CHAPTER 8. TERMINATION

8-1 Introduction

A. Chapter 8 addresses terminating housing assistance and terminating tenancy. Under program regulations and leases, termination of assistance occurs when a tenant is no longer eligible for subsidy or to enforce HUD program requirements. It results in the loss of subsidy to the tenant. Tenants whose assistance is terminated may remain in the unit, but they must pay the market rent, full contract rent, or 110% of BMIR rent. Owners are authorized to terminate assistance only in limited circumstances and after following required procedures to ensure that tenants have received proper notice and an opportunity to respond.

B. Termination of tenancy is the first step in the eviction process and is often used interchangeably with the term *eviction*. When terminating tenancy, the owner gives the tenant notice to vacate the unit because of a lease violation(s). A tenant who fails to vacate the unit after receiving notice from the owner may face judicial action initiated by the owner to evict the tenant. The owner may only terminate tenancy in limited circumstances as prescribed by HUD regulations and the lease and must follow HUD and state/local procedures.

C. Owners are expected to enforce program requirements under the terms of the lease. Similarly, HUD expects tenants to comply with the program requirements as established in the lease. HUD encourages owners to work with tenants and utilize other corrective actions, such as repayment agreements or negotiated settlements, to resolve program/lease issues. Terminations represent only one of the tools available to owners for lease enforcement. Owners and tenants are advised that HUD termination policies and procedures must be followed when initiating a termination, including proper notices and documentation. Owners are also advised that terminations for reasons other than those permitted by HUD are prohibited.

D. The chapter is organized into the following four sections:

- **Section 1: Termination of Assistance** outlines key requirements and procedures regarding when and how a tenant's assistance must be terminated.

- **Section 2: Termination of Tenancy by Lessees** discusses the tenant's responsibilities when the tenant wishes to terminate tenancy.

- **Section 3: Termination of Tenancy by Owners** outlines allowable circumstances for terminating tenancy and the requirements and procedures that owners must follow to terminate a tenant's residency.

- **Section 4: Discrepancies, Errors, and Fraud** describe the circumstances when owners must investigate discrepancies and provides guidelines on how to distinguish tenant errors from fraud. It also identifies how to take action (e.g., documenting fraud and reimbursing HUD or the tenant).

8-2 Key Terms

A. There are a number of technical terms used in this chapter that have very specific definitions established by federal statute or regulations or by HUD. These terms are listed in Figure 8-1, and their definitions can be found in the Glossary to this handbook. It is important to be familiar with these definitions when reading this chapter.

B. The terms “disability” and “persons with disabilities” are used in two contexts – for civil rights protections, and for program eligibility purposes. Each use has specific definitions.

1. When used in context of protection from discrimination or improving the accessibility of housing, the civil rights-related definitions apply.

2. When used in the context of eligibility under multifamily subsidized housing programs, the program eligibility definitions apply.

NOTE: See the Glossary for specific definitions and paragraph 2-23 for an explanation of this difference.

Figure 8-1: Key Terms

• Adult • *Enterprise Income Verification (EIV)* • Eviction • Family • Fraud • Increased ability to pay • Law enforcement agency • Live-in aide	• Rural Housing Service (RHS) • Tenant • Tenant with a disability • Termination of assistance • Termination of tenancy • Unauthorized occupant • Unintentional program violation

Section 1: Termination of Assistance

8-3 Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 1: Termination of Assistance. The citations and their topics are listed below.

A. 24 CFR 5.218 (Penalties for failing to disclose and verify social security and employer identification numbers)

B. 24 CFR 5.232 (Penalties for failing to sign consent forms)

C. 24 CFR part 5, subpart E – Restrictions on Assistance to Noncitizens

D. 24 CFR 5.659 (Family information and verification)

E. 24 CFR 247.4 (Termination of tenancy notice procedures applied to the termination of assistance notice)

F. 24 CFR 880.603, 881.601, 883.701, 884.218, 886.124, 886.324, 891.410, 891.610, and 891.750 (Selection and admission of assisted tenants/re-examination of family income and composition)

8-4 Applicability

A. Termination of assistance is not applicable to Section 202 PRAC and Section 811 PRAC properties.

B An owner's authority to remove or terminate assistance is established by the HUD-required lease provision entitled "Removal of Subsidy."

8-5 Key Requirements: When Assistance Must Be Terminated

An owner must terminate a tenant's assistance in the following circumstances:

A. A tenant fails to provide required information at the time of recertification, including changes in family composition, or changes in income or social security numbers for new *household* members.

B. A tenant fails to sign/submit required consent and verification forms (form HUD-9887 and form HUD-9887-A).

1. Form HUD-9887, *Notice and Consent for the Release of Information to HUD and to a PHA* permits HUD to obtain wage and claim information from State Wage Information Collection Agencies (SWICAs), current tax information from the Internal Revenue Service (IRS), and wages and unemployment compensation information from the Social Security Administration (SSA) *and the Department of Health and Human Services' (HSS') National Directory of New Hires (NDNH).*

2. Form HUD-9887-A, *Applicant's/Tenant's Consent to the Release of Information – Verification by Owners of Information Supplied by Individuals Who Apply for Housing Assistance* allows an owner to obtain and verify information about income, assets, and allowances for items such as child care and medical expenses, which is needed to determine the amount of rent a tenant must pay.

C. An annual or interim recertification determines that the tenant has an increased ability to pay the full contract rent.

D. A tenant fails to move to a different-sized unit within 30 days after the owner notifies him/her that the unit of the required size is available. *As required by the HUD lease,* if the tenant remains in the same unit, the tenant must pay the market rent, full contract rent, or 110% of the BMIR rent.

***NOTE:** When assistance is terminated for a tenant with more than one form of subsidy, the tenant must pay the market rent, full contract rent, or 110% of BMIR rent. For example, if a tenant resides in a Section 236 property and receives Section 8 assistance, the tenant would pay *the full Section 8 contract rent if his or her assistance were terminated unless there is an eligible in-place Section 236 tenant or a vacant unit the Section 8 can be transferred to.*

E. A tenant has begun receiving assistance, but the owner is unable to establish citizenship or eligible immigration status for any family member from the information provided by the tenant and determines that the tenant does not meet the citizenship requirement. (See Chapters 3, 4, and 7 for other citizenship and eligible immigration status requirements. Restriction on assistance to noncitizens is addressed in paragraph 3-12, denial of assistance is addressed in paragraph 4-31, and changes in status are addressed in paragraph 7-11.)

The process for owners to verify and establish a tenant's eligible immigration status can be lengthy. Sometimes a tenant begins receiving assistance before the owner establishes citizenship or eligible immigration status; this happens when the owner encounters delays in verifying the information provided by the tenant. If the owner then determines that the tenant does not meet the requirement for citizenship or eligible immigration status, the assistance must be terminated. Refer to paragraph 3-12 K for further guidance.

NOTE: This requirement does not apply to the following programs covered by this handbook, Section 202 PRAC, Section 811 PRAC, Section 202 PAC and Section 221(d)(3) BMIR..

F. A student enrolled at an institution of higher education does not meet the eligibility requirements for assistance. (See Chapter 3, paragraph 3-13.)

G. **REMINDER:** Actions to terminate assistance must be based only on a change in the tenant's eligibility for assistance or a tenant's failure to fulfill specific responsibilities under program requirements. Owners must not take action to terminate assistance based on other factors.

8-6 Procedures for Terminating or Reinstating Assistance

To avoid the potential for discrimination, it is important for owners to ensure that the requirements and procedures described below are applied consistently to all tenants.

A. **Terminating Assistance**

1. When terminating a tenant's assistance, the owner increases the tenant's rent to market rent (or contract rent) and, where applicable, makes the assistance available to another tenant.

2. When terminating assistance, an owner must provide proper notice to the tenant of the increase in the tenant's rent.

   REMINDER: When provided to a tenant with a disability, this notice must be in a form accessible to the tenant (e.g., in Braille or audio form for a tenant with a vision impairment).

3. Written notice should include:

   a. The specific date the assistance will terminate;

   b. The reason(s) for terminating assistance;

   c. The amount of rent the tenant will be required to pay;

   d. Notification that if the tenant fails to pay the increased rent, the owner may terminate tenancy and seek to enforce the termination in court; and

   e. The tenant has a right to request, within 10 calendar days from the date of the notice, a meeting with the owner to discuss the proposed termination of assistance.

4. The notice should be served by:

   a. Sending a letter by first class mail, properly stamped and addressed and including a return address, to the tenant at the unit address; <u>and</u>

   b. Delivering a copy of the notice to any adult person answering the door at the unit. If no adult answers the door, the person serving the notice may place it under or through the door, or affix it to the door.

5. The date on which the notice is deemed <u>received</u> by the tenant is the later of:

   a. The date the first class letter is mailed; or

   b. The date the notice is properly given.

6. Service of the notice is deemed effective once the notice has been both mailed and hand delivered.

B. **Reinstating Assistance**

An owner may reinstate a tenant's terminated assistance if:

1. The original termination of assistance was due to:

   a. A tenant's failure to recertify, or

   b. A tenant's increased ability to pay;

2. The original termination of assistance was not due to fraud;

3. The tenant is eligible for assistance (based on the income and rent calculation, the tenant would pay less than market rent);

4. The tenant submits the required information; and

5. Assistance is available for the unit.

8-7 Termination of Assistance Related to Establishing Citizenship or Eligible Immigration Status

A. **Applicability**

As stated in paragraphs 3-12 F. and 4-31 A., the restriction on assistance to noncitizens applies to all properties covered by this handbook, except the following:

1. Section 221(d)(3) BMIR properties;

2. Section 202 PAC;

3. Section 202 PRAC; and

4. Section 811 PRAC.

B. **When Assistance Must Not Be Terminated**

An owner must not terminate assistance on the basis of ineligible immigration status of a family member if:

1. The primary (automated) and secondary (manual) verification search of any immigration documents that were submitted in time has not been completed by the DHS;

2. The family member for whom required evidence has not been submitted has moved from the assisted dwelling unit;

3. The family member who is determined not to have eligible immigration status following DHS verification has moved from the assisted dwelling unit;

4. The DHS appeals process under 24 CFR 5.514(e) has not been concluded (see subparagraph C below);

5. Assistance is prorated in accordance with 24 CFR 5.520;

6. Assistance for a mixed family is continued in accordance with 24 CFR 5.516 and 24 CFR 5.518; or

7. Deferral of termination of assistance is granted in accordance with 24 CFR 5.516 and 24 CFR 5.518.

C. **Termination of Assistance When Unable to Establish Citizenship or Eligible Immigration Status**

1. When an owner is unable to establish citizenship or eligible immigration status of family members, as discussed in paragraph 8-5 E, assistance to a tenant cannot be terminated until the completion of an informal hearing.

2. Within 30 days of a DHS appeal decision or a notice from the owner terminating assistance, a tenant may request that the owner provide a hearing. The hearing procedures are outlined below.

   a. The tenant must be provided a hearing before any person(s) designated by the owner, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

   b. The tenant must be provided the opportunity to examine and copy, at the tenant's expense and at a reasonable time in advance of the hearing, any documents in the possession of the owner pertaining to the tenant’s eligibility status, or in the possession of the DHS (as permitted by DHS requirements), including any records and regulations that may be relevant to the hearing;

   c. The tenant must be provided the opportunity to present evidence and arguments in support of eligible immigration status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

   d. The tenant must be provided the opportunity to argue against evidence relied upon by the responsible entity and to confront and cross-examine all witnesses on whose testimony or information the owner relies;

   e. The tenant must be entitled to be represented by an attorney, or other designee, at the tenant’s expense, and to have such person make statements on the tenant’s behalf;

f. The tenant must be entitled to arrange for an interpreter to attend the hearing, at the expense of the tenant, or owner, as may be agreed upon by the two parties; and

g. The tenant must be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to, be provided by the owner).

3. The owner must provide a written final decision, based solely on the facts presented at the hearing, to the tenant within 14 days of the date of the informal hearing. The decision must also state the basis for the determination. As with the notice, the decision must be in an accessible form if being provided to a tenant with a disability.

4. A decision against a tenant member issued in accordance with the requirements listed above does not preclude the tenant from exercising the right, which may otherwise be available, to seek redress directly through the judicial procedures.

5. The owner must retain for a minimum of 5 years the following documents that may have been submitted by the tenant or provided to the owner as part of the DHS appeal or the informal hearing process:

a. The application for financial assistance;

b. The form completed by the tenant for income re-examination;

c. Photocopies of any original documents (front and back), including original DHS documents;

d. The signed verification consent form;

e. The DHS verification results;

f. The request for an DHS appeal;

g. The final DHS determination;

h. The request for an informal hearing; and

i. The final informal hearing decision.

D. **Termination of Assistance When a Tenant Allows an Ineligible Individual to Reside in a Unit**

If the owner terminates assistance based on a determination that a tenant has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit:

1. Such termination must be for a period of not less than 24 months; and

2. This provision does not apply to a tenant if, when calculating any proration of assistance provided for the family, the individual's ineligibility was known and considered.

Section 2: Termination of Tenancy by Lessees

8-8 Key Regulations

This paragraph identifies the key regulatory citations pertaining to Section 2: Termination of Tenancy by Lessees. The citations and their title are listed below.

- 24 CFR 880.606, 884.215, 886.127, 886.327, 891.425, 891.625, and 891.765 Lease Requirements

8-9 Key Requirements

In order to terminate tenancy, the tenant must provide the owner with a written 30-day notice to vacate the unit, as required by the HUD lease.

NOTE: The regulations for RHS Section 515/8 properties permit either the tenant or the owner to terminate the lease with a 30-day written notice. This provision may be included in a one-year lease. The provision must be included in any multi-year lease.

8-10 Allowable Use of Security Deposits

If a tenant fails to pay the required rent or if there are tenant damages to the unit, an owner may use the tenant's security deposit to pay the outstanding rent and/or damages. Any remaining funds must be paid to the tenant. An owner must follow the requirements and guidelines for security deposits and other charges outlined in paragraph 6-18 regarding the refunding and use of the security deposit.

Section 3: Termination of Tenancy by Owners

8-11 Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 3: Termination of Tenancy by Owners. The citations and their titles (or topics) are listed below.

A. **Termination of Tenancy**

1. *24 CFR 5.218 (Penalties for failing to disclose and verify Social Security and Employer Identification Numbers)**

2. 24 CFR 5.850-5.852, 5.858-5.861, 5.901, 5.903, and 5.905 (Termination of tenancy in Screening and Eviction for Drug Abuse and Other Criminal Activity; Final Rule)

3. 24 CFR 247.3, 880.607, 881.601, and 883.701 (Fraud, minor violations, nonpayment of rent, state or local Landlord and Tenant Act)

4. 24 CFR 247.3, 880.607, 881.601, 883.701, and 884.216 (Substantial lease violations)

5. 24 CFR 880.607, 881.601, 883.701, and 247.3 (Other good cause)

6. 24 CFR 880.607, 881.601, 883.701, and 884.216 (Lease expiration)

B. **Eviction for Drug Abuse and Other Criminal Activity**

- 24 CFR 5.850-5.852, 5.858-5.861, 5.901, 5.903, and 5.905 (Eviction in Screening and Eviction for Drug Abuse and Other Criminal Activity; Final Rule)

  NOTE: These regulatory requirements do not apply to owners of housing assisted by the Rural Housing Service under Section 514 or Section 515 of the Housing Act of 1949.

C. **Providing Notice of Termination of Tenancy**

1. 24 CFR 247.4 Termination Notice

2. 24 CFR 247.6 Eviction

8-12 Overview

A. The requirements and procedures for terminating tenancy provide owners with a mechanism to ensure that a tenant is fulfilling his/her obligations under the lease. These obligations include abiding by the lease and the house rules attached to and incorporated into the lease, paying rent when due, maintaining the unit, and permitting other tenants peaceful enjoyment of their units and the common area.

Additionally, the termination of tenancy provides a mechanism to evict tenants who commit fraud or fail to provide the information required by HUD to establish their eligibility and/or appropriate rent.

B. The requirements and procedures also seek to ensure that owners provide tenants with proper notice and the opportunity to respond and treat all tenants in an equitable and consistent manner when terminating tenancy. Additionally, owners must be in compliance with applicable federal, state, and local requirements when pursuing termination of tenancy. Owners must:

1. Adhere to termination criteria consistently and equitably; and

2. Enforce the lease and house rules, and if lease obligations are not fulfilled, initiate termination proceedings to guarantee the other residents' health, safety, and peaceful enjoyment of the property.

C. An owner must not refuse to renew a lease solely because a lease term has expired. Figure 8-2 summarizes the allowable circumstances when an owner may terminate tenancy, either during or at the end of the lease term. Each circumstance will be discussed in detail in the paragraphs to follow.

Figure 8-2: Allowable Circumstances for Terminating Tenancy

- Material noncompliance
  - Substantial lease violations
  - Fraud
  - Repeated minor violations
  - Nonpayment of rent
  - *Failure to disclose and provide verification of SSN(s)*
  - *Failure to sign and submit consent forms*
- Drug abuse and other criminal activity
- Material failure to carry out obligations under a State Landlord and Tenant Act
- Other good cause

8-13 Material Noncompliance with the Lease

A. Key Requirements

Owners may terminate tenancy when a tenant is in material noncompliance with the lease, including:

1. Failure of the tenant to submit in time all required information on household income and composition. Examples include:

   a. The tenant's failure to:

      (1) Submit required evidence of citizenship or eligible immigration status;

      (2) Disclose and verify social security numbers; or

      (3) Sign and submit consent forms allowing verification of information regarding the tenant's income and eligibility.

   b. The tenant's knowingly providing incomplete or inaccurate information.

2. Extended absence or abandonment of the unit as defined in the house rules for the property, or in state or local law.

   a. House rules regarding extended absence or abandonment must be consistent with the requirements and guidelines for house rules described in paragraph 6-9. See that chapter for more information.

   b. The house rules must be attached to the lease for that unit.

3. Fraud, which is when a tenant knowingly provides inaccurate or incomplete information.

   a. If the owner determines that a tenant acted fraudulently, the owner may terminate tenancy under the lease. A fraudulent action is considered material noncompliance with the lease.

   b. The owner must handle fraud as a civil violation and may handle fraud as a criminal violation. When evicting for fraud, the owner must simultaneously file a civil action against the tenant to recover the subsidy overpayment. The owner may refer the case to a local, state, or federal prosecutor who may pursue the case as a criminal matter.

   c. The owner must take care not to confuse tenant error with fraud. Figure 8-3 below describes the difference between fraud and tenant errors. See paragraphs 8-17 and 8-18 for more information.

Figure 8-3: Tenant Errors versus Fraud

Fraud should not be confused with tenant errors, which HUD considers unintentional program violations. Tenant errors are usually infractions or oversights that do not involve intentional deceit (e.g., tenant misunderstands or forgets the rules).

Tenants who were not eligible for assistance because they mistakenly provided incorrect information must reimburse the owner for the difference between the rent the tenant should have paid and the actual rent the tenant was charged. This circumstance constitutes a tenant error and is not a basis for eviction.

4. Repeated minor violations that:

   a. Disrupt the livability of the property;

   b. Adversely affect the health or safety of any person, or the right of any tenant to the peaceful enjoyment of the property;

   c. Interfere with the management of the property; or

   d. Have an adverse financial effect on the property.

Example – Minor Violations

NOTE: This list is not comprehensive.

- Tenant keeps unauthorized occupants.
- Tenant fails to pay utilities.
- Tenant behaves or acts in a manner that continually disrupts the right of other residents to enjoy the property.
- Tenant damages, destroys, or defaces the unit or property.
- Tenant fails to pay the cost of all repairs caused by carelessness or neglect on the part of the tenant.

5. Nonpayment of rent due under the lease.

   a. The tenant is obligated to pay all amounts due under the lease or repayment agreement, including any portion thereof.

   b. The owner must not terminate tenancy until any grace period permitted by state law has expired.

NOTE: If the tenant pays all amounts due under the lease within the grace period, this is not material noncompliance, but rather a minor violation. Repeated minor violations constitute cause for eviction.

6. *Failure to disclose and provide verification of SSNs.

a. Termination of tenancy.

(1) The owner must terminate tenancy of a tenant and the tenant's household if the SSN disclosure and verification requirements for all household members are not met in the specified timeframe. This includes those households where a child under the age of six who did not have a SSN was added to the household with the understanding that the SSN would be disclosed and verification provided within 90 days after admission, or within the 90 day extension period, if applicable.

(2) There is no proration of assistance for those household members who are required to obtain a SSN but who fail to disclose and provide verification of their SSN.

(3) Termination of tenancy does not apply to those households with individuals who do not contend eligible immigration status or tenants who were age 62 or older as of January 31, 2010, whose initial determination of eligibility was begun before January 31, 2010, unless there are other members of the household who have not disclosed or provided verification of their SSNs.

b. Deferring termination of tenancy.

The owner may defer termination of tenancy and provide tenants with an additional 90 days past their next regularly scheduled recertification of income and family composition to become in compliance with the SSN disclosure and verification requirements in Chapter 3, Paragraph 3-9.

(1) The deferral is at the owner's discretion and must only be provided if failure to meet the SSN requirements was due to circumstances outside the control of the tenant and there is a likelihood that the tenant will be able to disclose and provide verification of the needed SSN(s) by the deadline date.

(2) After the 90-day deferral period, if the tenant has not disclosed and provided verification of the needed SSN(s), the owner will pursue termination of tenancy.

B. **Procedures for Terminating Tenancy and Providing Notice**

The following procedures are the minimum standards required by HUD. Most state and/or local laws are more restrictive than HUD's minimum requirements; therefore, an owner should be aware of state and local laws governing terminations.

1. Basis for termination.

To terminate tenancy, an owner must establish that the basis for the termination is consistent with:

a. HUD-required lease provisions;

b. Allowable lease provisions set forth in the lease for the unit occupied by the tenant; and

c. Applicable state and local laws.

2. Termination notice.

a. If the owner proposes to terminate a lease, the owner must give the tenant written notice of the proposed termination.

b. For tenants with a disability, the notice must be provided in a form accessible to the tenant (e.g., in Braille or audio form for a tenant with a vision impairment).

c. When an owner terminates tenancy, written notice must be provided to the tenant and must:

(1) State the specific date the tenancy will be terminated;

(2) State the reasons for the action with enough detail to enable the tenant to prepare a defense;

(3) Advise the tenant that remaining in the unit on the termination date specified in the notice may result in the owner seeking to enforce the termination in court, at which time the tenant may present a defense;

(4) Advise the tenant that he/she has 10 days within which to discuss termination of tenancy with the owner. The 10-day period begins on the day that the notice is deemed effective (see subparagraph B.3 below);

(5) Advise that persons with disabilities have the right to request reasonable accommodations to participate in the hearing process (see Chapter 2, Subsection 4 for information on Reasonable Accommodation)

(6) Be served on the tenant as described under subparagraph B.3.c below.

d. When terminating tenancy for material noncompliance, the time of service of the termination notice must be in accordance with the lease and state law.

e. In the case of the tenant's nonpayment of rent, the notice must include the dollar amount of the balance due on the rent account and the date of such computation.

3. Manner of service for Section 236, Section 221(d)(3) BMIR, Rent Supplement, Section 202/8, Section 202 PAC, Section 202 PRAC, Section 811 PRAC, Section 8 Loan Management Set-Aside, and Section 8 Property Disposition Set-Aside.

a. The notice must be served by:

(1) Sending a letter by first class mail, properly stamped and addressed and including a return address, to the tenant at the unit address; and

(2) Delivering a copy of the notice to any adult person answering the door at the unit. If no adult answers the door, the person serving the notice may place it under or through the door, or affix it to the door.

b. The date on which the notice is deemed received by the tenant is the later of:

(1) The date the first class letter is mailed; or

(2) The date the notice is properly given.

c. Service of the notice is deemed effective once the notice has been both mailed and hand delivered.

4. Manner of service for all other Section 8 programs.

The manner of service will be in accordance with the provisions of state and local laws.

5. Judicial action.

a. An owner must not evict any tenant except by judicial action pursuant to state and local laws.

b. In any judicial action to evict a tenant, the owner must rely on the grounds cited in the termination notice served to the tenant. However, the owner is not precluded from relying on grounds about which he/she had no knowledge of at the time the notice was sent to the tenant.

NOTE: For Section 8 New Construction, Substantial Rehabilitation, and State Agency properties, the owner must rely only on the grounds cited in the termination notice served to the tenant.

c. The tenant's failure to object to the notice does not constitute the tenant's waiver of his/her rights to contest the owner's action in a judicial proceeding.

d. A tenant may rely on state or local laws governing eviction procedures where such laws provide the tenant procedural rights that are in addition to those provided by the regulatory agreements, except where such laws have been preempted under CFR Part 246, Local Rent Control, or by other action of the United States.

8-14 Drug Abuse and Other Criminal Activity

A. Key Requirements

1. The authority to terminate tenancy of tenants is in accordance with the HUD model leases and state or local Landlord and Tenant Act(s).

2. Criminal activity. Owners may terminate tenancy for any of the following types of criminal activity by a covered person (a tenant, household member, guest, or other person under the tenant's control):

   a. Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises); or

   b. Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises.

   NOTE: Owners may terminate tenancy and evict tenants for criminal activity by a covered person if they determine that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying a criminal conviction standard of proof of the activity.

3. Illegal drug use. Owners may evict a family when they determine that a household member is illegally using a drug or when owners determine 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.

4. Alcohol abuse. Owners may terminate tenancy if they determine that a 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.

5. *Lifetime sex offender. Owners must terminate the tenancy of a participant who is subject to a lifetime registration requirement under a State sex offender registration program who was erroneously admitted (the household member was subject to a lifetime registration requirement at admission and was admitted after June 25, 2001) and is receiving housing assistance.

   NOTE: If an O/A erroneously admitted a lifetime sex offender, the O/A must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the O/A must terminate assistance for the household.*

6. Other circumstances. Owners may terminate tenancy during the term of the lease if a tenant is:

   a. Fleeing to avoid prosecution, or custody or confinement after conviction for a crime, or attempting 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

   b. Violating a condition of probation or parole imposed under federal or state law.

7. Owners must consistently apply their eviction standards.

8. Eviction actions must be consistent with federal, state, and local civil rights laws, including the fair housing and equal opportunity laws described in 24 CFR 5.105.

B. Factors to Consider When Terminating Tenancy for Drug Abuse and Other Criminal Activity

NOTE: Owners should be careful to implement consistently all criminal background checks and decision-making procedures. Owners are required to have their procedures included as part of their Tenant Selection Plan (see Chapter 4, Figure 4-2.)

1. As part of their eviction standards, owners may consider all of the circumstances relevant to a particular eviction case, such as:

   a. The seriousness of the offending action;

   b. The effect on the community of terminating or not terminating tenancy;

c. The extent of the tenant's participation in the offending action;

d. The effect of termination of tenancy on household members not involved in the offending action;

e. The demand for assisted housing by families who will adhere to lease responsibilities;

f. The extent to which the tenant has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action; and

g. The effect of the owner's action on the integrity of the program.

2. In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member *who is no longer engaged in such behavior*, an owner may consider and may require evidence of whether the member:

a. Is participating in or has successfully completed a supervised drug or alcohol rehabilitation program; or

b. Has otherwise been rehabilitated successfully.

3. A tenant may be required to exclude a household member in order to continue to reside in the unit when that household member has participated in, or is responsible for, an action or a failure to act that warrants termination.

C. **Procedures for Accessing Criminal Records**

1. An owner may submit a request to a PHA (in the area where the property is located) to obtain the criminal records *and/or State lifetime sex offender registration records* of a member of a household for use in applicant screening, lease enforcement or eviction. Refer to Glossary for definition of Public Housing Agency (PHA).

2. Prior to performing or requesting a PHA to conduct a background check, an owner must do the following:

a. Obtain a signed consent form from the household member or applicant;

b. Provide the PHA with its selection criteria; and

c. Ensure that all criminal background checks are conducted consistently for every applicant or resident.

3. Upon request of the owner, the PHA must request the criminal conviction *or State lifetime sex offender registration* records from the state where the applicant resides and from other states where the applicant *or members of

the applicant's household have resided.* Owners and PHAs may rely on the applicant's declaration *on their application* regarding their residences and any other information.

4. If the PHA receives criminal conviction *and/or State lifetime sex offender registration* records requested by the owner, the PHA must determine whether criminal action by a household member, as shown by such criminal conviction records, may be a basis for lease enforcement or eviction. The

   PHA's determination with regard to the screening and admission of applicants is based upon the criminal conviction record and the owner's standards for prohibiting admission. All findings of a criminal background or sex offender status used to make determinations must be documented. If the owner's selection criteria are not clear, the PHA should contact the owner for clarity. The PHA will make a determination based on the information provided by the owner. Any decisions based on "reasonable belief" or other "determination" of the owner should be documented with the reason for the belief or determination. This documentation should not be only of specific behavior, but that the behavior would (or does) interfere with the health, safety, or peaceful enjoyment of other residents.

5. The PHA must notify the owner whether it has received criminal conviction *or State lifetime sex offender registration* records for the household member and its determination as to whether such records may be a basis for lease enforcement or eviction. Except as provided below, a PHA must not disclose the household member's criminal conviction *or State lifetime sex offender registration* records or the content of the records to the owner. A PHA may only make this disclosure if the following conditions are satisfied:

   a. The PHA determines that the criminal activity by the household member, as shown by records received from a law enforcement agency, may be a basis for eviction from a unit; and

   b. The owner certifies in writing that the criminal conviction records will be used only for the purpose and only to the extent necessary to seek eviction in a judicial proceeding of a tenant, based on the criminal activity by the household member that is described in the criminal conviction records.

6. If a PHA receives criminal conviction records from a state or local agency showing that a household member has been convicted of a crime relevant to lease enforcement or eviction, the PHA must notify the household of the proposed action and must provide the subject of the record and the tenant a copy of the information and an opportunity to dispute the accuracy and relevance of the information. This opportunity must be provided before alease enforcement or eviction action is taken on the basis of the information.

7. The owner may deny admission to an applicant using his/her standard for admission screening or may evict a tenant in accordance with his/her standard for termination of tenancy if the criminal background *or State lifetime sex offender registration* check indicates that the applicant or tenant provided false information. If the household is to be denied admission or evicted, the PHA /owner making the determination must:

   a. Notify the household of the proposed denial of admission or termination of tenancy.

   b. Provide the subject of the record and the applicant or tenant, with a copy of the information the action is based upon.

   c. Provide the applicant or tenant with an opportunity to dispute the accuracy and relevance of the information obtained from any law enforcement agency.

   ***NOTE:** Persons who are subject to a lifetime sex offender registration requirement who were admitted prior to June 25, 2001, the effective date of the Screening and Eviction of Drug Abuse and Other Criminal Activity final rule, must not be evicted unless they commit criminal activity while living in federally assisted housing or have some other lease violation, in which case the owner may terminate the tenancy and pursue eviction to the extent allowed by their lease and state or local law.*

8. A PHA may charge an owner reasonable fees for making a request, on behalf of the owner, for criminal conviction records. A PHA may require the owner to reimburse costs incurred by the PHA, including reimbursement of any fees charged to the PHA by a law enforcement agency, and the PHA's own related staff and administrative costs.

9. Owners may use sources other than the PHA to conduct criminal background checks, *including the State lifetime sex offender registration checks.* The owner may conduct his/her own background search of criminal records, or may secure a contractor. When the owner conducts his/her own criminal background searches or uses sources other than a PHA, the owner will make the determination, in accordance with the owner's standards for admission, if the applicant or tenant meets the screening criteria.

   ***NOTE:** O/As should verify the information provided by the applicant by searching the Dru Sjodin National Sex Offender Database. The Dru Sjodin National Sex Offender Database is an online, searchable database, hosted by the Department of Justice, which combines the data from individual state sex offender registries. The website for the database is located at: http://www.nsopw.gov. A record of this screening, including date performed, should be retained.*

10. The owner may <u>not</u> pass along the costs of the criminal records checks to the tenant.

11. Owners and PHAs have the discretion to contract out criminal background checks, *including State sex offender registration checks,* but will be responsible for the action and decisions made by their contractor. HUD does not prescribe the process the PHA uses to determine the source for obtaining the criminal background information. However, the criminal records must be requested from the appropriate law enforcement agency, National Crime Information Center (NCIC), police departments, or other law enforcement agencies that hold criminal conviction records.

12. Entities that obtain criminal records are not responsible for updating the criminal history of an applicant or tenant.

13. Criminal records obtained by the **PHA** are to be maintained confidentially, not misused or improperly disseminated; and destroyed upon completion of the originally intended use. When destroying records of criminal background in accordance with 24 CFR 5.903(g), the PHA should make a notation in the tenant file that includes the date the records are destroyed and a statement that the records were destroyed for purposes of confidentiality. *Owners must retain documentation in the tenant file showing the date, type and results of the criminal background check and/or State lifetime sex offender registration check performed by the PHA.*

14. Criminal records obtained by the **owner** are to be maintained confidentially, not misused or improperly disseminated, and destroyed three years after tenancy is terminated. Criminal records, *including State lifetime sex offender registration checks,* received for applicants who never move-in are to be retained with the application for three years.

15. Entities must handle any information from other records in accordance with applicable state and federal privacy laws and with the provisions of the consent forms signed by the applicant.

16. Penalties for improper release of information. Conviction for a misdemeanor and imposition of a fine of not more than $5,000 is the potential penalty for any owner who knowingly and willfully requests or obtains under false pretenses any information concerning a tenant under the authority of this rule or who discloses any such information in any manner to any individual not entitled under any law to receive the information.

D. Procedures for Terminating Tenancy and Providing Notice

See paragraph 8-13 B for information on the basis for termination, the termination notice, the manner of service, and judicial action.

8-15 Material Failure to Carry Out Obligations under a State or Local Landlord and Tenant Act

A. Key Requirements

State and local laws impose obligations on a landlord and tenant and provide that violations of the tenant's obligations constitute grounds for eviction.

Example – Material Failure to Carry Out Obligations under a State or Local Landlord and Tenant Act

Examples of a tenant's failure to fulfill his/her obligation under a State or Local Landlord and Tenant Act include but are not limited to:

- Overcrowding a unit in violation of the local housing code; and
- Damaging, destroying, or defacing a unit to such extent that the unit no longer is in compliance with the housing code.

B. **Procedures for Terminating Tenancy and Providing Notice**

1. See paragraph 8-13 B for information on the basis for termination, the termination notice, the manner of service, and judicial action.

2. When terminating tenancy for material failure to carry out an obligation under a State and Local Landlord and Tenant Act, the time of service of the termination notice must be in accordance with the lease and state law.

8-16 Other Good Cause

A. **Key Requirements**

1. Other good cause is defined by state and local laws, not by HUD. In addition, issues regarding the existence of other good cause may be resolved by the owner and tenant in court through an action for eviction of the tenant.

2. The conduct of a tenant may be deemed good cause, provided the owner has given the tenant prior written notice and stated the conduct would constitute a basis for termination of occupancy in the future. Such notice to the tenant must be served in the same manner as a notice of termination of tenancy. (See paragraph 8-13 B.)

Example – Other Good Cause

For all Section 8 New Construction, Substantial Rehabilitation, and State Agency properties, the regulations list the refusal of the tenant to accept an approved modified lease form as "Other Good Cause."

B. **Procedures for Terminating Tenancy and Providing Notice**

1. See paragraph 8-13 B for information on the basis for termination, the termination notice, the manner of service, and judicial action.

2. If the owner is terminating tenancy for other good cause, the notice must be effective at the end of the lease term, but in no case earlier than 30 days after receipt of the notice by the tenant. This notice period may run concurrently with any comparable notice period required by state or local law.

3. A termination notice for other good cause must provide that the proposed termination will be effective at the end of the lease term, but in no case earlier than 30 days after receipt of the notice by the tenant.

Section 4: Discrepancies, Errors, and Fraud

8-17 *Key Regulations

24 CFR 5.233 Mandated Use of HUD's Enterprise Income Verification (EIV) System *

8-18 Procedures for Addressing Discrepancies and Errors

A. **Overview**

To promote income and rent integrity, owners must investigate and research discrepancies and possible errors.

Owners must use HUD's EIV system as a tool to identify possible discrepancies in income reported by the tenant as well as identifying tenants who may be deceased or receiving assistance at more than one location or under more than one HUD rental assistance program.

B. **Program Violations**

When owners identify an error involving a tenant, they should first determine if the error constitutes a program violation.

A program violation occurs when the tenant by action or inaction breaches a lease, regulation, or other program requirement. Tenant errors occur because tenants misunderstand or forget rules. Tenant errors are thought of as unintentional program violations.

C. **Investigating and Discovering the Facts**

1. If an owner suspects that a tenant has inaccurately supplied or misrepresented information that affects the tenant's rent or eligibility, the owner must investigate and document the tenant's statements and any conflicting information the owner has received. To research questionable information, the owner may:

   a. Confront the tenant with the tenant's information and any conflicting information;

b. Obtain additional information from other persons or agencies; and

c. Take other actions to verify either the tenant's information or the conflicting information.

__NOTE:__ Owners may not suspend, terminate, reduce or make a final denial of any benefits of a tenant until they have taken appropriate steps to independently verify the tenant's information or the conflicting information.

2. If an intentional misstatement or withholding of information cannot be substantiated through documentation, the owner must treat the case as an unintentional program violation.

D. **Notifying and Meeting with the Tenant**

1. After gathering the documentation, the owner must notify the tenant in writing of the error and identify what information is believed to be incorrect.

2. The tenant must have an opportunity, within 10 days, to meet with the owner and discuss the allegations.

a. The owner must also inform the tenant that failure to do so may result in the tenant's termination of tenancy.

b. The meeting with the owner must be with a designated representative who has not been involved in any manner with the review of the allegedly false information.

c. The owner must provide a written final decision, based solely on the facts presented and discussed at the meeting to the tenant within 10 days of the date of the meeting. The decision must also state the basis for the determination.

3. For tenants with a disability, the notice must be in a form accessible to the tenant, and the meeting must be held in a location accessible to the tenant.

E. **Determining the Outcome of the Investigation**

1. If the tenant meets with the owner to discuss the error, and the owner is convinced the tenant's submissions were correct, the owner should document the file accordingly and close the investigation.

2. If, after meeting with the tenant, the owner determines that the provision of inaccurate information was an unintentional program violation, the owner should correct the tenant's rent, if applicable, and provide the tenant with notice of the change in rent. If the tenant is unable to repay the full amount, the owner and tenant should enter into a repayment agreement. *(See Paragraph 8-23 for information on repayment agreements.)*

a. If, after the income adjustment, the tenant no longer qualifies for assistance, the tenant may remain in the property subject to making repayments and paying market rent.

b. The owner may terminate tenancy if the tenant refuses to pay the new monthly rent or refuses to repay the previously overpaid subsidy pursuant to the repayment agreement.

c. If necessary, civil action may be filed to recover the funds.

Example – Unintentional Program Violation

A two-income household receives rental assistance payments. One individual works full time, which was fully disclosed during the last recertification. The other has a part-time job, but the work is on an as-needed basis. Because the income earnings were uncertain, small in amount, and infrequent, the tenant misunderstood the requirement to report income and did not report the uncertain income earnings.

3. If the owner determines the tenant knowingly provided inaccurate or incomplete information, and this can be substantiated through documentation, the owner needs to pursue the incident as fraud following the guidance in paragraph 8-18.

8-19 Procedures for Addressing Fraud

A. Overview

Some investigations may lead to the discovery of efforts by tenants or other parties to mislead the owner and, possibly, to commit fraudulent acts that result in the receipt of benefits or rent subsidies for which the tenant is not eligible. If after following the procedures in paragraph 8-17 for investigating and researching questionable information, the owner may determine that the tenant has knowingly provided inaccurate or incomplete information and will pursue the incident as fraud.

B. Criminal Violation (Fraud)

A criminal violation would be fraud, which is considered deceit or trickery deliberately practiced in order to gain some advantage dishonestly. Fraud is an intentional deception; it cannot be committed accidentally.

NOTE: A common error is to misuse or overuse the term “fraud” when a violation is suspected. A violation is not always fraudulent. It is important that owners first review and assess the circumstances before labeling a violation as fraud.

C. Documenting Fraud

In order to establish fraud, the tenant file must contain documentation showing the following:

1. The tenant was made aware of program requirements and prohibitions (i.e., all appropriate signatures are on the intake documents); and

2. The tenant intentionally misstated or withheld some material information. The strongest proof of fraud is an admission by the tenant. Fraudulent intent can also be demonstrated by documenting that:

   a. The act was done repeatedly (i.e., not a one-time or accidental occurrence), or there was prior determination of fraudulent intent or conviction (e.g., signing false HUD-50059s);

   b. False names or social security numbers were used;

   c. The tenant falsified, forged, or altered documents;

   d. The tenant omitted material facts that were known to the tenant (e.g., employment of self or other household members); or

   e. The tenant made admission to another person of the illegal action or omission (e.g., boasting that he/she cheated, or telling an employer or neighbor that an “absent” spouse has moved in with the tenant).

D. **Taking Action to Address Fraud**

1. When fraud is present, the authorized course of action for owners to take is termination of tenancy. An owner's authority to pursue eviction in cases of tenant fraud is grounded in the material noncompliance provision contained in both the model lease and in the regulations *[24 CFR 247.3]*. Material noncompliance includes "knowingly providing incomplete or inaccurate information.”

2. Fraud can be handled as a civil and/or criminal violation.

   a. Fraud can be handled as a civil violation by using it as grounds for a termination of tenancy. Providing false information is a material noncompliance with the lease. The owner must seek recovery for subsidy overpayment by asking the court for judgment against the tenant.

   b. Fraud is handled as a criminal violation when a local or federal prosecutor decides to prosecute the tenant for violation of a state or federal law. To convict the tenant, the prosecutor must show the court that the case contains all the elements of criminal fraud.

3. When a tenant is evicted for material noncompliance for submitting false, incomplete, or inaccurate information on household income or family composition required for certification or recertification, an owner must file a civil action against the tenant to recover improper subsidy payments. An

owner may consider referring the case for prosecution as a criminal violation, if applicable. Prosecution may be pursued on the local, state, or federal level.

8-20 *Discrepancies Reported in the EIV System*

A. Requirements Regarding Discrepancies *Reported in the EIV System*

*At the time of recertification, or at other times as stated in the owner's policies and procedures, owners must review and resolve any discrepancies reported in the EIV system that could result in errors in a tenant's rent and/or HUD assistance payments. This includes discrepancies in income reported on the EIV Income Discrepancy Report and discrepancies reported on the EIV Deceased Tenant Report and Multiple Subsidy Report. (See Chapter 9, Enterprise Income Verification (EIV), for more information on use of these reports.)

1. EIV Reports.

   a. Income Discrepancy Report:

      At the time of recertification, owners must review and resolve any discrepancies in income reported on the EIV Income Discrepancy Report. Using this report, the owner must identify any unreporting or underreporting of income by the tenant reported on current or historical HUD-50059s and transmitted to TRACS.

   b. EIV Verification Reports.

      Owners must review and resolve any discrepancies in the information reported on the following reports to identify tenants who may be receiving assistance they are not entitled to receive.

      (1) Deceased Tenant Report. Tenants reported by SSA as being deceased, and where HUD is continuing to pay subsidy.

      (2) Multiple Subsidy Report. Tenants who may be receiving rental assistance at more than one location.

   NOTE: The reports in EIV are a tool to alert owners of possible discrepancies. Not all EIV discrepancies reported are valid discrepancies.

2. Owners may not suspend, terminate, reduce or make a final denial of any benefits of a tenant until they have taken appropriate steps to independently verify information relative to any discrepancy reported. For example, if there is an income discrepancy, the owner must verify:

   a. The amount of the wages, unemployment compensation, or SSA benefits involved;

b. Whether such tenant actually has (or had) access to such wages or benefits for his or her own use; and

c. The period (or periods) when, or with respect to which the tenant actually received such wages or benefits.

See Chapter 9, Enterprise Income Verification (EIV) for more information on the EIV reports.

3. Owners must follow the instructions in Paragraph 8-18.D for notifying and meeting with the tenant when a valid discrepancy is discovered as a result of the owner's review.

a. If the owner determines the tenant is in noncompliance with his/her lease because he/she knowingly provided incomplete or inaccurate information, the owner must follow the guidance in Section 3 of this Chapter for terminating the tenant's tenancy and Paragraph 8-18 for the requirements on filing a civil action against the tenant to recover improper subsidy payments.

b. Where fraud is suspected, the owner should report this to the HUD OIG Office of Investigation in the district that has jurisdiction in the state the project is located.

B. Nondisclosure of Income Information

The Federal Privacy Act (5 USC 552a, as amended) prohibits the disclosure of an individual's information to another person without the written consent of such individual. As such, the EIV data of an adult household member may not be shared (or a copy provided or displayed) with another adult household member, unless the individual has provided written consent to disclose such information. However, the O/A is not prohibited from discussing with the head of household (HOH) and showing the HOH how the household's income and rent were determined based on the total income reported and verified. See Chapter 9, Paragraph 9-17, Disclosure of EIV Data.*

C. Opportunity to Contest

The owner *must* promptly notify a tenant in writing of any adverse findings made on the basis of the information verified. The tenant may contest the findings in the same manner as applies to other information and findings relating to eligibility factors under the applicable program. *Denial of assistance or termination of tenancy* must be carried out in accordance with requirements and procedures applicable to the individual covered program and will not occur until the expiration of any notice period provided by the statute or regulations governing the program.

8-21 Reimbursement to HUD for Overpayment of Assistance

A. Tenant's Obligation to Repay

1. The tenant must reimburse the owner for the difference between the rent the tenant should have paid and the rent he/she was actually charged, if the tenant:

   a. Fails to provide the owner with interim changes in income or other factors;

   b. Submits incorrect information on any application, certification, or recertification;

   c. *Fails to report income received*, and

   d. As a result, is charged a rent less than the amount required by HUD's rent formulas.

2. The tenant acknowledges his/her obligation to make such reimbursements:

   a. In paragraph 18 of the Model Lease for Subsidized Programs;

   b. In paragraph 14 of the Model Lease for Section 202/8 or Section 202 PAC; and

   c. In paragraph 12 of the Model Leases for Section 202 PRAC and Section 811 PRAC.

3. If the tenant does not pay in full, an owner should enter into a repayment *agreement* with the tenant to collect these funds over a specific period of time.

4. The tenant is not required to reimburse the owner for undercharges caused solely by the owner's failure to follow HUD's procedures for computing rent or assistance payments.

5. A tenant must reimburse the owner for the total overpayment back to the *time overpayment of assistance started, not to exceed the 5-year limitation that the tenant was receiving assistance discussed in forms HUD-9887 and HUD-9887-A. This 5-year limitation applies for all overpayments of assistance and is not limited to errors found using the EIV system.

6. The owner must have the form HUD-50059(s) on file that was in effect during the period(s) that the overpayment of assistance occurred, along with any supporting documentation, in order to calculate the amount the tenant must reimburse to the owner. The form HUD-50059(s) is the document whereby the tenant(s) certifies to the accuracy of the information recorded on the form. If the owner does not have this historical information, they cannot go back to the tenant for any overpayment of assistance.*

B. **Owner’s Obligation to Repay**

1. The owner is not required to reimburse HUD immediately for overpayments of assistance where the overpayment was caused by the tenant's

submission of incorrect information. Repayments are required when and as tenants repay in accordance with an agreed-upon repayment agreement.

2. *The owner may retain a portion of the repayments they actually collect from the tenants who have improperly reported their income at the time of certification or recertification to help defray the cost of pursuing these cases (this is not limited to cases where the owner has determined fraud).

   a. Owners may only retain an amount to cover their actual costs, which is the **lesser of**:

      (1) Their actual costs, or

      (2) 20 percent of the amount received from the tenant.

   b. Amounts retained by the owner must be deposited into the project's operating account to offset the expenses incurred for these cases.

   c. As with all income and expenses of the project, owners must keep records of the receipt and disbursement of all amounts collected from the tenant for audit purposes. At a minimum, the owner must record:

      (1) Date and amount(s) received from the tenant;

      (2) Expenses incurred;

      Examples of types of expenses incurred include staff time for verifying the unreported income; meeting with tenant; drafting repayment agreements; generating and sending monthly invoices to tenant; generating manual voucher adjustments; collection agency fees, if applicable; and, meeting state requirements.

      (3) Amount(s) retained; and

      (4) Voucher date(s) and amount(s) of reimbursement made to HUD.*

3. The owner must reimburse HUD for all other overpayments of assistance where such overpayments were due to the owner's error or the owner's failure to follow HUD's procedures. HUD or the Contract Administrator may permit the owner to repay such overpayments in one lump sum or over a period of time through reduction of normal housing assistance requisitions if immediate repayment in full would jeopardize the financial condition of the property.

8-22 *Tenant Repayment Options

A. Tenants can repay amounts due:

1. In a lump sum payment; or

2. By entering into a repayment agreement with the owner; or

3. A combination of 1 and 2, above.

For example, a tenant may owe $1,000, make a lump sum payment of $3,000 and enter into a repayment agreement for the remaining $700.

B. Tenants who do not agree to repay amounts due in accordance with a above, will be in noncompliance with their lease agreement and may be subject to termination of tenancy.

C. Tenants may also be required to repay funds to the owner due to a:

1. Civil action taken by the owner, or

2. Court action as a result of an Office of Inspector General (OIG) audit.

8-23 Repayment Agreements

A. The tenant and owner must both agree on the terms of the repayment agreement.

The tenant may wish to consult with HUD's Housing Counseling Agency in their area to assist them in working with the owner to reach agreeable terms for the repayment agreement. See the Housing Counseling Agency website for a listing of agencies for each state at: http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm.

1. Monthly Payment.

The tenant's monthly payment must be what the tenant can afford to pay based on the family's income.

The monthly payment plus the tenant's total tenant payment (TTP) at the time the repayment agreement is executed should not exceed 40 percent of the family's monthly adjusted income.

Example:

- Family's monthly adjusted income is $1,230.
- Family's monthly TTP is $369 (30% of the family's monthly adjusted income.
- 40% of the family's monthly adjusted income is $492.
- The monthly payments for the repayment agreement should not exceed $123 per month ($492 - $369 = $123) ($369 monthly TTP+ $123 repayment = $492, 40% of the family's monthly adjusted income.

2. Repayment Time Period.

   The time period for repayment by the tenant of the amount owed.

Example: The tenant agrees to repay $1,000 and agrees to monthly payments of $25.

$1,000/$25 = 40 months (time period).

B. The repayment agreement must:

1. Include the total retroactive rent amount owed, the amount of lump sum paid at time of execution of the agreement, if applicable, and the monthly payment amount.

2. Reference the paragraphs in the lease whereby the tenant is in noncompliance and may be subject to termination of their lease.

3. Contain a clause whereby the terms of the agreement can be renegotiated if there is a decrease or increase in the family's income of $200 or more per month.

4. Include a statement that the monthly retroactive rent repayment amount is in addition to the family's monthly rent payment, and is payable to the owner.

5. Late and missed payments constitute default of the repayment agreement and may result in termination of assistance and/or tenancy.

6. Be signed and dated by the tenant and the owner.

C. Owners must not apply a tenant's monthly rent payment towards the repayment amount owned that would result in an accumulation of late rent payments. The

monthly payment due on the repayment agreement is in addition to the tenant's monthly rent payment.*

8-24 Reimbursement to Tenant for Overpayment of Rent

A. *If, at the time of recertification, there is an Income Discrepancy Report in EIV that reflects a decrease of $2,400 or more in wage, unemployment and/or Social Security income reported in EIV and the wage, unemployment and/or Social Security income reported in TRACS for the period of income used for the discrepancy analysis, the owner must investigate the discrepancy.*

B. If, after investigating the discrepancy, the owner determines that an error was made in calculating the tenant's income (e.g., third party verification not obtained, third party verification received but an error was made in calculating the tenant's income) and the income was over-reported, the owner must complete corrections to the prior certification(s) affected by the income change. Once the corrections have been made, the owner must determine the difference between the amount of rent the tenant paid and the rent that the tenant should have paid.

C. *The owner must discuss the discrepancy in income reported with the tenant.*

1. The owner must provide the tenant with written notification, which includes:

a. A notice of the change in rent, effective retroactively to when the error occurred;

b. The new monthly rent the tenant is required to pay;

c. The amount of the overpayment of rent due to the tenant; and

d. A form for the tenant to execute and return to the owner stating whether the tenant wishes to:

(1) Receive a full, immediate refund; or

(2) Apply the overpayment to future monthly rent payments.

8-25 *Reimbursement for Errors Discovered During a Monitoring Review

If, during a review of the tenant files, the CA determines that an error was made in the income calculation based on the income verifications on file that results in an under- or over-payment of rent by the tenant, unless the overpayment was due to the owner's error or the owner's failure to follow HUD's procedures, the owner must make the necessary adjustments to the tenant's rent for the period the error occurred. The tenant must reimburse the owner for any underpayment of rent and the owner must reimburse the tenant for any overpayment of rent.*