of the PHA whether such circumstances in general warrant consideration for the termination of assistance. As discussed further in Chapter 12-II.E, the Violence Against Women Reauthorization Act of 2005 explicitly prohibits PHAs from considering incidents of, or criminal activity directly related to, domestic violence, dating violence, or stalking as reasons for terminating the assistance of a victim of such abuse.

TCHAO Policy

TCHAO may terminate a family's assistance if any family member, guest or visitor violates serious or significant lease provisions. Also, TCHAO may terminate a family's assistance if any family member violates any FSS program obligation or contract provision, or the

Interim Disbursement Agreement for improper or unauthorized use of FSS escrow account funds.

TCHAO **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 TCHAO policies.

Any household member, frequent/overnight visitor 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 rights of others.

Any household member's abuse or pattern of abuse of alcohol threatens the health, safety, or rights of others.

Any household 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 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, frequent/overnight visitor or guest has breached the terms of a TCHAO ***Violation*** or Warning Notice.

The family has breached the terms of a repayment agreement entered into with TCHAO.

A household member has threatened violent or behavior considered by TCHAO to be violent, abusive or disrespectful toward TCHAO personnel.

Abusive or violent behavior towards TCHAO *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 PHA will consider alternatives as described in Chapter 12-II.C and other factors described in Chapter 12-II.D and Chapter 12-II.E. Upon consideration of such alternatives and factors, the PHA 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 PHA 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 member of the family is residing in the unit.

TCHAO Policy

If the family is going to be absent from the unit for more than 60 days, the family must immediately notify TCHAO in writing of the circumstance and when the family plans to return to the unit. Without approval, a family absent from the subsidized unit more than 60 consecutive days will be terminated. Notice of termination will be sent in accordance with Chapter 12-II.F.

Insufficient Funding [24 CFR 982.454]

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

PHA Policy

The PHA 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 PHA determines there is a shortage of funding, prior to terminating any HAP contracts, the PHA 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 PHA will terminate HAP contracts as a last resort.

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

If the PHA must terminate HAP contracts due to insufficient funding, the PHA will do so in accordance with the policies in Part VIII of Chapter 16.

PART II: APPROACH TO TERMINATION OF ASSISTANCE

12-II.A. OVERVIEW

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

> TCHAO Policy
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> 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 PHA request.

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

Evidence

For criminal activity, HUD permits the PHA 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)].

> TCHAO Policy
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> TCHAO 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 PHA is permitted, but not required, to consider all relevant circumstances when determining whether a family's assistance should be terminated.

TCHAO Policy

The TCHAO may 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 resident;

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, and 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.

TCHAO 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 PHA's decision to terminate the family's assistance is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

TCHAO Policy

If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of assistance, the PHA may determine whether the behavior is related to the disability. If so, upon the family's request, the PHA may determine whether alternative measures are appropriate as a reasonable accommodation. The PHA 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.

Any accommodation requested by the family must directly address the problem for which the termination is being considered. TCHAO will not consider accommodation when making a decision to terminate assistance, if the disability is not related and would not prevent reoccurrence of the offense. 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

This section addresses the protections against termination of assistance that the Violence against Women Act of 2005 (VAWA) provides for victims of domestic violence, dating violence, and stalking. For general VAWA requirements and PHA policies pertaining to notification, documentation, and confidentiality, see Section 16-IX of this plan, where definitions of key VAWA terms are also located.

VAWA Protections against Termination

VAWA provides four specific protections against termination of HCV assistance for victims of domestic violence, dating violence, or stalking. (*Note:* The second, third, and fourth protections also apply to terminations of tenancy or occupancy by owners participating in the HCV program. So do the limitations discussed under the next heading.)

First, VAWA provides that a PHA may not terminate assistance to a family that moves out of an assisted unit in violation of the lease, with or without prior notification to the PHA, if the move occurred to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.314(b)(4)].

Second, it provides that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking may not be construed either as a serious or repeated lease violation by the victim or as good cause to terminate the assistance of the victim [24 CFR 5.2005(c)(1)].

Third, it provides that criminal activity directly related to domestic violence, dating violence, or stalking may not be construed as cause for terminating the assistance of a tenant if a member of the tenant's household, a guest, or another person under the tenant's control is the one engaging in the criminal activity and the tenant or an immediate family member of the tenant is the actual or threatened victim of the domestic violence, dating violence, or stalking [24 CFR 5.2005(c)(2)].

Fourth, it gives PHAs the authority to terminate assistance to any tenant or lawful occupant who engages in criminal acts of physical violence against family members or others without terminating assistance to, or otherwise penalizing, the victim of the violence [24 CFR 5.2009(a)].

Limitations on VAWA Protections [24 CFR 5.2005(d) and (e)]

VAWA does not limit the authority of a PHA to terminate the assistance of a victim of abuse for reasons unrelated to domestic violence, dating violence, or stalking so long as the PHA does not subject the victim to a more demanding standard than it applies to other program participants [24 CFR 5.2005(d)(1)].

Likewise, VAWA does not limit the authority of a PHA to terminate the assistance of a victim of domestic violence, dating violence, or stalking if the PHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the assisted property if the victim is not terminated from assistance [24 CFR 5.2005(d)(2)].

HUD regulations define *actual and imminent threat* to mean words, gestures, actions, or other indicators of a physical threat that (a) is real, (b) would occur within an immediate time frame, and (c) could result in death or serious bodily harm [24 CFR 5.2005(d)(2) and (e)]. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk
- The nature and severity of the potential harm
- The likelihood that the potential harm will occur
- The length of time before the potential harm would occur [24 CFR 5.2005(e)]

Even when a victim poses an actual and imminent threat, however, HUD regulations authorize a PHA to terminate the victim's assistance "only when there are no other actions that could be taken to reduce or eliminate the threat" [24 CFR 5.2005(d)(3)].

PHA Policy

In determining whether a program participant who is a victim of domestic violence, dating violence, or stalking is an actual and imminent threat to other tenants or those employed at or providing service to a property, the PHA will consider the following, and any other relevant, factors:

Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, or stalking

Whether the threat is a physical danger beyond a speculative threat

Whether the threat is likely to happen within a short period of time

Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location or seeking a legal remedy to prevent the perpetrator from acting on the threat

If the participant wishes to contest the PHA's determination that he or she is an actual and imminent threat to other tenants or employees, the participant may do so as part of the informal hearing.

Documentation of Abuse [24 CFR 5.2007]

PHA Policy

When an individual facing termination of assistance for reasons related to domestic violence, dating violence, or stalking claims protection under VAWA, the PHA will request that the individual provide documentation supporting the claim in accordance with the policies in section 16-IX.D of this plan.

The PHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice. In such cases the PHA will document the waiver in the individual's file.

When a participant family is facing assistance termination 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 PHA will require the individual to submit documentation affirming that claim.

The documentation must include two elements:

A signed statement by the victim on HUD approved form HUD-5006 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, and

One of the following:

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

If the PHA 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 PHA will bypass the standard process and proceed with the immediate termination of the family's assistance.

Terminating the Assistance of a Domestic Violence Perpetrator

Although VAWA provides protection against termination of assistance for victims of domestic violence, it does not provide such protection for perpetrators. VAWA gives the PHA 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" [24 CFR 5.2009(a)]. This authority is not dependent on a bifurcated lease or other eviction action by an owner against an individual family member. Further, this authority supersedes any local, state, or other federal law to the contrary. However, if the PHA chooses to exercise this authority, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law regarding termination of assistance. This means that the PHA must follow the same rules when terminating assistance to an individual as it would when terminating the assistance of an entire family [3/16/07 *Federal Register* notice on the applicability of VAWA to HUD programs].

PHA Policy

The PHA will terminate assistance to a family member if the PHA determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the assistance of the remaining, nonculpable family members.

In making its decision, the PHA will consider all credible evidence, including, but not limited to, a signed certification (form HUD-50066) or other documentation of abuse submitted to the PHA by the victim in accordance with this section and section 16-IX.D. The PHA will also consider the factors in section 12-II.D. Upon such consideration, the PHA may, on a case-by-case basis, choose not to terminate the assistance of the culpable family member.

If the PHA does terminate the assistance of the culpable family member, it will do so in accordance with applicable law, HUD regulations, and the policies in this plan.

PHA Confidentiality Requirements

All information provided to the PHA 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

If a family's assistance is to be terminated, whether voluntarily or involuntarily, the PHA 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)].

TCHAO Policy

When termination is initiated by TCHAO, 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 TCHAO, 30 days - notice will not be given. In these cases, the notice to terminate will be sent at the time the PHA learns the family has vacated the unit.

When a family requests to be terminated from the program they must do so in writing to TCHAO (see section 12-I.C.). TCHAO will then send a confirmation notice to the family and the owner within 10 calendar days of the family's request but no later than the termination effective date (as requested by the family).

When the PHA notifies an owner that a family's assistance will be terminated, the PHA will, if appropriate, advise the owner of his/her right to offer the family a separate, unassisted lease.

If a family whose assistance is being terminated is entitled to an informal hearing, the notice of termination that the PHA sends to the family must meet the additional HUD and PHA notice requirements discussed in section 16-III.C of this plan. Although HUD does not require PHAs to include information about the protections against termination of assistance provided by the Violence against Women Act of 2005 (VAWA) to victims of domestic violence, dating violence, or stalking, PHAs have the discretion to include such information.

PHA Policy

Whenever the PHA decides to terminate a family's assistance because of the family's action or failure to act, the PHA will include in its termination notice the VAWA information described in section 16-IX.C of this plan and will request that a family member wishing to claim protection under VAWA notify the PHA within 10 calendar days.

Still other notice requirements apply in two situations:

- If a criminal record is the basis of a family's termination, a copy of the record must accompany (or precede) the termination notice, and a copy of the record must also be provided to the subject of the record [24 CFR 982.553(d)].
- If immigration status is the basis of a family's termination, as discussed in section 12-I.D, the special notice requirements in section 16-III.D must be followed.

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

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

TCHAO 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.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.

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 PHA 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 dictates whether assistance also will be terminated.

12-III.B. GROUNDS FOR OWNER TERMINATION OF TENANCY [24 CFR 982.310, 24 CFR 5.2005(e), 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, except when the violations are related to incidents of actual or threatened domestic violence, dating violence, or stalking and the victim is protected from eviction by the Violence against Women Act of 2005 (see section 12-II.E). A serious lease violation includes failure to pay rent or other amounts due under the lease. However, the PHA'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.

However, in the case of criminal activity directly related to domestic violence, dating violence, or stalking, if the tenant or an immediate member of the tenant's family is the victim, the

criminal activity may not be construed as cause for terminating the victim's tenancy (see section 12-II.E).

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 during the term of the lease for criminal activity and 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, 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.

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 the covered person has engaged in the criminal activity, regardless of arrest or conviction and without satisfying the standard of proof used for a criminal conviction, except in certain incidents where the criminal activity directly relates to domestic violence, dating violence, or stalking and the tenant or an immediate member of the tenant's family is the victim or threatened victim of the domestic violence, dating violence, or stalking. (see Section 12-II.E.).

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

> TCHAO Policy
>
> If the eviction action is finalized in court, the owner must provide TCHAO with documentation related to the eviction, including notice of the eviction date, as soon as possible.

12-III.D. DECIDING WHETHER TO TERMINATE TENANCY [24 CFR 982.310(h), 24 CFR 982.310(h)(4)]

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 Act of 2005 (VAWA) and the conforming regulations in 24 CFR Part 5, Subpart L. (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 PHA has no other grounds for termination of assistance, the PHA 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 list of the Statement of Family Obligations that all program participants 18yrs and older in the household are required to sign yearly stating they will comply with all obligations and requirements set forth by the U.S. Department of Housing and Urban Development (HUD) and TCHAO:

1. All members of my family, will not engage in drug-related criminal activity. Drug-related criminal activity is defined as:

(a) The manufacture, sale or distribution, or the possession with intent to manufacture, sell or distribute a controlled substance.

(b) The use or possession (other than with intent to manufacture, sell or distribute) of a controlled substance, within five years of the date of eligibility determination.

(c) Drug-related criminal activity does not include instances where the family member can demonstrate that he/she has had an addiction to a controlled substance, has a record of such impairment, or is regarded as having had such impairment, and has recovered from such addiction and does not currently use or possess controlled substances.

2. All members of my family, will not engage in any type of criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or peace of others. (Violent criminal activity is defined as any activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or to be reasonably likely to cause, serious bodily injury or property damage.

3. All members of my family, will not engage in alcohol abuse in a way that threatens the health, safety or peace of others.

NOTE*: TCHAO may deny or terminate assistance if the preponderance of evidence indicates that a family member has engaged in such activity, regardless of whether the family member has been arrested or convicted.*

4. The family must supply all information that is determined necessary in the administration of the program, including evidence of citizenship or eligible immigration status. "Information" may include any requested Certification, Release of Information, or other documentation.

5. The requested family members must attend regularly scheduled reexaminations and supply all information that is determined necessary for use in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements. Reasonable accommodations may be made if the Head of household is unable to attend an appointment.

6. The family must disclose and verify Social Security numbers and sign and submit consent forms for obtaining such information.

7. All members of my family, will supply information that is true and complete.

8. The family is responsible to give written notice of any changes to the family income within 10 days. The family must also report within 10 days all sources of income for dependents that are turning 18 years old.

9. The family must report any changes to the family composition and/or household income within ten days, in writing. (Changes include the birth, adoption or court awarded custody of a child). The family also understands that they must request TCHAO's approval to add anyone else as an occupant of the unit.

10. The family is responsible for any Housing Quality Standards breach caused by my family or their guests for any of the following reasons:

(a) Failure to pay and maintain the tenant's lease-assigned utilities in the head of household's name,

(b) Failure to provide and maintain any appliances that the owner is not required to provide, but which are to be provided by the tenant, or

(c) Damages to the dwelling unit or premises beyond normal wear and tear.

11. The family must allow the TCHAO to inspect the unit at reasonable times and after reasonable notice.

12. The family must always keep their place of residence in a safe, decent and sanitary condition.

13. The family must not commit any serious or repeated violations of the lease.

14. The family must notify the owner and TCHAO in writing, before moving out of the unit or terminating the Lease.

15. The family must promptly give the TCHAO a copy of any eviction notice.

16. The family must use the assisted unit as the family's only residence.

17. The family must promptly notify the TCHAO in writing if any family member no longer resides in the unit.

18. The family must report any absence from the unit for any period of time in excess of thirty days.

19. The family understands that, if the TCHAO has given approval, a foster child or a live-in aide may reside in the unit. (If the family does not request approval or approval is denied by TCHAO, the family may not allow a foster child or live-in aide to reside in the unit.)

20. The family must not sublease, let, assign the lease or transfer the unit, or use the unit for unauthorized or illegal activities.

21. All family members must not commit fraud, bribery or any other corrupt or criminal act in connection with the programs.

22. The family must not own or have any interest in the assisted unit, nor am I or any member of my family, related to the owner of the property.

23. The assisted family or any member of the family, must not receive Section 8 tenant-based assistance while receiving another housing subsidy, for the same unit or for a different unit, under any federal, state or local housing assistance program (as determined by HUD).

24. All members of the family, must not engage in or threaten physical or verbal abuse or violent behavior toward TCHAO staff or representatives.

The family signs and agrees that Failure to meet the conditions contained in this Statement of Family Obligations, including the timely payment of the tenant's portion of the rent to the owner, or failure to fulfill the obligations under the Lease will be grounds for termination of rental assistance.

In addition, the TCHAO Policies further detail the following for Family Obligations:

5. The requested family members must attend regularly scheduled reexaminations and supply all information that is determined necessary for use in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements. Reasonable accommodations may be made if the Head of household is unable to attend an appointment.

TCHAO Policy

Re-Examinations are now offered via Assistance Connect, mail-in or in person. Re-Examinations must be completed by all household members 18yrs and older unless they attend school full time away from home.

Families who have not completed their re-exam 30 days prior to the effective date may be terminated at TCHAO's discretion.

9. The family must report any changes to the family composition and/or household income within ten days, in writing. (Changes include the birth, adoption or court awarded custody of a child). The family also understands that they must request TCHAO's approval to add anyone else as an occupant of the unit.

TCHAO Policy

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

10. The family responsible for any Housing Quality Standards breach caused by my family or their guests for any of the following reasons:

#10 (a) Failure to pay and maintain the tenant's lease-assigned utilities in the head of household's name,

TCHAO Policy

All utilities must be on and operative at all times in the name of the Head of Household.

#10 (c) Damages to the dwelling unit or premises beyond normal wear and tear.

TCHAO Policy

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

13. The family must not commit any serious or repeated violations of the lease.

TCHAO Policy

TCHAO 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 lease violations, notice to evict, etc.

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 criteria to be used, is whether the reason for the eviction was through no fault of the tenant or guests.

14. The family must notify the owner and TCHAO in writing, before moving out of the unit or terminating the Lease

TCHAO Policy

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

18. The family must report any absence from my unit for any period of time in excess of thirty days.

TCHAO 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 TCHAO and approval granted, prior to the start of the extended absence.

20. The family must not sublease, let, assign the lease or transfer the unit, or use the unit for unauthorized or illegal activities.

TCHAO 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.

22. The family must not own or have any interest in the assisted unit, nor am I or any member of my family, related to the owner of the property.

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 PHA 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]