

Chapter 12

TERMINATION OF ASSISTANCE AND TENANCY

HUD regulations specify mandatory and optional grounds for which the DMMHA can terminate a family's assistance. They also specify the circumstances under which an owner may terminate the tenancy of an assisted family. This chapter describes the policies that govern mandatory and optional terminations of assistance, and termination of tenancy by the owner. It is presented in two parts:

Part I: Grounds for Termination of Assistance. This part describes the various circumstances under which assistance under the program can be terminated by the family or by the DMHHA.

Part II: Approach to Termination of Assistance. This part describes the policies and the process that the DMMHA will use in evaluating decisions on whether to terminate assistance due to actions or inactions of the family where termination is an option. It specifies the alternatives that the DMMHA may consider in lieu of termination, the criteria the DMMHA uses when deciding what action to take, and the steps the DMMHA will take when terminating a family's assistance.

PART I: GROUNDS FOR TERMINATION OF ASSISTANCE

12-I.A. OVERVIEW

HUD requires the DMMHA to terminate assistance for certain actions and inactions of the family and when the family no longer requires assistance due to increases in family income. HUD permits the DMMHA to terminate assistance for certain other actions or inactions of the family. In addition, a family, in good standing, may decide to withdraw from the program and terminate their HCV assistance at any time by notifying the DMMHA.

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

A family will become ineligible for Housing Assistance Payments when the monthly rental amount paid by the family equals or exceeds the Contract Rent due to the owner for the dwelling. The family will, however, be permitted to remain in the dwelling and continue to rent directly from the owner.

When such a rent change does occur, the Case Manager will determine if a family is ineligible for continued participation at the time the Notice of Housing Assistance Payment Change is completed. If DMMHA determines the family is ineligible for further Housing Assistance Payments, the Case Manager will prepare and forward a notification to the owner and family. These participants may remain on the program for 180 consecutive calendar days after the effective date of the recertification. If the participant does not contact the Housing Case Manager to report a decrease in income prior to the end of the 180 consecutive calendar days, they will be removed from the program.

12-I.C. FAMILY CHOOSES TO TERMINATE ASSISTANCE

If a family voluntarily withdraws from the program, they must do so in writing. DMMHA will notify the owner in writing that the Housing Assistance Payment Contract will end on the effective date of the family's withdrawal from the program. DMMHA will notify the client in writing of the date the client is responsible for full contract rent.

Provided that the family does not vacate the subsidized unit, the family will have up until the effective date of the withdrawal to submit a written request to their Housing Case Manager to rescind their withdrawal request should they wish to remain on the program. DMMHA will notify the client and the property owner in writing that the request to voluntarily withdraw from the program has been rescinded and the Housing Assistance Payment Contract will continue.

12-I.D. MANDATORY TERMINATION OF ASSISTANCE

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

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

The DMMHA 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, sexual assault 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.

A family will be considered *evicted* if the owner is awarded possession of the assisted unit by the court after a legal action for possession and the family is no longer living in the unit, whether or not physical enforcement of the order was necessary.

If a family moves after the owner has given the family an eviction notice for serious or repeated lease violations but before a legal eviction order has been issued, termination of assistance is not mandatory. However, the DMMHA 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, the DMMHA may determine at its sole discretion not to terminate assistance.

The family must notify the DMMHA in writing of its intention to move from the assisted unit after receiving an eviction notice from the owner.

“Serious or repeated lease violations” will include, but are not 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 drug and/or criminal activity. “Repeated” means three or more violations in a twelve (12) month period.

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

The DMMHA must terminate assistance if any family member fails to sign and submit any consent form they are required to sign for a regular or interim reexamination. See Chapter 7 for a complete discussion of consent requirements.

Failure to Document Citizenship [24 CFR 982.552(b)(4) and [24 CFR 5.514(c)]

The DMMHA 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 DMMHA, has knowingly permitted another individual who is not eligible for assistance to reside in the unit. 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.

In the event that the DMMHA becomes aware of a possible unauthorized person, the following investigative actions may be conducted by the DMMHA:

- Complete a U.S. Postal Service Verification
- Send landlord Occupancy Verification form
- Order arrest history, trip reports and/or case reports from local law enforcement Agency.
- Require the family to submit information satisfactory to the DMMHA.

Failure to Provide Social Security Documentation [24 CFR 5.218(c)], Notice PIH 2012-10

The DMMHA 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 and joins the family.

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

The DMMHA 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.

Lifetime Registered Sex Offenders [Notice PIH 2012-28]

Should the DMMHA discover that a member of an assisted household was subject to a lifetime registration requirement at admission and was erroneously admitted after June 25, 2001, the DMMHA must immediately terminate assistance for the household member.

In this situation, the DMMHA must offer the family an opportunity to remove the ineligible household member from the household. If the family is unwilling to remove that individual from the household, the DMMHA must terminate assistance for 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, the DMMHA 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 DMMHA policies, or must be given the opportunity to lease in place if the terminated ineligible student members move out of the assisted unit.

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

The DMMHA must immediately terminate program assistance for deceased single member households.

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

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

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

- Any household member is currently engaged in or has 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.

“Pattern” means activity that happens in a regular and repeated way.

Use of Illegal Drugs and Alcohol Abuse

The DMMHA will terminate a family’s assistance if any household member is currently engaged in or has engaged 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.

The DMMHA 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.

“Pattern” means activity that happens in a regular and repeated way.

The DMMHA will consider all credible evidence, including but not limited to, any record of arrest(s), conviction(s), or eviction of household members related to the use of illegal drugs or abuse of alcohol.

In making its decision to terminate assistance, the DMMHA 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 DMMHA may, on a case-by-case basis, determine at its sole discretion 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.

The DMMHA 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.

The DMMHA will consider all credible evidence, including but not limited to, any record of arrest(s), and/or conviction(s) of a household member related to drug-related or violent criminal activity, and any eviction or notice to evict based on drug-related or violent criminal activity.

In making its decision to terminate assistance, the DMMHA 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 DMMHA may, on a case-by-case basis, determine at its sole discretion not to terminate assistance.

Other Authorized Reasons for Termination of Assistance
[24 CFR 982.552(c), 24 CFR 5.2005 (c)]

HUD permits the DMMHA to terminate assistance under a number of other circumstances. The Violence Against Women Reauthorization Act of 2013 explicitly prohibits DMMHA from considering incidents of or criminal activity directly related to, domestic violence, dating violence, sexual assault or stalking as reasons for terminating the assistance of a victim of such abuse.

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

The DMMHA **will** terminate a family's assistance if:

The family has failed to comply with any family obligations under the program.

Any family member has been evicted from federally-assisted housing in the last 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, including but not limited to providing false information to a DMMHA staff member.

The family currently owes rent or other amounts to the DMMHA or any other Public Housing Authority in connection with Section 8 or public housing assistance under the 1937 Act.

The family has not reimbursed the DMMHA or any other Public Housing Authority 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.

If the family has breached an agreement with DMMHA.

A household member has engaged in or threatened violent, intimidating or abusive behavior toward DMMHA personnel.

Abusive, intimidating or violent behavior towards DMMHA 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 and intimidating refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to terminate assistance, the DMMHA 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 DMMHA may, on a case-by-case basis, determine at its sole discretion not to terminate assistance.

Family Absence from the Unit [24 CFR 982.312]

- 1) The family may be absent from the dwelling unit for a maximum of thirty days. Family is required to notify DMMHA in writing at least ten days prior to this absence.
- 2) Absence beyond thirty days requires prior written approval by DMMHA. DMMHA must be notified in writing by the family of extenuating circumstances to justify the absence such as medical or family emergency. The family may not be absent from the unit for a period of more than 180 consecutive calendar days, except where permitted under federal regulations for members of the armed forces serving in active duty under federally declared hostile action.

If the family is absent from the unit for more than 180 consecutive calendar days, the family's assistance will be terminated. Notice of termination will be sent in accordance with Section 12-II.E.

Insufficient Funding [24 CFR 982.454]

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

The DMMHA will determine whether there is sufficient funding to pay for currently assisted families according to the policies in Part VII of Chapter 16.

In the event that the DMMHA decides to stop issuing vouchers as a result of a funding shortfall, and the DMMHA is not assisting the required number of special purpose vouchers (NED families, HUD-Veterans Affairs Supportive Housing (VASH) families, and family unification program (FUP) families), when the DMMHA resumes issuing vouchers, the DMMHA will issue vouchers first to the special purpose voucher families on its waiting list until it has reached the required number of special purpose vouchers, when applicable.

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

If the DMMHA must terminate HAP contracts due to insufficient funding, the DMMHA will do so in accordance with the following criteria and instructions:

Families comprising the required number of special purpose vouchers, including nonelderly disabled (NED), HUD-Veteran's Affairs Supportive Housing (HUD-VASH), and family unification program (FUP) will be the last to be terminated.

The DMMHA reserves the right to terminate the HAP contract if DMMHA determines, in accordance with HUD requirements, that available program funding is not sufficient to support continued assistance for families in the Program. In the event that the DMMHA determines that the Agency has insufficient funds to make HAP payments for all of its current participants, HAP contracts will be terminated on a last issued, first terminated basis. The number

of HAP contracts that will be terminated at any given time will be at the sole discretion of the DMMHA.

Termination letters will be sent to both the Section 8 owner and tenant no less than 60 days prior to the effective date of the termination.

DMMHA will maintain a separate waiting list of all participants whose HAP contract was terminated due to insufficient funding. At such time as DMMHA determines there is enough funding to re-issue the Housing Choice Vouchers to these families, DMMHA will re-issue on a first terminated, first issued basis. Re-issuance of assistance to participants terminated due to insufficient funds is at the sole discretion of the DMMHA.

PART II: APPROACH TO TERMINATION OF ASSISTANCE

12-II.A. OVERVIEW

The DMMHA is required by regulation to terminate a family's assistance for certain actions or inactions of the family. For other types of actions or inactions of the family, the regulations give the DMMHA the authority to either terminate the family's assistance or to take another action. This part discusses the various actions the DMMHA may take when it has discretion, and outlines the criteria the DMMHA will use to make its decision about whether or not to terminate assistance. It also specifies the requirements for the notification to the family of the DMMHA's intent to terminate assistance.

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

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

- Terminating housing assistance payments under a current HAP contract,
- Refusing to enter into a new HAP contract or approve a lease, or
- Refusing to process a request for or to provide assistance under portability procedures.

12-II.C. ALTERNATIVES TO TERMINATION OF ASSISTANCE

Upon consideration of alternatives, the DMMHA may, on a case-by-case basis, determine at its sole discretion not to terminate assistance. DMMHA will consider the following alternatives in making its decision to terminate assistance:

Change in Household Composition

As a condition of continued assistance, the DMMHA may require that any household member who participated in or was responsible for a program violation no longer resides in the unit [24 CFR 982.552(c)(2)(ii)].

If the family is given this option, the head of household must certify that the identified household 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.

Repayment of Family Debts

If a family owes amounts to the DMMHA, as a condition of continued assistance, the DMMHA will require the family to repay the full amount within 6 months of receiving notice from the DMMHA of the amount owed. The 6 month repay period may be extended at the sole discretion of the DMMHA. See Chapter 16 for policies on repayment of debts.

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

Evidence

DMMHA will terminate assistance if the preponderance of evidence indicates that a family household member is currently engaged in or has engaged in any disqualifying activity, regardless of whether the family member has been arrested or convicted. In determining whether the family household member has engaged in such activity DMMHA will utilize all available evidence including, but not limited to police reports detailing the circumstances of the offense, witness statements, and other relevant documentation to assist in making a determination that the disqualifying conduct occurred. Before DMMHA will terminate, the evidence as a whole must show by a preponderance of the evidence that the family household member is currently engaged in or has engaged in such activity.

In reviewing the evidence, DMMHA will not be bound by the Iowa or Federal Rules of Evidence regarding admissibility and may consider evidence that may otherwise be inadmissible under those Rules.

Should DMMHA become aware that the family household member is currently engaged in, or has engaged in any disqualifying activity, then DMMHA shall provide the family household member with notification of the opportunity to dispute and/or provide additional information relevant to the cited activity. Should the family household member fail to respond within the specified time period, then the family household member will be terminated from the Section 8 program. Should the family household member respond, DMMHA may consider relevant circumstances history as stated below under “Consideration of Circumstances”.

Consideration of Circumstances [24 CFR 982.552(c)(2)(i)]

The DMMHA may consider all relevant circumstances when determining whether a family’s assistance will be terminated.

The DMMHA may consider the following factors prior to making its decision to terminate assistance:

- The seriousness of the case, especially with respect to how it could affect other residents.
- The extent of participation or culpability of individual family members, including whether the culpable family member is (as discussed further in section 12-II.E.) a victim of domestic violence, dating violence, sexual assault, or stalking.
- Any mitigating circumstances related to the disability of a family member.
- The effects the termination of assistance would have on other family members who were not involved in the action of failure to act. In these instances, the DMMHA may choose to offer the remaining adult household members the option to remove the culpable family member from the household.

In the case of drug or alcohol abuse, the DMMHA may require the family to submit evidence of the household member's successful completion of a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully.

- In the case of criminal activity or drug or alcohol abuse, the likelihood of recidivism of the activity or abuse.

12-II.E. TERMINATING THE ASSISTANCE OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT OR STALKING VICTIMS AND PERPETRATORS [Pub.L. 109-162, Pub.L. 109-271]

This section describes the protections against termination of assistance that the Violence Against Women Act of 2013 (VAWA) provides for victims of domestic violence, dating violence, and stalking.

VAWA Protections against Termination

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

First, VAWA provides that DMMHA may not terminate assistance to a family that moves out of an assisted unit in violation of the lease, with or without prior notification to the DMMHA, if the move occurred to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.354(b)(4)].

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

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

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

The DMMHA will inform applicants/participants of their right to dispute a denial/termination by certifying that they are a victim of domestic violence, dating violence, sexual assault or stalking.

The certification must include but is not limited to:

- The applicant/participant notifying DMMHA in writing of victim status within fourteen (14) days of the notification of denial of admission or termination of assistance.
- The domestic violence, dating violence, sexual assault or stalking must be directly related to the reason for denial of admission or termination of assistance.
- Applicants/participants must complete the HUD approved certification form or provide documentation to certify victim status.

Determination of the sufficiency of the content in the certification is at the sole discretion of DMMHA. If the verifications and certification are acceptable to the DMMHA, the DMMHA will withdraw the denial of admission/termination of assistance.

If the verifications and certifications are not acceptable, or not submitted to DMMHA within the required time frame, the DMMHA will continue with the denial of admission/termination of assistance and inform the applicant/participant of their right to an informal review or informal hearing regarding the denial of victim status.

The DMMHA will comply with the confidentiality requirements of the Violence Against Women Act of 2013.

12-II.F. TERMINATION NOTICE

If a family's assistance is to be terminated, whether voluntarily or involuntarily, the DMMHA must give the family and the owner written notice that includes:

- 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

When termination is initiated by the DMMHA, the notice of termination will be sent to the family and the owner at least thirty (30) calendar days prior to the effective date of the termination. However, if a family vacates the unit without informing the DMMHA, 30 days notice will not be given. In these cases, the notice of termination will be sent at the time the DMMHA learns the family has vacated the unit.

When a family requests to be terminated from the program they must do so in writing to the DMMHA (see section 12-I.C.). The DMMHA will then send a confirmation notice to the family and the owner.

- Form HUD-5382 and Form HUD 5380, as required by the Violence Against Women Act of 2013.

The DMMHA must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or eligible immigration status; (2) evidence of citizenship and eligible immigration status is submitted timely, but USCIS primary and secondary verification does not verify eligible immigration status of a family; or (3) the DMMHA determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside in the unit.