

## Chapter 12

### TERMINATION OF ASSISTANCE AND TENANCY

#### INTRODUCTION

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

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

As a family's income increases, the amount of BHA subsidy goes down. If the amount of HCV assistance provided by BHA drops to zero and remains at zero for 6 months (or 180 consecutive calendar days) the family's assistance terminates automatically.

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

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

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

### BHA 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, BHA will follow the notice requirements in Section 12-II.F.

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

HUD requires BHA to terminate assistance in the following circumstances.

### **Eviction [24 CFR 982.552(b)(2), Pub.L. 109-162]**

BHA must terminate assistance whenever a family is evicted from a unit assisted under the HCV program for a serious or repeated violation of the lease. Incidents of actual or threatened violence, dating violence, or stalking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking.

### BHA 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, BHA will determine whether the family has committed serious or repeated violations of the lease based on available evidence and may terminate assistance or take any of the alternative measures described in Section 12-II.C and other factors as described in Sections 12-II.E. Upon consideration of such alternatives and factors, BHA 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 criteria to be used is whether the reason for the eviction was through no fault of the tenant or guests.

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

BHA 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)]**

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

BHA must terminate assistance if a participant family fails to provide the documentation or certification required for any family member who obtains a social security number, joins the family, or reaches 6 years of age.

BHA will accept the following documents as evidence if the SSN is provided on the document:

- Identification card issued by a federal, state, or local agency, a medical insurance company or provider, or employer or trade union
- Payroll stubs
- Benefit award letters from government agencies; retirement benefit letters; life insurance policies
- Court records (real estate, tax notices, marriage and divorce, judgment or bankruptcy records)

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

BHA 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.

#### **Erroneously admitted Sex Offender**

If an individual who is subject to lifetime registration as a sex offender is erroneously admitted, BHA must act to terminate assistance of the individual or the household.

#### **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, 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, BHA 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 BHA policies, or must be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit.

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

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

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

- Any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member has violated the family's obligation not to engage in any drug-related criminal activity
- Any household member has violated the family's obligation not to engage in violent criminal activity

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

#### **BHA Policy**

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

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

*Currently engaged in* is defined as any use of illegal drugs during the previous six months.

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

#### BHA Policy

BHA 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.

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

In making its decision to terminate assistance, BHA will consider alternatives as described in Section 12-II.C and other factors described in Sections 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.

#### **Other Authorized Reasons for Termination of Assistance [24 CFR 982.552(c), Pub.L. 109-162]**

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

#### BHA Policy

BHA **will not** terminate a family's assistance because of the family's failure to meet its obligations under the Family Self-Sufficiency program.

BHA **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 BHA policies.

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

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

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

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

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

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

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

*Abusive or violent behavior towards PHA 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, BHA will consider alternatives as described in Section 12-II.C and other factors described in Sections 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.

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

The family may be absent from the unit for brief periods. BHA 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.

See Chapter 3 “Eligibility” for further details on absence from a unit.

#### **BHA Policy**

A family is considered absent when no member of the family is residing in the assisted unit. BHA may use utility bills, statements from neighbors and landlords, visits to the unit, postal records, letters passports and other travel documents, and any other appropriate methods to determine whether the family or one or more family members is absent.

A family member absent from the assisted unit as a result of being enrolled as a student at an institution of higher education, as defined under section 102 of the Higher Education Act of 1965 (20 U.S.D. 1002), continues to be a family member unless and until the student establishes a separate household.

A family must notify BHA in writing, as soon as is reasonably practical, of the absence from the unit (for example, because of travel, hospitalization, imprisonment, etc.) of the entire family, or one or more family members, including a child or children placed in a foster home or otherwise removed from the home by governmental action as follows:

- a. Before the absence begins if a family knows or believes that the absence will be for more than a total of 30 days (irrespective of whether the days are consecutive or not) per consecutive 12 month period; or
- b. Upon the occurrence if, as a result of a change in circumstances, an anticipated absence from the unit of a total of 30 or fewer days per consecutive 12 month period becomes an absence of more than 30 days.

BHA will determine, on a case by case basis, whether adequate notice was given.

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

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

#### **BHA Policy**

BHA will determine whether there is sufficient funding to pay for currently assisted families according to the policies in Part VIII of Chapter 16. If BHA determines there is a shortage of funding, prior to terminating any HAP contracts, BHA 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, BHA will terminate HAP contracts as a last resort.

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

If BHA must terminate HAP contracts due to insufficient funding, BHA will do so as described in steps 1 through 7 below. The Project-Based Voucher Program and Moderate Rehabilitation Programs are excluded from participation in these voucher reductions.

Order of Voucher Terminations due to Insufficient Funds:

1. BHA will recall vouchers issued to applicants from the Section 8 Housing Choice Voucher waiting list who received a voucher but have not yet utilized the voucher.
2. In the event that BHA determines that funding remains insufficient after BHA has recalled the vouchers described immediately above, BHA will contact receiving PHAs to determine if they can absorb any of the outgoing contracts.
3. In the event that BHA determines the funding remains insufficient after BHA has acted as described immediately above, BHA will recall the vouchers of the "other singles" who are not currently occupying an assisted unit.
4. In the event that BHA determines that funding remains insufficient after BHA has recalled the vouchers described immediately above, BHA will conduct a lottery and recall the vouchers of the "other singles" who are currently housed.
5. In the event that BHA determines that funding remains insufficient after BHA has recalled the vouchers described immediately above, BHA will identify the contracts where the HAP is less than \$200, and recall the vouchers.
6. In the event that BHA determines that funding remains insufficient after BHA has recalled the vouchers described immediately above, BHA will conduct a

lottery, and recall the vouchers of families (not elderly or disabled households).

7. In the event that BHA determines the funding remains insufficient after BHA has recalled the vouchers described immediately above, BHA will conduct a lottery and recall the vouchers of elderly and disabled households.

Families who have had their HAP contract terminated, or voucher recalled, will be placed at the top of the waiting list, in the order that their voucher has been recalled or terminated, to await the next available voucher. Families whose voucher has been terminated will be placed on the wait list ahead of families whose voucher has been recalled.

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

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

BHA 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 BHA the discretion to either terminate the family's assistance or to take another action. This part discusses the various actions BHA may choose to take when it has discretion, and outlines the criteria BHA 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.

BHA will report all terminations for cause, and all assisted household debts to BHA, in HUD's "Debts Owed to PHAs and Terminations" module. Every assisted household member will receive general notice of BHA's intent to comply with HUD reporting requirements for nonperforming prior-program participants. In addition to the general notice, BHA will provide written notice to the household (at last known address) of any adverse report submitted to BHA.

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

The way in which BHA terminates assistance depends upon individual circumstances. HUD permits BHA 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, BHA may require that any household member who participated in or was responsible for an offense no longer resides in the unit [24 CFR 982.552(c)(2)(ii)].

### BHA Policy

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

## **Repayment of Family Debts**

### BHA Policy

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

BHA will not allow the family to transfer assistance to another unit in the jurisdiction unless the Repayment Agreement is in good standing.

BHA will not allow the family to transfer assistance outside the jurisdiction until the debt is paid in full.

## **Voluntary Participation in Intervention Strategies**

### BHA Policy

As a reasonable accommodation of a disabled person, BHA will encourage participants to sign a release allowing BHA to make referrals to, and discuss strategies to preserve the rental housing subsidy, with agencies that serve disabled or aged individuals, including but not limited to Berkeley Mental Health and Alameda County Adult and Senior Services (e.g. Adult Protective Services, Elder Abuse).

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

### **Evidence**

For criminal activity, HUD permits BHA 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)].

### BHA Policy

BHA 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)]**

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

#### BHA Policy

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

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

The evidence that there is a responsible family member, friend or case manager to help the family manage/avoid a repeat of the problem behavior

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities or (as discussed further in section 12-II.E) a victim of domestic violence, dating violence, or stalking

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

As evidence of the likelihood of favorable conduct in the future, BHA will consider all of the following: evidence of employment, education, participation in a work training program, participating in a counseling program, involvement in a community group, a certificate of rehabilitation from the state, and letters of support from parole or probation, case workers, clergy or community leaders.

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

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

### BHA Policy

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

### **12-II.E. TERMINATING THE ASSISTANCE OF DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING VICTIMS AND PERPETRATORS [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 BHA 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."

### BHA Policy

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, BHA 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

If the tenant wishes to contest BHA's determination that he or she is an actual and imminent threat to other tenants or employees, the family may do so as part of the informal hearing process. Prior to terminating assistance based on any other of the "Other Authorized Reasons for Termination of Assistance," the PHA shall consider, as mitigating circumstances, whether domestic violence, dating violence, or stalking played a role in causing the basis for termination of the victim's assistance.

Any eviction or termination of assistance, as provided in paragraph 24 CFR 5.2005 (d)(3) of this section, should be utilized by BHA, owner, or management agent only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents.

All termination notices will notify participants of VAWA's protections, and that they may seek an Informal Hearing if they believe that the termination is based on acts of domestic violence, dating violence, or stalking committed against them. In accordance with the PHA's Limited English Proficiency Plan, the notice must be in a language that is understood by the individual if the individual is not proficient in English.

Any reported change in household income will be effective in the family rent portion the following month.

## **Victim Documentation**

### BHA Policy

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, BHA will request in writing that the individual submit documentation affirming that claim. The written request will include explicit instructions on where, when, and to whom the documentation must be submitted. It will also state the consequences for failure to submit the documentation by the deadline.

The documentation will consist of a completed and signed form HUD-50066, Certification of Domestic Violence, Dating Violence, or Stalking. In lieu of the certification form, BHA will accept either of the following forms of documentation:

A police or court record documenting the actual or threatened abuse

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.

BHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice.

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

If the individual provides the requested documentation within 14 business days, or any BHA-approved extension, BHA 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 BHA-approved extension, BHA 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 BHA 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 BHA 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 BHA 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].

#### BHA Policy

BHA will terminate assistance to a family member if BHA 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, non-culpable family members.

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

If BHA 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.

### **BHA Confidentiality Requirements [24 CFR 5.2007(a)(1)(v)]**

All information provided to BHA 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. BHA shall not allow employees to have access to information regarding documentation of domestic violence, dating violence, or stalking unless explicitly authorized by

the PHA for reasons that specifically call for the employees to have access to this information [24 CFR 5.2007 (a) (4) (iii)].

### BHA Policy

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

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

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

### BHA Policy

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

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

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

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

#### BHA 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 [HCV GB, p. 15-8].

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

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

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

### **12-III.B. GROUNDS FOR OWNER TERMINATION OF TENANCY [24 CFR 982.310 and Form HUD-52641-A, Tenancy Addendum, Pub.L. 109-162]**

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, 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.

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.

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

#### BHA Policy

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

### **12-III.D. DECIDING WHETHER TO TERMINATE TENANCY [24 CFR 982.310(h), 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 Reauthorization Act of 2005 (VAWA). (See Section 12-II.E.)

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

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

### **PART IV: TERMINATION OF HOUSING ASSISTANCE PAYMENT (HAP) CONTRACT BY THE OWNER**

The Section 8 Housing Choice Voucher program relies upon voluntary participation by participating landlords and assisted, eligible households.

Under the rules governing the Federal Section 8 (S8) Housing Choice Voucher Program:

1. Participation is voluntary for landlords and households.
2. The owner is *exempt* from the following provisions of the Berkeley Rent Stabilization Program for any S8 assisted tenancy:
  - a. Registration of the unit;
  - b. Payment of annual registration fees; and
  - c. Rent ceiling and rent increase regulations.

3. An owner may rent one unit to a household with S8 assistance, and lease other units to unassisted households.
4. An owner cannot discriminate in the selection of households for tenancy.
5. The owner has a right to a reasonable rent for the unit.
6. The owner may request a rent adjustment (increase) once every 12 months, at the anniversary of the HAP contract (BHA will approve the request if it is supported by rent comps).
7. The owner has the exclusive right to terminate any tenancy for lease violations and “other good cause.”
8. At *turnover*, the owner has the option of selecting a household with S8 assistance, or renting the unit to an unassisted household.
9. The Housing Assistance Payment (HAP) contract between BHA and the landlord only terminates as follows:
  - a. The lease between the owner and the household is terminated in accordance with the “Good Cause for Eviction” provisions in the local Rent Control Ordinance (you must submit a copy of the Court order);
  - b. The voucher is terminated for cause;
  - c. The household forfeits the voucher;
  - d. At the end of the month, when no eligible person is in the unit (i.e. head of household passes away, and there are no other assisted household members);
  - e. The unit has been in failed status (uncorrected conditions that don’t meet minimum Housing Quality Standards) for more than 60-days; or
  - f. Six months (or 180 days) after \$0 rental subsidy payments to the landlord (where the household is paying 100% of the rent).

## EXHIBIT 12-1: STATEMENT OF FAMILY OBLIGATIONS

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

- The family must supply any information that BHA or HUD determines to be necessary, including submission of required evidence of citizenship or eligible immigration status.
- The family must supply any information requested by BHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- The family must disclose and verify social security numbers and sign and submit consent forms for obtaining information.
- Any information supplied by the family must be true and complete.
- The family is responsible for any Housing Quality Standards (HQS) breach by the family caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond normal wear and tear caused by any member of the household or guest.
- The family must allow the owner access to the unit after reasonable advance notice or without notice if the reason to delay can result in greater harm/damage.
- The family must notify BHA in writing, as soon as possible, when someone moves, or will be out of the unit for 30-days or more. This includes someone in a medical facility, foster care, jail, or on an extended vacation.
- The family must provide BHA with a copy of any notice from the landlord regarding (a) non-payment of rent or (b) nuisance behavior within five (5) days of receipt.
- The family must monitor and manage the behavior of all household members (and guests) to make sure no one is involved in criminal behavior, especially no acts of violence or involvement with illegal drugs.
- An adult of the family must be present, or have an adult (18 years or older) present who is authorized by the family to allow BHA access to the unit, when BHA has scheduled an inspection. This may include the landlord if the family so chooses.

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

### BHA Policy

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

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

The family must notify BHA and the owner before moving out of the unit or terminating the lease.

### BHA Policy

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

The family must promptly give BHA a copy of any owner eviction notice.

The family must use the assisted unit for residence by the family. The unit must be the family's only residence.

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

### BHA Policy

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

The family must promptly notify BHA in writing if any family member no longer lives in the unit.

If BHA has given approval, a foster child or a live-in aide may reside in the unit. BHA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when BHA consent may be given or denied. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see Chapter 3 (Sections I.K and I.M), and Chapter 11 (Section II.B).

The family must not sublease the unit, assign the lease, or transfer the unit.

### BHA Policy

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

The family must supply any information requested by BHA to verify that the family is living in the unit or information related to family absence from the unit.

The family must promptly notify BHA when the family is absent from the unit.

### BHA 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 BHA at the start of the extended absence.

The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].

The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).

Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).

Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and BHA policies related to drug-related and violent criminal activity.

Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for a discussion of HUD and BHA policies related to alcohol abuse.

An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.

A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless BHA 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]