

CHAPTER 10. DELAY, DEFERRAL OR TERMINATION OF ASSISTANCE

10-1. Termination Of Assisted Occupancy -- Section 8 Programs Only. In the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation programs, assisted occupancy is terminated by terminating assistance payments. (See the provisions in Chapter 8 concerning termination of assistance.) The HA shall not make any additional assistance payments to the owner after the required procedures specified herein have been completed. In addition, the HA shall not approve a lease, enter into an assistance contract, or process a portability move for the family after those procedures have been completed.  
[812.9(i)(2)]

10-2. Assistance Available For Mixed Families. [812.10(a); 950.310(r)(1); 912.10(a)]

a. Assistance available for tenant mixed families. For a tenant mixed family assisted under a Section 214 covered program on June 19, 1995, and following completion of the INS appeals and HA informal hearing procedures provided in Chapter 9 if utilized by the family, one of the following three types of assistance may be available to the family:

(1) Continued assistance (see paragraph 10-4 of this section);

(2) Temporary deferral of termination of assistance (see paragraph 10-5);

(3) Prorated assistance (see Chapter 11; a mixed family must be provided prorated assistance if the family so requests).

b. Assistance available for applicant mixed families. Prorated assistance is also available for applicant mixed families applying for assistance as provided in Chapter 11.

c. Assistance available to other families in occupancy. For families receiving assistance under a Section 214 covered program on June 19, 1995, and who have no members with eligible immigration status, the HA may grant the family temporary deferral of termination of assistance.

10-3. Discretion Afforded To Provide Certain Family Preservation Assistance.

a. Owners. With respect to assistance administered by a HA-owned project under Section 8 New Construction Substantial Rehabilitation, Loan Management Set-Aside, and Property Disposition Programs the HA should refer to the Office of Housing's Notice H-95-55 entitled Procedures for implementing Section 214 of the Housing and Community Development Act of 1980, as amended, Restrictions on Assistance to Noncitizens.

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b. HAs.

(1) An HA acting as a contract administrator of a Rental Certificate (including project-based Rental Certificate),

Rental Voucher, or Moderate Rehabilitation program (as opposed to an HA owner), or operating public or Indian housing, rather than HUD, has the discretion to determine the circumstances under which a family will be offered one of the two statutory forms of assistance (continued assistance or temporary deferral of termination of assistance). The HA must establish its own policy and criteria to follow in making its decision. In establishing the criteria for granting continued assistance or temporary deferral of termination of assistance, the HA must incorporate the statutory criteria, which are set forth in paragraphs 10-4 and 10-5. However, the housing authority must offer prorated assistance to eligible mixed families (see Chapter 11).

(2)HAs must exercise their discretion regarding continued assistance and deferred termination in a nondiscriminatory manner. HAs should be prepared to justify any decisions denying continued assistance and deferred termination, given that the families involved will be likely to question them. In this respect, HAs may find it advantageous to always grant continued assistance or deferred termination whenever a family meets the criteria specified in 812.10 (c)-(d), 912.10(b)-(c) or 950.310(r)(2)-(3), or, in other words, treat the word "may" in those sections as "shall".

10-4.Continued Assistance. A mixed family may receive continued housing assistance if all of the following conditions are met: [812.10(c); 950.310(r)(2); 912.10(b)]

a.The family must have been receiving assistance under a Section 214 covered program on June 19, 1995;

b.The family's head of household or spouse must declare either citizenship or eligible immigration status as described in paragraph 3-1; and

c.The family may not include any person (who does not have citizenship or eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head' of household, any parents of the spouse, or any children of the head of household or spouse. The inclusion in a housing unit of an extended family member who is eligible for housing assistance will not render an otherwise eligible family ineligible for continued assistance, so long as the extended family member (such as an uncle) is included in the lease (as required by other provisions).

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d.Example. A family with a legal head of household, and a nonlegal spouse and two children and who were in occupancy by the effective date are eligible for continued assistance. That same family with the addition of a ineligible brother-in-law living with them is not eligible for continued assistance (i.e., the family no longer meets the preceding statutory definition of family).

The family is eligible, however, for prorated assistance. In

determining the amount of prorated assistance, the only eligible member of the family is the head of household and therefore entitled to one-fifth assistance.

e. Effective Date. A tenant family's eligibility for continued assistance is judged as of the date following completion of the hearing process (provided they were tenants on June 19, 1995). If the tenant family is not eligible for continued assistance on June 19, 1995, but becomes eligible for such assistance by the time the hearing process is completed, it will be granted continued assistance.

10-5. Temporary Deferral Of Termination Of Assistance. A mixed family may receive temporary deferral of termination of assistance under the following conditions: [812.10((d); 950.310(r)(3); 912.10(c)]

a. The family must have been receiving assistance under a Section 214 covered program on June 19, 1995;

b. Eligibility for this type of assistance. If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance) but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible immigration status, and any other family members involved, to find other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

c. Time limit on deferral period. If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of three years.

d. Notification requirements for beginning of each deferral period. At the beginning of each deferral period, the HA must inform the

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family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

e. Determination of availability of affordable housing at end of each deferral period. Before the end of each deferral period, the HA must:

(1) Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions, which when taken together, will demonstrate:

(a)an inadequate supply of affordable housing for the area in which the project is located,

(b)the consolidated plan (if applicable, as described in 24 CFR Part 91),

(c)the HA's own knowledge of the availability of affordable housing, and

(d)evidence of the tenant family's efforts to locate such housing; and

(2)Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceed three years), and a determination was made that other affordable housing is not available; or

(3)Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed three years, or a determination has been made that other affordable housing is available.

10-6.Option To Select Proration Of Assistance At End Of Deferral Period. A family who is eligible for and who receives temporary deferral of termination of assistance, may request, and the HA shall provide, proration of assistance at the end of the deferral period if the family has made a good faith effort during the deferral period to locate other affordable housing. [812.10(e); 950.310(r)(3)(v); 912.10(d)]

10-7.Election To Select Proration of Assistance At End of Deferral Period Irreversible. Once the family exercises the option to receive proration of assistance at the end of the deferral period, the family may not elect to return to receive temporary deferral of termination of assistance. Prorated assistance is, in a sense, a partial termination of assistance. Allowing a family to move from prorated assistance to

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deferred termination would give assistance to an ineligible family member who was not receiving assistance under prorated assistance. Moving from deferred termination to prorated assistance lowers the amount of assistance provided, whereas moving in the opposite direction raises the amount of assistance provided.

10-8.Notification Of Decision On Family Preservation Assistance. An HA shall notify the family of its decision concerning the family's qualification for assistance. If the family is ineligible for assistance, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the family of any applicable appeal rights. (For HAs administering Rental Certificate or Rental Voucher Programs, see 24 CFR Sections 882.216 or 887.405).

[812.10(f); 950.310(r)(3)(vi); 912.10(e)]

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