

direct what subjects must be covered by HA administrative policies, while leaving HAs discretion on how to regulate the prescribed subjects. Comments particularly welcome new regulatory provisions confirming that an HA may adopt local policies concerning family absence from the assisted unit, program participation after break up of the assisted family, maximum security deposit, and enforcement of participant obligations. (Provisions on these subjects are discussed later in the preamble.)

However, HA comments express concern with the cost and administrative burden of adopting and revising HA policies. Comments ask clarification of a proposed provision stating that the HA must revise the administrative plan or equal opportunity plan to change the policies covered by the plan. Comments recommend combining the equal opportunity and administrative plans.

Comments discuss the difficulty and delay in securing HUD approval for new HA policies. Some comments recommend a regulatory time limit for HUD review of the HA policy.

Comments suggest that the HA should be required to give notice of proposed changes in HA policies to participants and interested organizations or advocates, and that the HA should be required to give copies of the HA policies to each applicant or participant.

On reconsideration, HUD has made a number of changes in the provisions on HA local policies:

- Merging the equal opportunity and administrative plans into a single plan;
- Limiting the subjects that must be contained in the plan; and
- Eliminating the blanket requirement for HUD advance approval of HA policies in the administrative plan.

In the final rule, HUD has decided to eliminate the requirement for separate administrative and equal opportunity plans. An HA's discretionary policies will be contained in the administrative plan. This change eliminates the artificial distinction between equal opportunity issues and ordinary administrative policies. The final rule removes the requirement for separate overlapping or duplicative coverage under the prior equal opportunity and administrative plans, such as policies for selection of program participants. All aspects of program administration must be consistent with the HA's obligation to operate the program in accordance with civil rights requirements.

Under the terms of the proposed rule, the administrative plan would have

been a comprehensive statement of HA local policies for administration of the program. Under the final rule, the mandatory coverage of the administrative plan is only focussed on equal opportunity requirements and programmatic policies for the specific areas listed in the rule. (§ 982.54(d)) While HA policy and practice in other areas (such as financial management) have a vital role in operation of the tenant-based program, HUD review and oversight will focus on the results of HA policies, not on whether the HA has adopted a written policy to achieve these results (or has obtained HUD approval for such a policy).

Besides listing specific subjects that had to be included in the administrative plan, the proposed rule also would have required the HA to include unspecified "other local HA policies" for administration of the program. In the final rule, this residual category is deleted. The HA is only required to cover the specific subjects listed in the rule. In defining this mandatory coverage, HUD does not express any view that other matters are not important, or that the HA should not adopt formal written policies for the guidance of program officials. However, the decision whether to adopt such additional policies is left to the local judgment and managerial experience of the individual HA.

Before this rule, the HA was required to submit the administrative plan for HUD approval. In the final rule, this requirement is deleted. For most purposes, the HA may adopt and revise HA policies without asking for HUD approval. However, the policies in the administrative plan must comply with HUD requirements. The HA must give HUD a copy of the administrative plan. (§ 982.54(b))

By eliminating the HUD approval requirement, the new rule substantially increases the HA's day-to-day autonomy in administration of the program, and minimizes HUD interference in HA policy decisions. At the same time, HUD retains the authority for necessary oversight and audit of HA operations. If HA policies violate HUD requirements, the HA must revise the administrative plan to comply with HUD requirements. (§ 982.54(b)) Instead of using HUD administrative resources for routine review and approval of policies in the HA administrative plans, HUD can concentrate available HUD staff on discovery and correction of the most serious HA problems in managing the program.

Since the rule generally lifts the requirement for prior HUD approval of HA administrative policies, an HA can

revise its policy more quickly and easily. The HA does not need to wait for HUD approval, or negotiate changes in HA policy to satisfy the HUD reviewer, so there is no need to consider or establish a deadline for HUD review of the HA administrative plan, as suggested by some comments.

Comments ask if changes in the administrative plan must be approved by the HA board. The final rule provides that the administrative plan and any revisions of the plan must be formally adopted by the HA board or other authorized officials. (§ 982.54(a))

In certain key areas, HUD rules will continue to mandate advance HUD approval of HA policies. Residency preferences for selection of applicants must be approved by HUD. (§ 982.208(b) (59 FR 36687, July 18, 1994)) As required by law, the HA family self-sufficiency (FSS) action plan must also be approved by HUD. (42 U.S.C. 1437u(g)(1)) (If FSS policies are contained in an HA's administrative plan, the policies must be moved to the HA's FSS action plan.)

Comments state that the HA administrative plan should include HUD requirements, not just HA discretionary policies. HA comments ask if an HA must amend the administrative plan whenever HUD revises regulations or other requirements. The final rule provides that an administrative plan must state HA policy "on matters for which the HA has discretion to establish local policies." (§ 982.54(a))

Since the final rule does not require that the HA revise the administrative plan to merely echo HUD regulations or other requirements, the HA is only required to revise the administrative plan to reflect the exercise of policy choices by the individual HA. By definition, HUD "requirements" are binding on the HA in any case.

For practical administration of the program, HAs may elect to develop procedures or guidance for HA staff that reflect both HUD requirements and the HA's policy decisions in accordance with HUD requirements. As noted above, the rule no longer requires that the administrative plan must be approved in advance by HUD, so it is less critical to distinguish between HA policy mandated by HUD, as opposed to HA policy adopted in accordance with local HA discretion.

The final rule drops a proposed provision that would have required an HA to adopt policies to encourage participation by eligible families. Since many eligible families are eager to participate in the program, and most HAs have long waiting lists, HAs have