

notice of the offer. Comments recommend that the owner should also be required to send the HA a copy of the offer. The comment is adopted. (§ 982.309(e)(2))

Rent to the owner and the family share of rent may change during the assisted lease. The rule does not require the execution of a new lease or HAP contract for a change in family share in accordance with HUD requirements, or a change in rent to owner in accordance with the HA approved lease.

5. Termination of Tenancy

The rule and the statute provide that an owner may terminate an assisted tenancy for serious or repeated violation of the lease, violation of tenancy obligations under federal, State or local law, or other good cause. (42 U.S.C. 1437f(d)(1)(B)(ii); § 982.310) The final rule provides that the owner may terminate tenancy for these grounds "during the term of the lease".

(§ 982.310(a)) The federal requirements for termination of tenancy only apply during the term of the assisted lease, but do not apply after a termination of the assisted lease—for example, where the lease has terminated automatically because the HAP contract has terminated.

Other Good Cause

As under the old rule, the rule provides that "other good cause" for termination of tenancy by the owner may include, but is not limited to, any of the following examples:

- Failure by the family to accept the offer of a new lease or revision;
- A family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or premises;
- The owner's desire to use the unit for personal or family use; or
- A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, desire to lease the unit at a higher rental). (§ 982.310(d))

Comments recommend that HUD give more definition of "other good cause", and suggest that the existing provisions have been used as "legal loopholes" for owner eviction of tenants. The recommendation is not adopted. The statute permits eviction after the first year for "other good cause", as well as for family violation of the lease. Eviction for good cause is not a "loophole", as asserted by the comment, but is a ground for eviction specifically provided in the statute. If an owner seeks to evict for this reason, the existence or non-existence of cause is

determined by the court in the owner's eviction action. The good cause provisions in the present rule are largely the same as provisions promulgated by the Department in 1984 for the certificate program (and subsequently incorporated in regulations for the voucher program). In the preamble to the 1984 rule, the Department noted that:

"a comprehensive regulatory definition of good cause in the Section 8 Existing Housing Program (i.e., the certificate program) is neither possible or desirable. The good cause category should remain open to case by case determination by the courts. It is a prime virtue of this statutory category that it permits termination by owner in types of cases which cannot be readily foreseen." (49 FR 12233, March 29, 1984)

The rule recites key "examples" of cases that may be good cause, but explicitly states that "other good cause" is not limited to the listed examples. In the 1984 rule, HUD stated that:

"The good cause concept should be flexible and open to application in concrete cases, but there is a critical need to provide explicit regulatory assurance to prospective section 8 owners that legitimate owner concerns will be recognized as grounds for termination of tenancy * * *. (T)his assurance may be essential to promote broad participation by owners." (Id.)

Criminal Activity

The rule provides that the owner may evict a tenant for any criminal action that threatens persons who reside in the "premises" or the "immediate vicinity". (§ 982.310(c)) In the rule, "premises" is defined as the building or complex in which the dwelling unit is located, including common areas and grounds. (§ 982.4) Comments support allowing eviction because of threats to persons who reside in the vicinity. However, comments also recommend that HUD should allow the owner to evict because of criminal activity that is a threat to the owner's representative or staff.

An owner may only terminate a tenancy in Section 8 existing housing for the grounds specified in the law. (42 U.S.C. 1437f(d)(1)(B)) The rule implements statutory provisions which explicitly confirm that the owner may evict a tenant for criminal activity that is a threat to residents. The statute does not refer to criminal activity that is a threat to other persons, who do not reside in the housing or the vicinity, and does not refer to representatives of the owner. However, threats or harm to owner representatives by the assisted household or its guests may be ground for eviction if the threatening activity constitutes a serious or repeated lease violation or is "other good cause" for eviction of the tenant.

The rule permits an owner to evict the tenant for drug-related criminal activity "on or near" the premises. (§ 982.310(c)(3)) Comments state that the program should not assist persons who engage in drug-trafficking, whether the activity occurs on or off the premises. The law provides that the owner may terminate tenancy because of any drug-related criminal activity "on or near" the assisted premises. (42 U.S.C. 1437f(d)(1)(B)(iii)) The language of the HUD rule follows the eviction standard prescribed in the law.

During the term of an assisted lease, an owner may not evict a tenant for drug crime unless the crime takes place "on or near" the housing (unless the behavior is a serious or repeated lease violation or is otherwise "other good cause" for eviction of the tenant). However, the HA may terminate program assistance for drug-related criminal activity or violent criminal activity by a family member, regardless of where the criminal activity takes place. (§ 982.553) HUD has explained the reason for this policy:

"The Department has not limited the proscribed (drug-related or violent criminal) activities under this rule to activities carried out on or near the premises. Section 8 certificates and housing vouchers are a very mobile form of housing assistance. The holder can lease suitable housing with Federal subsidy assistance anywhere in the PHA's jurisdiction, in the metropolitan area, or in a contiguous metropolitan area. If a PHA were (only) permitted to terminate assistance for activities on or near the assisted premises, the deterrent effect of this policy would be substantially diminished because the family could lease housing outside the area where the family member engages in the proscribed activities. Furthermore, if the rule were limited to activities engaged in on or near the premises which are being leased with Section 8 assistance, the rule would not authorize a PHA to deny Section 8 assistance to a former public housing tenant evicted for drug-dealing in public housing * * *." (55 FR 28538, 28540, July 11, 1990)

The lease terminates when the HA terminates assistance for the family. (§ 982.309(b)(3)(v))

Under the law and this rule, the owner may evict for drug crime "on or near" the premises. Comments suggest that the rule should cover crime in an adjoining street, alley or other public right of way. In this rule, HUD tracks the statutory standard, and does not attempt to further define when a crime location is considered "near" the assisted project or building. In general, this standard would cover drug crime in a street or other right of way that adjoins the project or building where a Section 8 unit is located. A landlord-tenant court