

Chapter 12

DENIAL OR TERMINATION OF ASSISTANCE

I. INTRODUCTION

HACSM may deny or terminate assistance to a family because of the family's action or failure to act. HACSM will provide families with a written description of the grounds under which HACSM is proposing to deny or terminate assistance and the process by which a tenant or an applicant may request an informal hearing or review. This chapter describes HACSM policies for denying or terminating Section 8 assistance.

II. DENIAL OF ASSISTANCE

Denial of assistance for an applicant may include any or all of the following:

- Not placing the family's name on the waiting list
- Denying or withdrawing a voucher
- Not approving a request for tenancy or refusing to enter into a HAP contract
- Refusing to process a request for or to provide assistance under portability procedures

Denial of program assistance does not include any of the following criteria:

- Age, disability, race, color, religion, sex, or national origin
- Where a family lives prior to admission to the program
- Where the family will live with assistance under the program. Although eligibility is not affected by where the family will live, there may be restrictions on the family's ability to move outside the HACSM's jurisdiction.
- Whether members of the family are unwed parents, recipients of public assistance, or children born out of wedlock
- Whether the family includes children
- Whether a family decides to participate in a family self-sufficiency program
- Whether or not a qualified applicant has been a victim of domestic violence, dating violence, or stalking

III. MANDATORY DENIAL OF ASSISTANCE

HACSM will deny assistance in the following cases:

- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing.
- Any household member is subject to a lifetime registration requirement under a state sex offender registration program.

- Any member of the household has been evicted from federally-assisted housing in the last 3 years for drug-related criminal activity. HACSM will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 3 years for drug-related criminal activity, if HACSM is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program, or the person who committed the crime, is no longer living in the household.
- HACSM determines that any household member is currently engaged in the use of illegal drugs. *Currently engaged in* is defined as any use of illegal drugs during the previous six months.
- HACSM has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

In determining reasonable cause, HACSM will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A conviction will be given more weight than an arrest. HACSM will also consider evidence from treatment providers or community-based organizations providing services to household members.

- HACSM determines the family has no citizens or eligible alien members in the household. Housing assistance is restricted to citizens and non-citizens who have been lawfully admitted to the United States. "Mixed families" may be eligible for prorated assistance. If the family fails to submit required evidence of citizenship or eligible immigration status based on non-citizen rule regulations and applicable informal hearing procedures and is not eligible.
- If any member of the family fails to sign and submit consent forms allowing HACSM to obtain wage and income information.

IV. OTHER REASONS FOR DENIAL OF ASSISTANCE

HACSM will deny an applicant admission for participation in the program in the following cases:

- If any household member is currently engaged in, or has engaged in any of the following criminal activities, within the past three years:
 - *Drug-related criminal activity*, 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 [24 CFR 5.100].
 - *Violent criminal activity*, defined by HUD as 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 [24 CFR 5.100].
 - Criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the

immediate vicinity (*Immediate vicinity* means within a three-block radius of the premises); or

- Criminal activity that may threaten the health or safety of property owners and management staff, and persons performing contract administration functions or other responsibilities on behalf of the HA (including a HA employee or a HA contractor, subcontractor, or agent).

Evidence of such criminal activity includes, but is not limited to:

-Conviction for drug-related or violent criminal activity within the past 3 years.

-Any record of eviction from public or privately-owned housing as a result of criminal activity within the past 3 years.

- Any family member has been evicted from federally-assisted housing in the last three years;
- Any PHA has ever terminated assistance under the program for any member of the family within the last three years;
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program;
- The family owes rent or other amounts to any housing authority in connection with the HCV, Certificate, Moderate Rehabilitation or public housing programs, unless the family repays the full amount of the debt prior to being selected from the waiting list;
- If 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, unless the family repays the full amount of the debt prior to being selected from the waiting list;
- The family has breached the terms of a repayment agreement entered into with HACSM, unless the family repays the full amount of the debt covered in the repayment agreement prior to being selected from the waiting list;

Upon consideration of all factors, HACSM may, on a case-by-case basis, decide not to deny assistance.

V. SCREENING FOR ELIGIBILITY

Criminal Background Checks

HACSM is required to perform criminal background checks necessary to determine whether applicants are engaging in or have engaged in certain criminal activities or whether any household member is subject to a lifetime registration requirement under a state sex offender program in the state where the housing is located, as well as in any other state where a household member is known to have resided. In order to obtain access to the records, HACSM will require every applicant family to submit a consent form signed by each adult household member.

If HACSM proposes to deny assistance based on a criminal record or on lifetime sex offender registration information, HACSM must notify the household of the proposed

action and must provide the subject of the record and the applicant a copy of the record and an opportunity to dispute the accuracy and relevance of the information prior to a denial of admission.

Screening for Suitability as a Tenant

HACSM has no liability or responsibility to the owner for the family's behavior or suitability for tenancy. The HACSM will not conduct additional screening to determine an applicant family's suitability for tenancy.

The owner is responsible for screening and selection of the family to occupy the owner's unit. HACSM will inform the owner that screening and selection for tenancy is the responsibility of the owner. An owner may consider a family's history with respect to factors such as: payment of rent and utilities, caring for a unit and premises, respecting the rights of other residents to the peaceful enjoyment of their housing, criminal activity that is a threat to the health, safety or property of others, and compliance with other essential conditions of tenancy.

HACSM will provide prospective owners with the family's current and prior address (as shown in HACSM records) and the name and address (if known) of the owner at the family's current and prior addresses.

HACSM may provide owners with additional information, as long as families are notified that the information will be provided, and the same type of information is provided to all owners. HACSM will make an exception to this requirement if the family's whereabouts must be protected due to domestic abuse or witness protection.

HACSM will provide the following information, based on documentation in its possession:

- Eviction history
- Damage to rental units
- Other aspects of tenancy history that is a matter of public record
- Drug trafficking by family members

HACSM policy on providing information to owners is included in the briefing packet and will apply uniformly to all families and owners.

VI. CRITERIA FOR DECIDING TO DENY ASSISTANCE

HACSM will use the concept of "the preponderance of the evidence" as the standard for making all admission 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

HACSM will consider the following factors when making its decision:

- The seriousness of the case, especially with respect to how it would affect other residents;
- The effects that denial 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 3-III.G) 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:

-HACSM will require the applicant 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.

As a condition of receiving assistance, a family may agree to remove the culpable family member from the application. In such instances, the head of household must certify that the family member will not be permitted to visit or to stay as a guest in the assisted unit.

After admission to the program, the family must present evidence of the former family member's current address upon HACSM request.

VII. NOTICE OF ELIGIBILITY OR DENIAL

If the family is eligible for assistance, HACSM will notify the family when it extends the invitation to attend the voucher briefing appointment.

If HACSM determines that a family is not eligible for the program for any reason, the family will be notified promptly. The notice will describe the reasons for which assistance has been denied, the family's right to an informal review, and the process for obtaining the Informal Review.

If HACSM uses a criminal record or sex offender registration information obtained under 24 CFR 5, Subpart J, as the basis of a denial, a copy of the record must precede the notice to deny, with an opportunity for the applicant to dispute the accuracy and relevance of the information before HACSM can move to deny the application. In addition, a copy of the record must be provided to the subject of the record [24 CFR 5.903(f) and 5.905(d)]. HACSM must give the family an opportunity to dispute the accuracy and relevance of that record, in the informal review process in accordance with program requirements [24 CFR 982.553(d)].

If based on a criminal record or sex offender registration information, an applicant family appears to be ineligible; HACSM will notify the family in writing of the proposed denial and provide a copy of the record to the applicant and to the subject of the

record. The family will be given 10 business days to dispute the accuracy and relevance of the information.

If the family does not contact HACSM to dispute the information within the established time frame, HACSM will proceed with issuing the notice of denial of admission. A family that does not exercise their right to dispute the accuracy of the information prior to issuance of the official denial letter will still be given the opportunity to do so as part of the informal review process.

VIII. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING [24 CFR Part 5, Subpart L]

The Violence against Women Reauthorization Act of 2005 (VAWA) prohibits denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, or stalking. Specifically, Section 606(1) of VAWA adds the following provision to Section 8 of the U.S. Housing Act of 1937, which lists contract provisions and requirements for the housing choice voucher program:

- That an applicant or participant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate reason for denial of program assistance or for denial of admission, if the applicant otherwise qualifies for assistance or admission [24 CFR 5.2005].

Definitions [24 CFR 5.2003]

As used in VAWA:

- The term *bifurcate* means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.
- The term *domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship
 - The type of relationship
 - The frequency of interaction between the persons involved in the relationship

- The term *stalking* means:
 - To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or
 - To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
 - In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.
- The term *immediate family member* means, with respect to a person:
 - A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in the position or place of a parent; or
 - Any other person living in the household of that person and related to that person by blood and marriage.

Notification

HACSM acknowledges that a victim of domestic violence, dating violence, or stalking may have an unfavorable history (e.g. a poor credit history, a record of previous damage to an apartment, a prior arrest record) that would warrant denial under its policies. Therefore, if HACSM makes a determination to deny admission to an applicant family, it will include in its notice of denial

- A statement of the protection against denial provided by VAWA
- A description of HACSM confidentiality requirements
- A request that an applicant wishing to claim this protection submit to HACSM documentation meeting the specifications below with her or his request for an informal review.

Documentation

Victim Documentation

An applicant claiming that the cause of an unfavorable history is that a member of the applicant family is or has been a victim of domestic violence, dating violence, or stalking must provide documentation (1) demonstrating the connection between the abuse and the unfavorable history and (2) naming the perpetrator of the abuse. The documentation must include two elements:

- A statement signed by the victim certifying that the information provided is true and correct and that it describes bona fide incident(s) of actual or threatened domestic violence, dating violence, or stalking; and

One of the following:

- A police or court record documenting the domestic violence, dating violence, or stalking

- Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; or a medical or other knowledgeable professional. The person signing the documentation must attest under penalty of perjury to the person's belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

HACSM may, with respect to any specific case, waive the above-stated requirements for verification and provide the benefits of this policy based on the victim's statement or other corroborating evidence.

Perpetrator Documentation

If the perpetrator of the abuse is a member of the applicant family, the applicant must provide additional documentation consisting of one of the following:

- A signed statement (1) requesting that the perpetrator be removed from the application and (2) certifying that the perpetrator will not be permitted to visit or to stay as a guest in the assisted unit
- Documentation that the perpetrator has successfully completed, or is successfully undergoing, rehabilitation or treatment. The documentation must be signed by an employee or agent of a domestic violence service provider or by a medical or other knowledgeable professional from whom the perpetrator has sought or is receiving assistance in addressing the abuse. The signer must attest under penalty of perjury to his or her belief that the rehabilitation was successfully completed or is progressing successfully. The victim and perpetrator must also sign or attest to the documentation.

HACSM may, with respect to any specific case, waive the above-stated requirements for verification and provide the benefits of this policy based on the victim's statement or other corroborating evidence.

Time Frame for Submitting Documentation

The individual claiming victim status must submit the requested documentation within 14 business days after receipt of HACSM's written request or must request an extension within that time frame. HACSM may, at its discretion, extend the deadline for 10 business days.

If the individual provides the requested documentation within 14 business days, or any HACSM-approved extension, HACSM will reconsider its denial of assistance decision in light of the documentation.

If the individual does not provide the requested documentation within 14 business days, or any HACSM-approved extension, HACSM will proceed with denial of the family's assistance in accordance with applicable law, program regulations, and the policies in this plan.

HACSM Confidentiality Requirements [24 CFR 5.2007(a)(1)(v)]

All information provided to HACSM 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 database 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.

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, HACSM will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

IX. TERMINATION OF ASSISTANCE

Family No Longer Requires Assistance

As a family's income increases, the amount of HACSM subsidy goes down. If the amount of HCV subsidy provided by HACSM 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 HACSM of the changed circumstances and request an interim reexamination before the expiration of the 180-day period.

Family Exceeds Asset Limits

Participants will be determined ineligible for the program if they have experienced an increase in assets, valuing more than \$100,000 in assets, or have gained ownership interest in a suitable home in which they have a legal right to reside (see Chapter 7 for further details).

If a participating family is determined ineligible due to the above factor, HACSM will continue assistance for 90 days from the determination prior to terminating assistance. If a participating family experiences a change in asset value during the 90 days, the family must notify HACSM of the changes and request an interim before the expiration of the 90-day period.

Family Chooses to Terminate Assistance

The family may request that HACSM 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 co-head unless circumstances do not allow for written notice.

If no written notice is received, but some other form of notification is received (verbal from family, verbal or written from owner), HACSM staff will document the file accordingly and send a confirmation notice to the family and the owner within 10 business days of the notification, but no later than the termination effective date.

Family Absence from the Unit

The family may be absent from the unit for brief periods. However, the family cannot 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.

If the family is absent from the unit for more than 180 consecutive calendar days, the family's assistance will be terminated and notice of termination will be sent in accordance with policies set forth in this plan.

X. MANDATORY TERMINATION OF ASSISTANCE

HACSM will terminate assistance in the following circumstances:

- If any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.
- The family is evicted from a unit assisted under the HCV program for a serious or repeated violation of the lease. 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.

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 HACSM 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 alternative measures. Upon consideration of such alternatives and factors, the HACSM may, on a case-by-case basis, choose not to terminate assistance.

- Any family member fails to sign and submit any consent form they are required to sign for a reexamination.
- The family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; 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 a family member, as determined by the HACSM, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For the latter reason, such termination must be for a period of at least 24 months. This does not apply to ineligible non-citizens already in the household where the family's assistance has been prorated.
- If a participant family fails to provide the documentation or certification required for any family member who obtains a social security number or joins the family.

- 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, HACSM 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 HACSM 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.

- If any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents. *Currently engaged in* is defined as any use of illegal drugs during the previous six months.
- 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.

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

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

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.

Upon consideration of all factors or alternatives, the HACSM may, on a case-by-case basis, decide not to terminate assistance.

XI. OTHER AUTHORIZED REASONS FOR TERMINATION OF ASSISTANCE

HACSM **may** terminate a family's assistance if:

- The family has failed to comply with any family obligations under the program.
- Any family member has been evicted from federally-assisted housing in the last three years;
- Any PHA has terminated assistance under the program for any member of the family within the last three years;
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program;

- The family currently owes rent or other amounts to any PHA in connection with the HCV, Certificate, Moderate Rehabilitation or public housing programs (unless a repayment agreement is in place and payments are current);
- The family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease;
- The family has breached the terms of a repayment agreement entered into with the HACSM;
- A family member has engaged in or threatened violent or abusive behavior toward HACSM personnel. *Abusive or violent behavior towards HA 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.

Upon consideration of all factors or alternatives, the HACSM may, on a case-by-case basis, decide not to terminate assistance.

XII. ALTERNATIVES TO TERMINATION OF ASSISTANCE

Change in Household Composition

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 HACSM request.

Repayment of Family Debts

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

XIII. CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE

HACSM will use the concept of "the preponderance of the evidence" as the standard for making 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

HACSM will consider the following factors when making its decision:

- 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 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 HACSM will require the applicant 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

If the family includes a person with disabilities, HACSM'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 HACSM will determine whether the behavior is related to the disability. If so, upon the family's request, the HACSM will determine whether alternative measures are appropriate as a reasonable accommodation. The HACSM 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.

XIV. TERMINATING THE ASSISTANCE OF DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING VICTIMS AND PERPETRATORS [24 CFR 5.2005]

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 PHAs 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 PHA to terminate the assistance of any participant if the PHA "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.” However, situations where this might be relevant are extremely rare.

In determining whether a 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, HACSM will consider the following, and any other relevant, factors:

- Whether the threat is toward a tenant or employee other than the victim of domestic violence, dating violence, 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 helping the victim relocate to a confidential location.

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

Victim Documentation

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, HACSM will request in writing that the individual submit documentation affirming that claim.

- The documentation must include two elements: A statement signed by the victim certifying that the information provided is true and correct and that it describes bona fide incident(s) of actual or threatened domestic violence, dating violence, or stalking; and

One of the following:

- A police or court record documenting the domestic violence, dating violence, or stalking
- Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; or a medical or other knowledgeable professional. The person signing the documentation must attest under penalty of perjury to the person’s belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

HACSM may, with respect to any specific case, waive the above-stated requirements for verification and provide the benefits of this policy based on the victim’s statement or other corroborating evidence.

The individual claiming victim status must submit the requested documentation within 14 business days after receipt of HACSM's written request or must request an extension within that time frame. HACSM may, at its discretion, extend the deadline for 10 business days.

If the individual provides the requested documentation within 14 business days, or any HACSM-approved extension, HACSM will reconsider its termination decision in light of the documentation.

If the individual does not provide the requested documentation within 14 business days, or any HACSM-approved extension, HACSM will proceed with termination of the family's assistance in accordance with applicable law, program regulations, and the policies in this plan.

Terminating the Assistance of a Domestic Violence Perpetrator [24 CFR 5.2005(c)]

Although VAWA provides assistance termination protection for victims of domestic violence, it does not provide 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." 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 [Pub.L. 109-271]. 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].

HACSM will terminate assistance to a family member if it 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, HACSM will consider all credible evidence, including, but not limited to, a signed certification (from HUD-50066) or other documentation of abuse submitted to HACSM by the victim in accordance with this section. HACSM will also consider the factors in Section XIII of this chapter. Upon such consideration, HACSM may, on a case-by-case basis, choose not to terminate the assistance of the culpable family member.

If HACSM 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.

HACSM Confidentiality Requirements

All information provided to HACSM 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.

If disclosure is required for use in eviction proceeding or is otherwise required by applicable law, HACSM will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

XV. TERMINATION NOTICE

If a family's assistance is to be terminated, whether voluntarily or involuntarily, the HACSM will 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 and process to request one

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 HACSM, 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 HACSM, 30 days notice may not be given. In these cases, the notice to terminate will be sent at the time the HACSM learns the family has vacated the unit. The notice will be sent to the last known address on record with the HACSM.

XVI. TERMINATION OF TENANCY BY THE OWNER

Termination of an assisted tenancy is a matter between the owner and the family; the HACSM 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.

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, including 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. This includes failure to pay rent or other amounts due under the lease. However, HACSM's failure to make a HAP payment to the owner is not a violation of the lease between the family and the owner.

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

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 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.

Eviction

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 HACSM a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give HACSM a copy of any eviction notice.

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

XVII. DECIDING WHETHER TO TERMINATE TENANCY

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).