

extension. The final rule provides, as under the old rule, that the initial term plus any extensions may not exceed a total of 120 days. (§ 982.303(b)(1))

The family may ask the HA to extend the term up to the 120 maximum as a reasonable accommodation for a disabled person. (§ 982.303(b)(2)) If the HA believes that a longer time is necessary for this purpose in a special case, HUD will consider a request for regulatory waiver of the 120 day maximum.

At its discretion, in accordance with HA policy as described in the administrative plan, an HA may grant a "suspension" (tolling) of the certificate or voucher term if the family submits a request for lease approval during the term of a certificate or voucher. (§ 982.303(c)) "Suspension" means stopping the clock on the term of a family's voucher or certificate after the family submits a request for lease approval. (§ 982.4; § 982.54(d)(2)) The final rule permits the HA to grant a suspension for "any part of" the period running from the family's request for lease approval up to the time when the HA approves or denies the request. (§ 982.303(c))

The rule requires the HA to establish in the administrative plan a policy on when and whether extensions or suspension of the term may be granted, including how the HA decides whether to grant extensions or suspensions, and the length of any extension or suspension. (§ 982.54(d)(2))

#### *E. HA Approval To Lease a Unit*

The HA must determine that a unit meets program requirements. Before approving rental of a unit with assistance under the program, the HA must determine that:

- The unit is eligible housing;
- HA inspection shows that condition of the unit satisfies the housing quality standards (HQS);
- The lease is approvable and includes the "lease addendum" language required by HUD;
- The rent to owner is reasonable; and
- If the unit will be assisted under the certificate program, the total of contract rent plus any allowance for tenant-paid utilities does not exceed the FMR/exception rent limit. (§ 982.305(a)) The HA may not execute a HAP contract until all these requirements are satisfied.

The rule provides that all of the following actions must be completed before the beginning of the lease term:

- The HA has inspected the unit, and determined that the unit satisfies the HQS;

- The landlord and the tenant have executed the lease; and
- The HA has approved leasing of the unit in accordance with HUD requirements. (§ 982.305(b))

A public comment states that the rule should allow an HA to execute the HAP contract up to 60 days after commencement of the lease. Another comment argues that execution of the HAP contract before the HA has approved the unit would force the HA to pay rent to the owner before the HA has approved the unit and the lease. The final rule is consistent with the recommendations in these comments.

The final rule requires that the HAP contract must be executed no later than 60 days from the beginning of the lease term. (§ 982.305(c)(1)) However, the HA must use "best efforts" to execute the HAP contract before the beginning of the lease term. The HA may not approve the unit or execute the HAP contract until the HA has determined that the unit and lease meet all program requirements. (§ 982.305(a))

Comments object to the requirement that the lease must be executed before the beginning of the lease term. The final rule retains this requirement.

From the beginning of the lease term, the family's tenancy must be subject to the statutory and basic tenancy requirements stated in the required lease addendum. By execution of the lease, containing the required provisions, the lease requirements are contractually binding on the owner and the tenant. The lease makes explicit the intention of the family and the owner to establish a tenancy in accordance with requirements of the tenant-based programs.

Lease execution before commencement of the lease term is not difficult. Each family is given a copy of the lease addendum in the information packet. In general, owners are also familiar with this requirement. The requirement to execute the lease before the commencement of the term is also consistent with general practice in the private rental market.

The HA may not approve the unit or execute the HAP contract, until the HA determines that the tenancy meets all program requirements (as listed in the rule). (§ 982.305(a)) The HA must make "best efforts" to execute the HAP contract before the beginning of the lease term. (§ 982.305(c)(1)) The HAP contract must be executed within a maximum of 60 calendar days from the beginning of the lease term. (§ 982.305(c)(1)) In accordance with normal administrative fee procedures, the HA receives its administrative fee

for each whole month the unit is under lease.

The rule is revised to clarify what happens if the HAP contract is not executed before the beginning of the lease term. The final rule provides that:

- The HA may not pay any housing assistance payment to the owner until the HAP contract has been executed. (§ 982.305(c)(2))
- If the HAP contract is executed during the first 60 days of the lease term, the HA will pay housing assistance payments after execution of the HAP contract (in accordance with the terms of the HAP contract), to cover the portion of the lease term before execution of the HAP contract (a maximum of 60 days). (§ 982.305(c)(3))
- Any HAP contract executed after the 60 days period is void, and the HA may not pay any housing assistance payment to the owner. (§ 982.305(c)(4))

Comments recommend that the rule should require the HA to approve the unit and lease in a specific short period from submission of the family request for lease approval. A period of 7 days is suggested. The recommendation to prescribe a rigid uniform period from family submission to HA approval is not adopted. The imposition of a uniform deadline is not practical for HAs operating in different housing markets, and as applied to the special circumstances of particular cases—for example, time needed so that an owner can correct HQS deficiencies. As noted above, however, the HA must execute the HAP contract within 60 days after commencement of the tenancy.

#### *F. HA Disapproval of Owner*

##### *1. Mandatory Denial*

The rule requires that the HA *must not approve* rental of a unit from an owner if the owner is subject to certain federal sanctions (debarment, suspension or denial of participation under 24 CFR part 24). (§ 982.306(a)) The HA may or may not know that an owner is subject to these sanctions. The final rule therefore specifies that the HA's obligation to reject the owner only applies if the HA has been informed of this fact by HUD or some other source.

The proposed rule would have provided that the HA could never approve rental from the owner if HUD had initiated an enforcement action under the Fair Housing Act. The final rule is revised to provide that the HA must not approve rental from the owner *if so directed by HUD* when the owner has been the subject of equal opportunity enforcement proceedings.