

## CHAPTER 15

### DENIAL OR TERMINATION OF ASSISTANCE

[24 CFR 982.552, 982.553]

#### **INTRODUCTION**

The HA may deny or terminate assistance for a family because of the family's action or failure to act. The HA will provide families with a written description of the Family Obligations under the program, the grounds under which the HA can deny or terminate assistance, and the HA's informal hearing procedures. This Chapter describes when the HA is required to deny or terminate assistance, and the HA'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]

If denial or termination is based upon behavior resulting from a disability, the HA 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 HA 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 HA must deny assistance to applicants, and terminate assistance for participants:

- ◆ If any member of the family fails to sign and submit HUD or HA required consent forms for obtaining information.
- ◆ If no member of the family is an 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 HA's last housing assistance payment was made. (*See "Contract Terminations" chapter.*)

#### **The HA 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 HA must deny admission for **3 years** after the eviction occurred.

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

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

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

The HA 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.

## CHAPTER 15

- ⊗ The family violates any family obligation under the program as listed in 24 CFR 982-553
- ⊗ Any member of the family has ever been evicted from public housing;
- ⊗ If any HA 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 HA or to another HA in connection with Section 8 or public housing assistance under the 1937 Act;
- ⊗ The family has not reimbursed any HA 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 HA to pay amounts owed to a HA, or amounts paid to an owner by a HA. The HA at its discretion may offer the family the opportunity to enter a repayment agreement. The HA 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 HA personnel:

*"Abusive or violent behavior towards HA 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 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 *One Strike policy section below*);
- ⊗ If any member of the family commits drug-related criminal activity, or violent criminal activity. (See *One-strike policy below and 982.553 of the regulations*).

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

### **B. "ONE STRIKE" POLICY**

#### **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 Albemarle Office of Housing 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
- ✓ Help maintain an environment where children can live safely, learn and grow up to be productive citizens
- ✓ 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, or other legally protected groups.

## CHAPTER 15

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

### **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 HA 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**

*Drug-related criminal activity* is the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute or use a controlled substance. Drug-related criminal activity means *on or near the premises*.

*Violent criminal activity* includes 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, and the activity is being engaged in by any family member.

### **Standard for Violation**

The HA will deny participation in the program to applicants and terminate assistance to participants in cases where the HA determines there is reasonable cause to believe that the person is illegally using a controlled substance or if the person abuses alcohol in a way that may interfere with the health, safety or right to peaceful enjoyment of the premises by other residents, including cases where the HA determines that there is a pattern of illegal use of a controlled substance or pattern of alcohol abuse.

The HA will consider the use of a controlled substance or alcohol to be a pattern if there is more than one incident during the previous 6 months.

“Engaged in or engaging in” violent criminal activity means any act within the past **three (3)** years by applicants or participants, household members, or guests which involved criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person of another, which [resulted in] [did or did not result in] the arrest and/or conviction of the applicant or participant, household members, or guests.

The activity is being engaged in by any family member.

The existence of the above-referenced behavior by any household member or guest, regardless of the applicant or participant’s knowledge of the behavior, shall be grounds for denial or termination of assistance.

In evaluating evidence of negative past behavior, the HA will give fair consideration to the seriousness of the activity with respect to how it would affect other residents, and/or likelihood of favorable conduct in the future which could be supported by evidence of rehabilitation.

### **Crime by Family Members**

- (a) At any time, The Albemarle County Office of Housing (HA) may deny assistance to an applicant, or terminate assistance to a participant family if any member of the family commits:
  - (1) Drug-Related criminal activity; or
  - (2) Violent criminal activity
  
- (b) *If the PHA seeks to deny or terminate assistance because of illegal use or possession for personal use of a controlled substance, such use or possession must have occurred within one year before the date that the PHA provides notice to the family of the PHA determination to deny or terminate assistance. The PHA may not deny or terminate assistance for such use or possession by a family member, if the family member can demonstrate that he or she:*
  - (1) Has an addiction to a controlled substance, has a record of such an impairment, or is regarded as having such an impairment; and

## CHAPTER 15

- (2.) Is recovering or has recovered from such addiction and does not currently use or possess controlled substances. The PHA may require a family member who has engaged in the illegal use of drugs to submit evidence of participation in, or successful completion of, a treatment program as a condition to being allowed to reside in the unit.
- (c) Evidence of criminal activity. In determining whether to deny or terminate assistance based on drug-related criminal activity or violent criminal activity, the HA may deny or terminate assistance if the preponderance of evidence indicates that a family member has engaged in such activity, regardless of whether the family member has been arrested or convicted.

The HA's administrative agent shall have discretion to consider all of the circumstances in each case to determine the extent of the participation by family members not involved in the proscribed activity. In appropriate cases, the HA will permit the remaining members of the family to continue receiving assistance and will impose a condition that family members determined to have engaged in the illicit activities will not reside in the unit. The HA will require a member that has engaged in the illegal use of drugs to submit evidence of successful completion of a treatment program as a condition of reinstated unit tenancy.

### **Termination of Assistance for Participants**

If the family violates the lease for drug-related or violent criminal activity, the HA will terminate assistance.

In appropriate cases, the HA may permit the family to continue receiving assistance provided that family members determined to have engaged in the proscribed activities will not reside in the unit. If the violating member is a minor, the HA may consider individual circumstances with the advice of Juvenile Court officials.

### **Notice of Termination of Assistance**

In any case where the HA decides to terminate assistance to the family, the HA 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 HA.

The HA 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.

### **Required Evidence**

*Preponderance of 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. The intent is not to prove criminal liability, but to establish that the act(s) occurred. Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

*Credible evidence* may be obtained from police and/or court records. Testimony from neighbors, when combined with other factual evidence can be considered credible evidence. Other credible evidence includes documentation of drug raids or arrest warrants.

The HA will pursue fact-finding efforts as needed to obtain credible evidence.

### **Confidentiality of Criminal Records**

The HA will ensure that any criminal record received is maintained confidentially, not misused or improperly disseminated, and destroyed once the purpose for which it was requested is accomplished.

All criminal reports, while needed, will be housed within the office with access limited to individuals responsible for screening and determining eligibility for initial and continued assistance and to Section 8 management.

Misuse of the above information by any employee will be grounds for termination of employment. Legal penalties for

## CHAPTER 15

misuses are contained in the Virginia State code.

### **C. FAMILY OBLIGATIONS** [24 CFR 982.551]

The family must supply any information that the HA 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 HA 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 HA 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 HA before the family moves out of the unit or terminates the lease upon notice to the owner.
- ☒ The family must promptly give the HA 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 HA. The family must promptly inform the HA of the birth, adoption or court-awarded custody of a child. The family must request HA approval to add any other family member as an occupant of the unit.
- ☒ The family must promptly notify the HA if any family member no longer resides in the unit.
- ☒ If the HA has given approval, a foster child or a live-in aide may reside in the unit. If the family does not request approval or HA 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 HA to verify that the family is living in the unit, or relating to family absence from the unit, including any HA-requested information or certification on the purposes of family absences. The family must cooperate with the HA for this purpose. The family must promptly notify the HA 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 HA one strike policy).

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 HA has discretion to consider all of the circumstances in each case, including the seriousness of the case. The HA will use its

## CHAPTER 15

discretion in reviewing the extent of participation or culpability of individual family members and the length of time since the violation occurred. The HA 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 HA 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 HA 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 **30 calendar days.**" Denial or termination of assistance is always optional except where this Plan or the regulations state otherwise.

#### **HQS Breach**

The 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 the Housing Programs Manager.

#### **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 HA 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 have been verified by the HA.
- Nonpayment of rent is considered a serious violation of the lease.

#### **Notification of Eviction**

If the family requests assistance to move and they did not notify the HA of an eviction within **30 calendar days** of receiving the Notice of Lease Termination, the move will be denied.

#### **Proposed Additions to the Family**

The HA 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 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 HA or to another HA 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 HA personnel.

#### **Family Member Moves Out**

Families are required to notify the HA if any family member leaves the assisted household. When the family notifies the HA, 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.

## CHAPTER 15

### **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, which is not available for sleeping, it will be considered a violation.

If the HA 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 HA 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 HA 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 HA 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 HA 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.

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

### **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 HA either after the INS appeal or in lieu of the INS appeal.

After the HA 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 10/2/95**

For contracts which were effective prior to 10/2/95, the HA is liable for unpaid rent and damages if the family vacates during the allowable 12 months after the last HAP payment. The HA 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 10/2/95** [24 CFR 982.455 (a)]

## CHAPTER 15

For contracts effective on or after 10/2/95, the HA 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 HA 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 HA to overpay assistance, the HA may choose not to terminate and may offer to continue assistance provided that the family executes a Repayment Agreement and makes payments in accordance with the agreement.

### **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 HA will deny or terminate assistance.

In making this determination, the HA 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 HA to fulfill its responsibilities. The HA schedules appointments and sets deadlines in order to obtain the required information. The Obligations also require that the family allow the HA 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 HA, may be sent a Notice of Denial or Termination of Assistance for failure to provide required information, or for failure to allow the HA 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:

- ! Documentable family or medical emergency

### **Procedure when Appointments are Missed or Information not Provided**

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

After issuance of the termination notice, if the family offers to correct the breach within the time allowed to request a hearing:

- ! The notice will be rescinded if the family offers to cure and the family does not have a history of non-compliance.