

Chapter 13

LEASE TERMINATIONS

INTRODUCTION

Either party in a lease agreement may terminate the lease under certain circumstances. A public housing lease is different from a private dwelling lease in that the family's rental assistance is tied to their tenancy. When the family moves from their public housing unit, they lose their rental assistance. Therefore, there are additional safeguards to protect the family's tenancy in public housing.

Likewise, there are safeguards to protect HUD's interest in the public housing program, to assure that qualified families are provided decent, safe, and sanitary housing which is in good repair. The housing authority may terminate the lease because of the family's failure to comply with HUD regulations, for serious or repeated violations of the terms of the lease, and for other good cause. HUD regulations specify some reasons for which a housing authority can terminate a family's lease, and give the housing authority permission to determine other reasons.

When determining housing authority policy on terminations, state and local landlord-tenant laws must be considered, since such laws could vary from one location to another. These variances may be either more or less restrictive than federal law or HUD regulation.

This chapter presents the policies that govern both the family's and the housing authority's termination of the lease. It is presented in four parts:

Part I: Termination by Tenant. This part discusses the family's voluntary termination of the lease and the requirements the housing authority places upon families who wish to terminate their lease.

Part II: Termination by the housing authority - Mandatory. This part describes the policies that govern how, and under what circumstances, a mandatory lease termination by the housing authority occurs. This part also includes nonrenewal of the lease for noncompliance with community service requirements.

Part III: Termination by the housing authority - Other Authorized Reasons. This part describes the housing authority's options for lease termination that are not mandated by HUD regulation but for which HUD authorizes housing authority's to terminate. For some of these options HUD requires the housing authority to establish policies and lease provisions for termination, but termination is not mandatory. For other options the housing authority has full discretion whether to consider the options as just cause to terminate as long as the housing authority's policies are reasonable, nondiscriminatory, and do not violate state or local landlord-tenant law. This part also discusses the alternatives that the housing authority may consider in lieu of termination, and the criteria the housing authority will use when deciding what actions to take.

Part IV: Notification Requirements. This part presents the federal requirements for disclosure of criminal records to the family prior to termination, the HUD requirements and housing authority policies regarding the timing and content of written notices for lease termination and eviction, and when eviction is due to criminal activity. This part also discusses record keeping related to lease termination.

PART I: TERMINATION BY TENANT

13-I.A. TENANT CHOOSES TO TERMINATE THE LEASE [24 CFR 966.4(k)(1)(ii) and 24 CFR 966.4(1)(1)]

The family may terminate the lease at any time, for any reason, by following the notification procedures as outlined in the lease. Such notice must be in writing and delivered to the project office or the housing authority's office or sent by pre-paid first-class mail, properly addressed.

GDPM Policy

If a family desires to move and terminate their tenancy with Greater Dayton Premier Management, they must give at least 30 calendar days advance written notice to GDPM of their intent to vacate. When a family must give less than 30 days notice due to circumstances beyond their control GDPM, at its discretion, may waive the 30 day requirement.

The notice of lease termination must be signed by the head of household, spouse, or co-head.

PART II: TERMINATION BY THE HOUSING AUTHORITY - MANDATORY

13-II.A. OVERVIEW

HUD requires the housing authority to terminate the lease in certain circumstances. In other circumstances HUD requires the housing authority to establish provisions for lease termination, but it is still a housing authority option to determine, on a case-by-case basis, whether termination is warranted. For those tenant actions or failures to act where HUD requires termination, the housing authority has no such option. In those cases, the family's lease must be terminated. This part describes situations in which HUD requires the housing authority to terminate the lease.

13-II.B. FAILURE TO PROVIDE CONSENT [24 CFR 960.259(a) and (b)]

The housing authority must terminate the lease if any family member fails to sign and submit any consent form s/he is required to sign for any reexamination. See Chapter 7 for a complete discussion of consent requirements.

13-II.C. FAILURE TO DOCUMENT CITIZENSHIP [24 CFR 5.514(c) and (d) and 24 CFR 960.259(a)]

The housing authority must terminate the lease 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, resulting in no eligible family members; or (3) a family member, as determined by the housing authority, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3), 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.

**13-II.D. FAILURE TO PROVIDE SOCIAL SECURITY DOCUMENTATION
124 CFR 5.218(c) and 24 CFR 960.259(a)(3)]**

The housing authority must terminate the lease if a resident family fails to provide the documentation or certification required for any family member who obtains a social security number, or joins the family.. See Chapter 7 for a complete discussion of documentation and certification requirements.

**13-II.E. FAILURE TO ACCEPT THE HOUSING AUTHORITY'S OFFER
OF A LEASE REVISION I24 CFR 966.4(1)(2)(ii)(E)]**

The housing authority must terminate the lease if the family fails to accept the housing authority's offer of a lease revision to an existing lease, provided the housing authority has done the following:

- The revision is on a form adopted by the housing authority in accordance with 24 CFR 966.3 pertaining to requirements for notice to tenants and resident organizations and their opportunity to present comments.
- The housing authority has made written notice of the offer of the revision at least 60 calendar days before the lease revision is scheduled to take effect.
- The housing authority has specified in the offer a reasonable time limit within that period for acceptance by the family.

See Chapter 8 for information pertaining to housing authority's policies for offering lease revisions.

13-II.F. METHAMPHETAMINE CONVICTION I24 CFR 966.4(1)(5)(i)(A)]

The housing authority must immediately terminate the lease if the housing authority determines that any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing. See Part 13-III.B. below for the HUD definition of *premises*.

**13-II.G. NONCOMPLIANCE WITH COMMUNITY SERVICE REQUIREMENTS I24
CFR
966.4(1)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)(2)(ii) and (c)]**

The housing authority is prohibited from renewing the lease at the end of the 12 month lease term when the family fails to comply with the community service requirement as described in Chapter 11.

PART III: TERMINATION BY THE HOUSING AUTHORITY - AUTHORIZED REASONS

13-III.A. OVERVIEW

Besides requiring the housing authority to terminate the lease under the circumstances described in Part II, HUD requires the housing authority to establish provisions in the lease for termination pertaining to certain criminal activity, alcohol abuse, and certain household obligations stated in the regulations. While these provisions for lease termination must be in the lease agreement, HUD does not require the housing authority to terminate for such violations in all cases. The housing authority has the discretion to consider circumstances surrounding the violation or, in applicable situations, whether the offending household member has entered or completed rehabilitation, and the housing authority may, as an alternative to termination, require the exclusion of the culpable household member. The housing authority must make policy decisions concerning these options.

In addition, HUD authorizes the housing authority to terminate the lease for other grounds, but for only those grounds that constitute serious or repeated violations of material terms of the lease or that are for other good cause. The housing authority must develop policies pertaining to what constitutes serious or repeated lease violations, and other good cause, based upon the content of the housing authority's lease. In the development of the terms of the lease, the housing authority must consider the limitations imposed by state and local landlord-tenant law, as well as HUD regulations and federal statutes. Because of variations in state and local landlord-tenant law, and because HUD affords housing authority's wide discretion in some areas, a broad range of policies could be acceptable.

The housing authority, with some restrictions, also has the option to terminate the tenancies of families who are over income.

The housing authority may consider alternatives to termination and must establish policies describing the criteria the housing authority will use when deciding what action to take, the types of evidence that will be acceptable, and the steps the housing authority must take when terminating a family's lease

13-III.B. MANDATORY LEASE PROVISIONS [24 CFR 966.4(1)(5)]

This section addresses provisions for lease termination that must be included in the lease agreement according to HUD regulations. Although the provisions are required, HUD does not require the housing authority to terminate for such violations in all cases, therefore housing authority's policies are needed.

***Definitions* [24 CFR 5.100]**

The following definitions will be used for this and other parts of this chapter:

Covered person means a tenant, any member of the tenant's household, a guest, or another person under the tenant's control.

Dating violence is defined in section 3-III.F.

Domestic violence is defined in section 3-III.F.

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

Drug-related criminal activity means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with the intent to manufacture, sell, distribute, or use the drug.

Guest means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.

Household means the family and housing authority-approved live-in aide. The term household also includes foster children and/or foster adults that have been approved to reside in the unit [HUD-50058, Instruction Booklet, p. 65].

Immediate family member is defined in section 3-III.F.

Other person under the tenant's control means that the person, although not staying as a guest in the unit, is, or was at the time of the activity in question, on the premises because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not *under the tenant's control*.

Premises means the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.

Stalking is defined in section 3-III.F.

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.

Drug Crime On or Off the Premises [24 CFR 966.4(1)(5)(i)(B)]

- The lease must provide that drug-related criminal activity engaged in, on or off the premises, by the tenant, member of the tenant's household or guest, or any such activity engaged in on the premises by any other person under the tenant's control is grounds for termination.

GDPM Policy

Greater Dayton Premier Management will terminate the lease for drug-related criminal activity engaged in, on or off the premises, by any tenant, member of the tenant's household or guest, and any such activity engaged in on the premises by any other person under the tenant's control.

Greater Dayton Premier Management will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the drug-related criminal activity.

In making its decision to terminate the lease, the housing authority will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E. Upon consideration of such alternatives and factors, GDPM, on a case-by-case basis, choose not to terminate the lease.

Illegal Use of a Drug [24 CFR 966.4(1)(5)(i)(B)]

The lease must provide that the housing authority may evict a family when housing authority determines that a household member is illegally using a drug or that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

GDPM Policy

Greater Dayton Premier Management will terminate the lease when GDPM determines that a household member is illegally using a drug or the housing authority determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

A pattern of illegal drug use means more than one incident of any use of illegal drugs during the previous six months.

Greater Dayton Premier Management will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs.

In making its decision to terminate the lease, the housing authority will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E. Upon consideration of such alternatives and factors, the housing authority may, on a case-by-case basis, choose not to terminate the lease.

Threat to Other Residents [24 CFR 966.4(1)(5)(ii)(A)]

- The lease must provide that any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including housing authority's management staff ~~residing on the premises~~) or by persons residing in the immediate vicinity of the premises is a ground for termination of tenancy.

GDPM Policy

Greater Dayton Premier Management will terminate the lease when a covered person engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including housing authority's management staff residing on the premises) or by persons residing in the immediate vicinity of the premises.

Immediate vicinity means within a three-block radius of the premises.

Greater Dayton Premier Management will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the criminal activity.

In making its decision to terminate the lease, GDPM will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, GDPM may, on a case-by-case basis, choose not to terminate the lease.

Alcohol Abuse [24 CFR 966.4(1)(5)(vi)(A)]

The housing authority must establish standards that allow termination of tenancy if the housing authority determines that a household member has engaged in abuse or pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

GDPM Policy

Greater Dayton Premier Management will terminate the lease if the GDPM determines that a household member has engaged in abuse or a pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

A pattern of such alcohol abuse means more than one incident of any such abuse of alcohol during the previous six months.

Greater Dayton Premier Management will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the abuse of alcohol.

In making its decision to terminate the lease, GDPM will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, GDPM may, on a case-by-case basis, choose not to terminate the lease.

Furnishing False or Misleading Information Concerning Illegal Drug Use or Alcohol Abuse or Rehabilitation [24 CFR 966.4(1)(5)(vi)(B)]

The housing authority must establish standards that allow termination of tenancy if the housing authority determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

GDPM Policy

Greater Dayton Premier Management will terminate the lease if the housing authority determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

Greater Dayton Premier Management will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs or the abuse of alcohol, and any records or other documentation (or lack of records or documentation) supporting claims of rehabilitation of illegal drug users or alcohol abusers.

In making its decision to terminate the lease, GDPM will consider alternatives as described in Section 13-III.D and other factors as described in Section 13-III.E. Upon consideration of such alternatives and factors, GDPM may, on a case-by-case basis, choose not to terminate the lease.

Other Serious or Repeated Violations of Material Terms of the Lease - Mandatory Lease Provisions [24 CFR 966.4(1)(2)(i) and 24 CFR 966.4(f)]

HUD regulations require certain tenant obligations to be incorporated into the lease. Violations of such regulatory obligations are considered to be serious or repeated violations of the lease and grounds for termination. Incidents of actual or threatened domestic 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 [Pub.L. 109-162].

GDPM Policy

Greater Dayton Premier Management will terminate the lease for the following violations of tenant obligations under the lease:

Failure to make payments due under the lease, including nonpayment of rent (see Chapter 8 for details pertaining to lease requirements for payments due);

~~Repeated late payment of rent or other charges. Four late payments within a 12 month period shall constitute a repeated late payment.~~

Failure to fulfill the ~~following~~ household obligations contained in the lease:

- ~~• Not to assign the lease or to sublease the dwelling unit. 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.~~
- ~~• Not to provide accommodations for boarders or lodgers~~
- ~~• To use the dwelling unit solely as a private dwelling for the tenant and the tenant's household as identified in the lease, and not to use or permit its use for any other purpose~~
- ~~• To abide by necessary and reasonable regulations promulgated by the housing authority for the benefit and well being of the housing site and the tenants which shall be posted in the project office and incorporated by reference in the lease~~
- ~~• To comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety~~
- ~~• To keep the dwelling unit and such other areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition~~
- ~~• To dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner~~
- ~~• To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appurtenances including elevators.~~
- ~~• To refrain from, and to cause the household and guests to refrain from destroying, defacing, damaging, or removing any part of the dwelling unit or site.~~

- ~~To pay reasonable charges (other than for normal wear and tear) for the repair of damages to the dwelling unit, or to the site (including damages to project buildings, facilities or common areas) caused by the tenant, a member of the household or a guest~~
- ~~To act, and cause household members or guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the site in a decent, safe and sanitary condition~~

In making its decision to terminate the lease, the housing authority ~~will~~ may consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13 III.F. Upon consideration of such alternatives and factors, the housing authority may, on a case-by- case basis, choose not to terminate the lease.

13-III.C. OTHER AUTHORIZED REASONS FOR TERMINATION [24 CFR 966.4(1)(2) and (5)(ii)(B)]

HUD authorizes the housing authority to terminate the lease for reasons other than those described in the previous sections. These reasons are referred to as "other good cause."

- **Other Good Cause [24 CFR 966.4(1)(2)(ii)(B) and (C)]**

HUD regulations state that the housing authority may terminate tenancy for other good cause. The regulations provide a few examples of other good cause, but do not limit the housing authority to only those examples. The Violence Against Women Reauthorization Act of 2005 explicitly prohibits housing authority from considering incidents of actual or threatened domestic violence, dating violence, or stalking as "other good cause" for terminating the tenancy or occupancy rights of the victim of such violence.

GDPM Policy

GDPM ~~will~~ may terminate the lease for other good cause, including, but not limited to the the following reasons.

Fugitive Felon or Parole Violator. If a tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or 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;

Persons subject to sex offender registration requirement. If any member of the household has, during their current asset management tenancy, become subject to a registration requirement under a state sex offender registration program;

Discovery after admission of facts that made the tenant ineligible;

Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with reexamination of income;

Failure to furnish such information and certifications regarding family composition and income as may be necessary for GDPM to make determinations with respect to rent, eligibility, and the appropriateness of dwelling size;

Failure to transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by GDPM that such a dwelling unit is available;

Failure to permit access to the unit by GDPM after proper advance notification for the purpose of performing routine inspections and maintenance, for making improvements or repairs, or to show the dwelling unit for re-leasing, or without advance notice if there is reasonable cause to believe that an emergency exists;

Failure to promptly inform GDPM of the birth, adoption or court-awarded custody of a child. In such a case, promptly means within 10 business days of the event;

Failure to abide by the provisions of GDPM pet policy;

If the family has breached the terms of a repayment agreement entered into with GDPM;

If a family member has violated federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

If a household member has engaged in or threatened violent or abusive behavior toward GDPM personnel.

Abusive or violent behavior towards housing authority's 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 the lease, GDPM will consider alternatives as described in Section 13-III.D and other factors described in Sections 13-III.E and 13 III.F. Upon consideration of such alternatives and factors, GDPM may, on a case-by-case basis, choose not to terminate the lease.

Family Absence from Unit [24 CFR 982.551(i)]

It is reasonable that the family may be absent from the public housing unit for brief periods. However, the housing authority needs a policy on how long the family may be absent from the unit. Absence in this context means that no member of the family is residing in the unit.

GDPM Policy

The family must supply any information or certification requested by GDPM to verify that the family is living in the unit, or relating to family absence from the unit, including any GDPM- requested information or certification on the purposes of family absences.

The family must cooperate with GDPM for this purpose.

The family must promptly notify GDPM 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. In such a case promptly means within 10 business days of the start of the extended absence.

If a family is absent from the asset management housing unit for more than **180 consecutive days**, and the family does not adequately verify that they are living in the unit, GDPM will terminate the lease for other good cause.

Abandonment. If the family appears to have vacated the unit without giving proper notice, GDPM will follow state and local landlord-tenant law pertaining to abandonment before taking possession of the unit. If necessary, the housing authority will secure the unit immediately to prevent vandalism and other criminal activity.

Over-Income Families [24 CFR 960.261 and FR 11/26/04, p. 68786]

GDPM will track all public housing residents who have an income over 120% of the Area Median Income (AMI). After exceeding this 120% threshold for 2 consecutive years, the resident shall be subject termination. In the alternative, GDPM may allow the resident to remain and be subject to a higher rent.

- 1. HUD's Over-income Rule.** After a family's income has exceeded 120 percent of the area median income (AMI) (or a different limitation established by HUD's Secretary) for two consecutive years (2-year grace period), a GDPM shall either 1) terminate the family's tenancy within 6 months of the second income determination or 2) raise the rent by charging the family a monthly rent equal to the greater of (a) the applicable Fair Market Rent (FMR); or (b) the amount of monthly subsidy for the unit including amounts from the operating and capital fund, as determined by regulations.
- 2. The Over-Income Limit.** The new language in section 16(a)(5) of the 1937 Act sets the over-income limit at 120% of the AMI. However, HUD has the ability to adjust the over-income limit (upward or downward) if the Secretary determines that it is necessary due to prevailing levels of construction costs or unusually high or low family incomes, vacancy rates, or rental costs. HUD will annually publish the over-income limits for each locality, specifying over-income limits for each family size.
- 3. Family Notification.** GDPM will notify a family of the potential changes to monthly rent after one year of the family's income exceeding the over-income limit. HUD intends to provide guidance on how to notify families, track over-income families, and report into HUD systems. The notice states that, if GDPM becomes aware, through an annual reexamination or an interim reexamination time for which the two-year clock will start. If, one year after the initial determination by GDPM that a family's income exceeds the over-income limit, the family's income continues to exceed the over-income limit,

GDPM will provide written notification to the family that their income has exceeded the over-income limit for one year, and that if the family's income continues to exceed the over-income limit for the next 12 consecutive months, the family will be subject to termination. At its discretion, GDPM may permit the resident to remain in the unit subject to paying a higher rent as set forth in the HUD rule.

4. Calculating Over-Income Limits: GDPM will update the over-income limits annually by multiplying the HUD published Very Low Income Limit by 2.4. The 2022 over income limits:

1 person	2 person	3 person	4 person
\$70.680	\$80.760	\$90.840	\$100.920

13-III.D. ALTERNATIVES TO TERMINATION OF TENANCY Exclusion of Culpable Household Member [24 CFR 966.4(1)(5)(vii)(C)]

As an alternative to termination of the lease for criminal activity or alcohol abuse HUD provides that the housing authority may consider exclusion of the culpable household member. Such an alternative can be used, by housing authority's policy, for any other reason where such a solution appears viable.

GDPM Policy

Greater Dayton Premier Management will consider requiring the tenant 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.

As a condition of the family's continued occupancy, the head of household must certify that the culpable 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 household member's current address upon GDPM's request.

Repayment of Family Debts

GDPM Policy

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

13-III.E. CRITERIA FOR DECIDING TO TERMINATE TENANCY

The housing authority that has grounds to terminate a tenancy is not required to do so, except as explained in Part II of this chapter, and may consider all of the circumstances relevant to a particular case before making a decision.

Evidence [24 CFR 982.553(c)]

For criminal activity, HUD permits the housing authority to terminate the lease 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, and without satisfying the standard of proof used for a criminal conviction.

GDPM Policy

~~Greater Dayton Premier Management 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 966.4(1)(5)(vii)(B)]

Although it is required that certain lease provisions exist for criminal activity and alcohol abuse, HUD provides that the housing authority may consider all circumstances relevant to a particular case in order to determine whether or not to terminate the lease.

Such relevant circumstances can also be considered when terminating the lease for any other reason.

GDPM Policy

Greater Dayton Premier Management will consider the following factors before deciding whether to terminate the lease for any of the HUD required lease provisions or for any other reasons:

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

The extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor, a person with disabilities, or (as discussed further in section 13-III.F) a victim of domestic violence, dating violence, or stalking

The effects that the eviction will have on other family members who were not involved in the action or failure to act

The effect on the community of the termination, or of GDPM's failure to terminate the tenancy

The effect of GDPM's decision on the integrity of the asset

management program

The demand for housing by eligible families who will adhere to lease

responsibilities

The extent to which the leaseholder has shown personal responsibility and whether they have taken all reasonable steps to prevent or mitigate the offending action

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

In the case of program abuse, the dollar amount of the underpaid rent and whether or not a false certification was signed by the family

Consideration of Rehabilitation [24 CFR 966.4(1)(5)(vii)(D)]

HUD authorizes the housing authority to take into consideration whether a household member who had used illegal drugs or abused alcohol and is no longer engaging in such use or abuse is participating in or has successfully completed a supervised drug or alcohol rehabilitation program.

GDPM Policy

In determining whether to terminate the lease for illegal drug use or a pattern of illegal drug use, or for abuse or a pattern of abuse of alcohol, by a household member who is no longer engaging in such use or abuse, the housing authority will 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.

For this purpose GDPM will 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.

Reasonable Accommodation [24 CFR 966.7]

If the family includes a person with disabilities, the housing authority's decision to terminate the family's lease is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

GDPM Policy

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

Nondiscrimination Limitation [24 CFR 966.4(1)(5)(vii)(F)]

The housing authority's eviction actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105.

13-III.F. PROHIBITION AGAINST TERMINATING TENANCY OF VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING [Pub.L. 109-162 and 109-271]

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 cause for termination of the tenancy or occupancy rights, if the tenant or immediate family member of the tenant's family is the victim or threatened victim of that abuse." VAWA further provides that incidents of actual or threatened domestic violence, dating violence, or stalking may not be construed either as serious or repeated violations of the lease by the victim of such violence or as good cause for terminating the tenancy or occupancy rights of the victim of such violence.

VAWA does not limit Greater Dayton Premier Management authority to terminate the tenancy of any tenant if the housing authority can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property.

Victim Documentation

GDPM Policy

When a tenant family is facing lease termination because of the actions of a tenant, household member, guest, or other person under the tenant's control and a tenant or immediate family member of the tenant'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, Greater Dayton Premier Management will require the individual to submit documentation affirming that claim.

The documentation must include two elements:

A signed statement by the victim that provides the name of the perpetrator and certifies that the incidents in question are bona fide incidents of actual or threatened domestic violence, dating violence, or stalking

One of the following:

A police or court record documenting the actual or threatened abuse

A statement signed by an employee, agent, or volunteer of a victim service provider; an attorney; a medical professional; or another knowledgeable professional from whom the victim has sought assistance in addressing the actual or threatened abuse. The professional must attest under penalty of perjury that the incidents in question are bona fide incidents of abuse, and the victim must sign or attest to the statement.

The required certification and supporting documentation must be submitted to the housing authority within 14 business days after the individual claiming victim status receives a request for such certification. Greater Dayton Premier Management, owner or manager will be aware that the delivery of the certification form to the tenant in response to an incident via mail may place the victim at risk, e.g., the abuser may monitor the mail. GDPM may require that the tenant come into the office to pick up the certification form and will work with tenants to make delivery arrangements that do not place the tenant at risk. This 14-day deadline may be extended at the housing authority's discretion. If the individual does not provide the required certification and supporting documentation within 14 business days, or the approved extension period, the housing authority may proceed with assistance termination.

Greater Dayton Premier Management also reserves the right to waive these victim verification requirements and accept only a self-certification from the victim if the housing authority deems the victim's life to be in imminent danger.

Once a victim has completed certification requirements, the housing authority will continue to assist the victim and may use bifurcation as a tool to remove a perpetrator from assistance. Owners will be notified of their legal obligation to continue housing the victim, while using lease bifurcation to remove the perpetrator from a unit. The housing authority will make all best efforts to work with victims of domestic violence before terminating the victim's assistance.

In extreme circumstances when the housing authority can demonstrate an actual and imminent threat to other participants or those employed at or providing service to the property if the participant's (including the victim's) tenancy is not terminated, the housing authority will bypass the standard process and proceed with the immediate termination of the family's assistance.

Terminating or Evicting a Perpetrator of Domestic Violence

Although VAWA provides protection from termination for victims of domestic violence, it does not provide protection for perpetrators. In fact, VAWA gives the housing authority the explicit authority to bifurcate a lease, or to remove a household member from a lease, "in order to evict, remove, terminate occupancy rights, or 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." This authority supersedes any local, state, or other federal law to the contrary. However, if the housing authority chooses to exercise this authority, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law for eviction, lease termination, or termination of assistance [Pub.L. 109-271].

GDPM Policy

When the actions of a tenant or other family member result in a determination by Greater Dayton Premier Management to terminate the family's lease and another family member claims that the actions involve criminal acts of physical violence against family members or others, the housing authority will request that the victim submit the above required certification and supporting documentation in accordance with the stated time frame. If the certification and supporting documentation are submitted within the required time frame or any approved extension period, the housing authority will bifurcate the lease and evict or terminate the occupancy rights of the perpetrator. If the victim does not provide the certification and supporting documentation, as required, the housing authority will proceed with termination of the family's lease.

If GDPM can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if the tenant's tenancy is not terminated, GDPM will bypass the standard process and proceed with the immediate termination of the family.

Housing Authority - Confidentiality Requirements

All information provided to the housing authority 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.

PART IV: NOTIFICATION REQUIREMENTS, EVICTION PROCEDURES AND RECORD KEEPING

13-IV.A. OVERVIEW

HUD regulations specify the requirements for the notice that must be provided prior to lease termination. This part discusses those requirements and the specific requirements that precede and follow termination for certain criminal activities which are addressed in the regulations. This part also discusses specific requirements pertaining to the actual eviction of families and record keeping.

13-IV.B. CONDUCTING CRIMINAL RECORDS CHECKS [24 CFR 5.903(e)(ii) and 24 CFR 960.259]

HUD authorizes the housing authority to conduct criminal records checks on public housing residents for lease enforcement and eviction. The housing authority's policy determines when the housing authority will conduct such checks.

GDPM Policy

Greater Dayton Premier Management ~~will~~ may conduct criminal records checks ~~when it has come to the attention of the housing authority, either from local law enforcement or by other means, that an individual has engaged in the destruction of property, engaged in violent activity against another person, or has interfered with the right to peaceful enjoyment of the premises of other residents~~. Such checks will ~~also~~ include sex offender registration information. In order to obtain such information, all adult household members must sign consent forms for release of criminal conviction and sex offender registration records on an annual basis.

Greater Dayton Premier Management may not pass along to the tenant the costs of a criminal records check.

13-IV.C. DISCLOSURE OF CRIMINAL RECORDS TO FAMILY [24 CFR 5.903(f), 24 CFR 5.905(d) and 24 CFR 966.4(l)(5)(iv)]

In conducting criminal records checks, if the housing authority uses the authority of 24 CFR 5.903 and 5.905 to obtain such information, certain protections must be afforded the tenant before any adverse action is taken. In such cases if the housing authority obtains criminal records information from a state or local agency showing that a household member has been convicted of a crime, or is subject to a sex offender registration requirement, relevant to lease enforcement or eviction, the housing authority must notify the household of the proposed action and must provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.

GDPM Policy

~~In all cases where criminal record or sex offender registration information would result in lease enforcement or eviction, the housing authority will notify the household in writing of the proposed adverse action and will provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.~~

~~The family will be given 10 business days from the date of GDPM notice, to dispute the accuracy and relevance of the information. If the family does not contact the housing authority to dispute the information within that 10 business day period, the housing authority will proceed with the termination action.~~

~~Should the tenant not exercise their right to dispute prior to any adverse action, the tenant still has the right to dispute in the grievance hearing or court trial.~~

13-IV.D. LEASE TERMINATION NOTICE [24 CFR 966.4(i)(3)]

Form, Delivery, and Content of the Notice

Notices of lease termination must be in writing. The notice must state the specific grounds for termination, the date the termination will take place, the resident's right to reply to the termination notice, and their right to examine housing authority documents directly relevant to the termination or eviction. If the housing authority does not make the documents available for examination upon request by the tenant, the housing authority may not proceed with the eviction [24 CFR 966.4(m)].

When the housing authority is required to offer the resident an opportunity for a grievance hearing, the notice must also inform the resident of their right to request a hearing in accordance with the housing authority's grievance procedure. In these cases, the tenancy shall not terminate until the time for the tenant to request a grievance hearing has expired and the grievance procedure has been completed.

When the housing authority is not required to offer the resident an opportunity for a grievance hearing because HUD has made a due process determination and the lease termination is for criminal activity that threatens health, safety or right to peaceful enjoyment or for drug-related criminal activity, the notice of lease termination must state that the tenant is not entitled to a grievance hearing on the termination. It must specify the judicial eviction procedure to be used by the housing authority for eviction of the tenant, and state that HUD has determined that the eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations. The notice must also state whether the eviction is for a criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the housing authority, or for a drug-related criminal activity on or off the premises.

GDPM Policy

Greater Dayton Premier Management will attempt to deliver notices of lease termination directly to the tenant or an adult member of the household. ~~If such attempt fails,~~ A copy of the notice will be sent by first-class mail ~~the same day.~~

Timing of the Notice [24 CFR 966.4(i)(3)(i)]

The housing authority must give written notice of lease termination of:

- 14 calendar days in the case of failure to pay rent
- A reasonable period of time considering the seriousness of the situation (but not to exceed 30 calendar days)

If the health or safety of other residents, housing authority employees, or persons residing in the immediate vicinity of the premises is threatened

If any member of the household has engaged in any drug-related criminal activity or violent criminal activity

If any member of the household has been convicted of a felony

- 30 calendar days in any other case, except that if a state or local law allows a shorter notice period, such shorter period shall apply

When the housing authority finds that a family is in noncompliance with the community service requirement, the tenant and any other noncompliant resident must be notified in writing of this determination. Notices of noncompliance will be issued in accordance with the requirements and policies in Section 11-I.E.

GDPM Policy

Greater Dayton Premier Management will give written notice of ~~14-14~~ calendar days for nonpayment of rent ~~issued on the 10th or next business day~~. ~~The tenant will have 14 days to pay any rent or other charges by the end of those 14 days or the eviction process will begin. For~~ The tenant will have the ability to pay rent in accordance with the terms of the termination notice. For all other lease terminations the housing authority will give ~~30 days~~ written notice in accordance with Ohio and federal law ~~or, if state or local law allows less than 30 days, such shorter notice will be given~~.

The Notice to Vacate that may be required under state or local law may be combined with or run concurrently with the notice of lease termination.

Notice of Nonrenewal Due to Community Service Noncompliance [24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)]

GDPM Policy

If after receiving a notice of initial noncompliance the family does not request a grievance hearing, or does not take either corrective action required by the notice within the required timeframe, a termination notice will be issued in accordance with the policies above.

If a family agreed to cure initial noncompliance by signing an agreement, and is still in noncompliance after being provided the 12-month opportunity to cure, the family will be issued a notice of continued noncompliance. The notice of continued noncompliance will be sent in accordance with the policies in Section 11-I.E. and will also serve as the notice of termination of tenancy.

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

In cases where termination of tenancy is based on citizenship status, HUD requires the notice of termination to contain additional information. In addition to advising the family of the reasons their assistance is being terminated, the notice must also advise the family of any of the following that apply: the family's eligibility for proration of assistance, the criteria and procedures for obtaining relief under the provisions for preservation of families, the family's 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 the family's right to request an informal hearing with the housing authority either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Please see Chapter 14 for the housing authority's informal hearing procedures.

13-IV.E. EVICTION [24 CFR 966.4(l)(4) and 966.4(m)]

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 housing authority may only evict the tenant from the unit by instituting a court action, unless the law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, and without a court determination of the rights and liabilities of the parties.

GDPM Policy

When a family does not vacate the unit after receipt of a termination notice, by the deadline given in the notice, the housing authority will follow state and local landlord-tenant law in filing an eviction action with the local court that has jurisdiction in such cases.

If the eviction action is finalized in court and the family remains in occupancy beyond the deadline to vacate given by the court, the housing authority will seek the assistance of the court to remove the family from the premises as per state and local law.

Greater Dayton Premier Management ~~may not proceed with an eviction action if GDPM has not made available the documents to be used in the case against the family, and has not afforded the family the opportunity to examine and copy such documents in accordance~~ will comply with the provisions of 24 CFR 966.4(1)(3) and (m).

13-IV.F. NOTIFICATION TO POST OFFICE [24CFR 966.4(1)(5)(iii)(B)]

When the housing authority evicts an individual or family for criminal activity, including drug-related criminal activity, the housing authority must notify the local post office serving the dwelling unit that the individual or family is no longer residing in the unit.

13-IV.G. RECORD KEEPING

For more information concerning general record keeping, see Chapter 16.

GDPM Policy

A written record of every termination and/or eviction will be maintained by the housing authority at the development where the family was residing, and will contain the following information:

Name of resident, number and identification of unit occupied

Date of the notice of lease termination and any other notices required by state or local law; these notices may be on the same form and will run concurrently

Specific reason(s) for the notices, citing the lease section or provision that was violated, and other facts pertinent to the issuing of the notices described in detail (other than any criminal history reports obtained solely through the authorization provided in 24 CFR 5.903 and 5.905)

Date and method of notifying the resident

Summaries of any conferences held with the resident including dates, names of conference participants, and conclusions