

Chapter 15

DENIAL OR TERMINATION OF ASSISTANCE

[24 CFR 982.552, 982.553]

INTRODUCTION

The PHA may deny or terminate assistance for a family because of the family's action or failure to act. The PHA will provide families with a written description of the Family Obligations under the program, the grounds under which the PHA can deny or terminate assistance, and the PHA's informal hearing procedures. This Chapter describes when the PHA is required to deny or terminate assistance, and the PHA's policies for the denial of a new commitment of assistance and the grounds for termination of assistance under an outstanding HAP contract.

A. GROUNDS FOR DENIAL/TERMINATION [24 CFR 982.552, 982.553; HUD-VASH Operating Requirements, as published in the Federal Register on May 6 and 19, 2008]

HUD-VASH

For applicants referred by the local Veterans Affairs Medical Center (VAMC) to HOC for participation in its HUD-Veterans Affairs Supportive Housing (HUD-VASH) program, the PHA will only screen to determine if any member of the household is subject to a lifetime registration requirement under a state sex offender registration program (see **Mandatory Denial and Termination**, below). If a family member other than the veteran is determined to be on such a registry, HOC can still serve the veteran if the veteran agrees to remove the registrant from the family composition.

Other factors listed in this Chapter as Grounds for Denial/Termination do not apply to the initial screening of veterans and their families referred by a VAMC. Unless specifically noted in this document or in federal guidance for HUD-VASH, the provisions in this Chapter governing termination of assistance do apply to participants in HUD-VASH.

In addition, as a condition of HCV rental assistance, a HUD-VASH eligible family must receive appropriate case management services, as determined by the VAMC, from the VAMC. Therefore, a HUD-VASH participant family's HCV assistance must be terminated for failure to participate, without good cause, in case management as verified by the VAMC. However, a VAMC determination that the participant family no longer requires case management is not grounds for termination of assistance. In such case, and at its option, the PHA may offer the family continued HCV assistance through one of its regular vouchers, to free up the HUD-VASH voucher for another eligible family referred by the VAMC.

If denial or termination is based upon behavior resulting from a disability, the PHA will delay the denial or termination in order to determine if there is an accommodation, which would negate the behavior resulting from the disability.

Form of Denial/Termination

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

- Denial for placement on the PHA waiting list
- Denying a voucher or withdrawing a certificate or voucher
- Refusing to enter into a HAP contract or approve a tenancy
- Refusing to process or provide assistance under portability procedures

Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a tenancy
- Terminating housing assistance payments under an outstanding HAP contract
- Refusing to process or provide assistance under portability procedures

Mandatory Denial and Termination [24 CFR 982.552(b) (10)(d)]

The PHA must deny assistance to applicants, and terminate assistance for participants:

If any member of the family fails to sign and submit HUD or PHA required consent forms for obtaining information.

If no member of the family is a U.S. citizen or eligible immigrant. (See Section D)

If the family is under contract and 180 days (or 12 months, depending on the HAP contract used) have elapsed since the PHA's last housing assistance payment was made. (See "Contract Terminations" chapter.)

The PHA must permanently deny assistance to applicants, and terminate the assistance of persons convicted of manufacturing or producing methamphetamine in violation of any Federal or State law.

If any member of the family has been evicted from federally assisted housing for a serious violation of the lease, the PHA must deny admission for three years after the eviction occurred.

The PHA must terminate program assistance for a family evicted from housing assisted under the program for serious violation of the lease.

The PHA must deny admission to the program for an applicant or terminate program assistance for a participant if any member of the family fails to sign and submit consent forms for obtaining information in accordance with Part 5, subparts B and F.

The PHA must deny admission or terminate assistance when required under the regulations to establish citizenship or eligible immigration status.

The PHA must permanently deny assistance to applicants, and terminate the assistance if any member of the household is subject to a lifetime registration requirement under a state sex offender registration program. Those persons who are required to register for a period other than a lifetime will be reviewed on an individual basis to determine further eligibility for assistance.

[24 CFR 5.856]

Students enrolled at an institution of higher education who are under the age of 24, not a veteran, unmarried, and have no children are not eligible for the Housing Choice Voucher program. The eligibility requirements apply to both full and part-time students. (Section 5.612 and 5.609)

Grounds for Denial or Termination of Assistance [24 CFR 982.552(c)]

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

The family violates any family obligation under the program as listed in 24 CFR 982.551. Any member of the family has ever been evicted from public housing.

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

If any member of the family commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program.

The family currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

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

The family breaches an agreement with a PHA to pay amounts owed to a PHA, or amounts paid to an owner by a PHA. The PHA at its discretion may offer the family the opportunity to enter into a repayment agreement. The PHA will prescribe the terms of the agreement. (See "Repayment Agreements" chapter.)

The family participating in an FSS program fails to comply, without good cause, with the family's FSS contract of participation.

If the family fails to fulfill its obligation under the Section 8 welfare-to-work voucher program.

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

"Abusive or violent behavior towards PHA personnel" includes verbal as well as physical abuse or violence. Use of expletives that are generally considered insulting, racial epithets, or other language, written or oral, that is customarily used to insult or intimidate, may be cause for termination or denial.

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

Actual physical abuse or violence will always be cause for termination.

Any member of the family whose drug or alcohol abuse interferes with the health, safety or peaceful enjoyment of other project residents. Crime by Family Member (See Criminal Screening Criteria in Section B, below)

If any member of the family commits drug-related criminal activity, or violent criminal activity. (See Criminal Screening Criteria in Section B, below and 982.553 of the regulations)

Any member of the family has ever been evicted or is in the process of being evicted from public housing, any HOC housing program, or HOC rental unit. When the eviction is the result of nonpayment in a HOC owned non-public housing unit, eligibility for issuance of a voucher will be determined on a case by case basis. If the eviction is overturned in favor of the client, eligibility in the Housing Choice Voucher program will be determined at the conclusion of the eviction process.

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

The Housing Opportunities Commission will not deny admission to the Housing Choice Voucher program to any applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, or stalking if the applicant otherwise qualifies for assistance or admission.

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 cause for termination if the tenant or immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking. The Housing Opportunities Commission may permit an owner or manager receiving Housing Assistance Payments to bifurcate a lease in order 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.

The Housing Opportunities Commission may terminate assistance for any violation of a lease not based on the act or acts of violence in question against the tenant or a member of the tenant's household.

The Housing Opportunities Commission may terminate assistance of any participant whose activities or actions, or activities or actions of the participant's household members or guests, pose an actual and imminent threat to other tenants or the employees of the Housing Opportunities Commission. The PHA may terminate assistance of a participant even if that tenant's lease is not terminated by the owner.

An incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and will not be good cause for terminating the tenancy or occupancy rights of the victim of such violence.

As allowed by federal statute and/or regulation, the Housing Opportunities Commission may require that a an individual certify via a HUD approved certification form that the individual is a victim of domestic violence, dating violence, or stalking, and that the incident or incidents in question are bona fide incidents of such actual or threatened abuse and meet the requirements set forth above. Such certification shall include the name of the perpetrator. The individual shall provide such certification within 14 business days after the Housing Opportunities Commission requests such certification.

If the PHA is advised through the normal course of business or at annual recertification of a HCV participant with a family member meeting the following student criteria: Students enrolled at an institution of higher education who are under the age of 24, not a veteran, unmarried, and have no children, the individual and family could be terminated from the program based on household income levels. (CFR24 982-552)

Refer to "Eligibility for Admission" chapter, "Other Criteria for Admission" section for further information.

B. CRIMINAL SCREENING CRITERIA

Purpose

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

Help create and maintain a safe and drug-free community;

Keep our program participants free from threats to their personal and family safety;

Support parental efforts to instill values of personal responsibility and hard work;

Help maintain an environment where children can live safely, learn and grow up to be productive citizens; and

Assist families in their vocational/educational goals in the pursuit of self-sufficiency.

Administration

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

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

This policy may be posted on the PHA's bulletin board and copies made readily available to applicants and participants upon request.

The head of household must notify HOC within ten (10) days of the arrest of any household member or any person arrested in the voucher-assisted unit.

Screening of Applicants

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

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

HUD Definitions

1. ***Drug-related criminal activity*** is the illegal manufacture, sale, distribution, use or possession with an intent to manufacture, sell, distribute or use of a controlled substance.
2. ***Violent criminal activity*** is any criminal activity that has as one of its elements, the use, attempted use, or threatened use of physical force against a person or property.
3. ***Preponderance of evidence*** is evidence which is of greater weight or more convincing than evidence which is offered in opposition to it so that the evidence, as a whole, shows the facts sought to be proved, are more probable than not.

Confidentiality of Criminal Records

The PHA will ensure that any criminal record received in connection with a determination of qualification, termination or denial of assistance is maintained confidentially, not misused, nor improperly disseminated and destroyed once the purpose for which it is requested is accomplished. Misuse of the information by any employee of the PHA may be grounds for termination of employment and legal penalties for misuse may be pursued.

Standard of Violation

1. The PHA will deny participation in the Housing Choice Voucher Program to applicants and terminate assistance to participants in instances in which the PHA determines there is reasonable cause to believe that the family, or guest, or a family member is illegally using a controlled substance or is engaged in a pattern of illegal use, or if the family or a family member abuses alcohol, or exhibits a pattern of abuse, that may interfere with the health, safety or right of peaceful enjoyment of the premises by other residents.
2. A pattern of abuse of a controlled substance or abuse of alcohol will be deemed to have been established if there is more than one (1) incident during the previous twenty-four (24) months.

In evaluating the evidence, the PHA will give fair consideration to the seriousness of the activity, the extent of participation of individual family members, mitigating circumstances, the effects of denial or termination of assistance of other family members who are not involved, and the likelihood of favorable conduct in the future. The PHA will make its determination or denial or termination of assistance based on a preponderance of the evidence presented to it.

Additional Criteria of Ineligibility for Admission

1. Persons evicted from Public Housing, Indian Housing, Section 23 Housing, or any Section 8 Program because of drug related criminal activity or violent criminal activity, are ineligible for admission to the Section 8 Program for a three (3) year period beginning on the date of such eviction unless, with respect to drug related activity, the evicted family member successfully completes a rehabilitation program approved by the PHA.
2. The PHA may deny assistance to any family determined to be involved in any drug related or violent criminal activity or other criminal activity which would adversely affect the health, safety or peaceful enjoyment of the premises by other residents. The PHA may, after 3 years from the date of the conviction or at the end of the incarceration/probationary period, whichever is longer, require the applicant as a condition of admission to the Program, to submit evidence sufficient to ensure that the individual or individuals in the applicant's household who have engaged in criminal activity for which denial was made, have not engaged in such criminal activity during such time.

Notice of Termination of Assistance

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

The reason(s) for the proposed termination,

The effective date of the proposed termination,

The family's right, if they disagree, to request an Informal Hearing to be held before termination of assistance.

The date by which a request for an informal hearing must be received by the PHA.

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

Appeal of Denial or Termination of Assistance

In any case in which the PHA determines to deny or terminate assistance to a family for drug related criminal activity or violent criminal activity, PHA shall provide an opportunity for an Informal Review or Informal Hearing, as the case may be, pursuant to Chapter 19.

C. FAMILY OBLIGATIONS [24 CFR 982.551]

The family must supply any information that the PHA or HUD determines is necessary in the administration of the program, including submission of required evidence of citizenship or eligible immigration status (as provided by 24 CFR 982.551). "Information" includes any requested certification, release or other documentation.

The family must supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements.

The family must disclose and verify Social Security Numbers (as provided by 24 CFR 5.216) and must sign and submit consent forms for obtaining information in accordance with 24 CFR 5.230.

All information supplied by the family must be true and complete.

The family is responsible for an HQS breach caused by the family as described in 982.404(b).

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

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

The family must notify the owner and, at the same time, notify the PHA before the family moves out of the unit or terminates the lease upon notice to the owner.

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

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

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

The family must promptly notify the PHA if any family member no longer resides in the unit.

If the PHA has given approval, a foster child or a live-in aide may reside in the unit. If the family does not request approval or PHA approval is denied, the family may not allow a foster child or live-in aide to reside with the assisted family.

Members of the household may engage in legal profit-making activities in the unit, but only if such activities are incidental to primary use of the unit as a residence by members of the family.

The family must not sublease or let the unit.

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

The family must supply any information or certification requested by the PHA to verify that the family is living in the unit, or relating to family absence from the unit, including any PHA-requested information or certification on the purposes of family absences. The family must cooperate with the PHA for this purpose. The family must promptly notify the PHA of absence from the unit.

The family must not own or have any interest in the unit.

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

The members of the family may not engage in drug-related criminal activity or violent criminal activity. (See Criminal Screening Criteria in Section B, above).

An assisted family, or members of the family, may not receive Section 8 tenant-based assistance while receiving another housing subsidy, for the same unit or for a different unit, under any duplicative (as determined by HUD or in accordance with HUD requirements) federal, State or local housing assistance program.

Housing Authority Discretion [24 CFR 982.552(c)]

In deciding whether to deny or terminate assistance because of action or failure to act by members of the family, the PHA has discretion to consider all of the circumstances in each case, including the seriousness of the case. The PHA will use its discretion in reviewing the extent of participation or culpability of individual family members and the length of time since the violation occurred. The PHA may also review the family's more recent history and record of compliance, and the effects that denial or termination of assistance may have on other family members who were not involved in the action or failure to act.

The PHA may impose, as a condition of continued assistance for other family members, a requirement that family members who participated in, or were culpable for the action or failure to act, will not reside in the unit. The PHA may permit the other members of a family to continue in the program.

Enforcing Family Obligations

Explanations and Terms

The term "Promptly" when used with the Family Obligations always means "within 10 days." Denial or termination of assistance is always optional except where this Plan or the regulations state otherwise.

HQS Breach

The Housing Inspector will determine if an HQS breach as identified in 24 CFR 982.404 (b) is the responsibility of the family. Families may be given extensions to cure HQS breaches by Housing Inspector Supervisor.

Lease Violations

The following criteria will be used to decide if a serious or repeated violation of the lease will result in termination of assistance:

If the owner terminates tenancy through court action for serious or repeated violation of the lease.

If the owner notifies the family of termination of tenancy assistance for serious or repeated lease violations, and the family moves from the unit prior to the completion of court action, and the PHA determines that the cause is a serious or repeated violation of the lease based on available evidence.

If the owner notifies the family of termination of tenancy assistance for serious or repeated lease violations, and the family moves from the unit prior to the completion of court action, and

If there are police reports, neighborhood complaints or other third party information, that has been verified by the PHA.

Nonpayment of rent is considered a serious violation of the lease.

Notification of Eviction

If the family request assistance to move and they did not notify the PHA of an eviction within 10 days of receiving the Notice of Lease Termination, the move will be denied.

Proposed Additions to the Family

The PHA will deny a family's request to add additional family members who are:

- Persons who have been evicted from public housing.
- Persons who have previously violated a family obligation listed in 24CFR 982.51 of the HUD regulations.
- Persons who have been part of a family whose assistance has been terminated under the Certificate or Voucher program.
- Persons who commit drug-related criminal activity or violent criminal activity. Persons who do not meet the PHA's definition of family.
- Persons who commit fraud, bribery or any other corrupt or criminal act in connection with any federal housing program.
- Persons who currently owe rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.
- Persons who have engaged in or threatened abusive or violent behavior toward PHA personnel.

Family Member Moves Out

Families are required to notify the PHA if any family member leaves the assisted household. When the family notifies the PHA, they must furnish the following information:

- The date the family member moved out.
- The new address, if known, of the family member.
- A statement as to whether the family member is temporarily or permanently absent.

Limitation on Profit-making Activity in Unit

If the business activity area results in the inability of the family to use any of the critical living areas, such as a bedroom utilized for a business that is not available for sleeping, it will be considered a violation.

If the PHA determines that the use of the unit as a business is not incidental to its use as a dwelling unit, it will be considered a program violation.

If the PHA determines the business is not legal, it will be considered a program violation.

Interest in Unit

The owner may not reside in the assisted unit regardless of whether (s)he is a member of the assisted family, unless the family owns the mobile home and rents the pad under the Certificate Program.

Fraud

In each case, the PHA will consider which family members were involved, the circumstances, and any hardship that might be caused to innocent members.

In the event of false citizenship claims: (See section below)

D. PROCEDURES FOR NON-CITIZENS [24 CFR 5.514, 5.516, 5.518]

Denial or Termination due to Ineligible Immigrant Status

Applicant or participant families in which all members are neither U.S. citizens nor eligible immigrants are not eligible for assistance and must have their assistance terminated. The PHA must offer the family an opportunity for a hearing. (See "Eligibility for Admission" chapter, section on Citizenship/Eligible Immigration Status.)

Assistance may not be terminated while verification of the participant family's eligible immigration status is pending.

False or Incomplete Information

When the PHA has clear, concrete, or substantial documentation (such as a permanent resident card or information from another agency) that contradicts the declaration of citizenship made by an applicant or participant, an investigation will be conducted and the individual will be given an opportunity to present relevant information.

If the individual is unable to verify their citizenship, the PHA will not give him/her an opportunity to provide a new declaration as an eligible immigrant or an opportunity to elect not to contend their status.

The PHA will then verify eligible status, deny, terminate, or prorate as applicable.

The PHA will deny or terminate assistance based on the submission of false information or misrepresentation.

Procedure for Denial or Termination

If the family (or any member) claimed eligible immigrant status and the INS primary and secondary verifications failed to document the status, the family may make an appeal to the INS and request a hearing with the PHA either after the INS appeal or in lieu of the INS appeal.

After the PHA has made a determination of ineligibility, the family will be notified of the determination and the reasons and informed of the option for prorated assistance (if applicable).

E. ZERO (\$0) ASSISTANCE TENANCIES

HAP Contracts Prior to October 2, 1995

For contracts that were effective prior to October 2, 1995, the PHA is liable for unpaid rent and damages if the family vacates during the allowable 12 months after the last HAP payment. The PHA must perform all of the functions normally required, such as reexaminations and inspections.

The participant will be notified of the right to remain on the program at \$0 assistance for 12 months. If the family is still in the unit after 12 months, the assistance will be terminated.

In order for a family to move to another unit during the 12 month, the rent for the new unit would have to be high enough to necessitate a housing assistance payment.

HAP Contracts On or After October 2, 1995 [24 CFR 982.455 (a)]

For contracts effective on or after October 2, 1995, the PHA has no liability for unpaid rent or damages, and the family may remain in the unit at \$0 assistance for up to 180 days after the last HAP payment. If the family is still in the unit after 180 days, the assistance will be terminated. If, within the 180-day timeframe, an owner rent increase or a decrease in the Total Tenant Payment causes the family to be eligible for a housing assistance payment, the PHA will resume assistance payments for the family.

In order for a family to move to another unit during the 180 days, the rent for the new unit would have to be high enough to necessitate a housing assistance payment.

F. OPTION NOT TO TERMINATE FOR MISREPRESENTATION

[24 CFR 982.551, 982.552(c)]

If the family has misrepresented any facts that caused the PHA to overpay assistance, the PHA may choose not to terminate. The PHA may offer to continue assistance provided that the family executes a Repayment Agreement and makes payments in accordance with the agreement or reimburses the PHA in full within 30 calendar days.

G. MISREPRESENTATION IN COLLUSION WITH OWNER

[24 CFR 982.551, 982.552 (c)]

If the family intentionally, willingly, and knowingly commits fraud or is involved in any other illegal scheme with the owner, the PHA will deny or terminate assistance.

In making this determination, the PHA will carefully consider the possibility of overt or implied intimidation of the family by the owner and the family's understanding of the events.

H. MISSED APPOINTMENTS AND DEADLINES [24 CFR 982.551, 982.552 (c)]

It is a Family Obligation to supply information, documentation, and certification as needed for the PHA to fulfill its responsibilities. The PHA schedules appointments and sets deadlines in order to obtain the required information. The Obligations also require that the family allows the PHA to inspect the unit, and appointments are made for this purpose.

An applicant or participant who fails to keep an appointment, or to supply information required by a deadline without notifying the PHA, may be sent a Notice of Denial or Termination of Assistance for failure to provide required information, or for failure to allow the PHA to inspect the unit.

The family will be given information about the requirement to keep appointments and the number of times appointments will be rescheduled, as specified in this Plan.

Appointments will be scheduled and time requirements will be imposed for the following events and circumstances:

Eligibility for Admissions

Verification Procedures

Voucher Issuance and Briefings

Housing Quality Standards and Inspections

Recertifications

Appeals

Acceptable reasons for missing appointments or failing to provide information by deadlines are:

- Medical emergency
- Family emergency

Procedure when Appointments are Missed or Information not Provided

For most purposes in this Plan, the family will be given one opportunity before being issued a notice of termination or denial for breach of a family obligation.

I. ADMINISTRATIVE CHANGES DURING TERMINATION OF ASSISTANCE

A. PERMISSABLE PHA ACTIONS DURING THE GRIEVANCE PROCEDURE:

The PHA may implement the following changes prior to an informal hearing:

- Changes in total tenant payment or family share; or
- Unit size determinations for a family that requests to move.

B. DENIAL OF VOUCHER ISSUANCE DURING THE GRIEVANCE PROCESS

In cases in which the PHA decides to terminate or reduce a family's assistance, the PHA will deny a request for a new voucher for a family that wants to move until the family has exhausted its rights through the informal hearing process (see Chapter 9, COMPLAINTS AND APPEALS).