

family to lease a unit where the rent is low. Comments recommend that the security deposit should be one month's family contribution (generally 30 percent of family income).

Comments recommend allowing owner damage claims for up to two months rent. These comments assert that the damage claim protection is an important tool in persuading owners to rent to program families. Other comments suggest that it would be better to eliminate owner claims by increasing the maximum allowable security deposit. Family payment of the security deposit promotes family responsibility. The security deposit gives the tenant an incentive to minimize the owner's claim for damage or unpaid rent.

Comments recommend that HUD should direct HAs to comply with a federally-mandated timetable for processing of owner claims.

Final Rule

The final rule eliminates the right of the owner to claim reimbursement from the HA for damages or other amounts owed by the tenant under the lease. In this respect, the assisted tenancy will function more like an ordinary tenancy in the private market. The owner must look to the tenant for payment of any damages.

The final rule also eliminates the HUD-imposed limit on the amount of owner security deposits. The rule provides that the owner may collect a security deposit. (§ 982.313(a)) The HA is not required to set any limit on the owner security deposit. However, the HA has discretion to prohibit security deposits in excess of private market practice, or in excess of security deposits for the owner's unassisted units. (§ 982.313(b))

HUD believes that these changes tend to produce significant benefits.

- Elimination of unnecessary distinctions between the tenant-based program and a private market tenancy encourages broader participation by owners of units outside of areas of minority and high poverty concentration.
- The owner can no longer rely on the HA to pay tenant damages or unpaid rent. This change gives the owner a stronger motivation to screen assisted families the same as for unassisted private market tenants, and to check for unit damage during occupancy.
- This change in turn reinforces the incentive for a program family to take care of its unit before and during assisted occupancy.
- As suggested by comments, the need for the tenant to make a larger security

deposit from its own pocket creates a greater incentive to avoid damage to the unit, and owner claims against the security deposit.

- The elimination of owner claims relieves a major administrative burden. The old owner claim procedure forced HAs to determine whether a unit was damaged during occupancy, and whether any damage was the fault of the tenant. Under the old system, it was often hard for the HA to know who caused unit damage, and to sort out bona fide owner claims. Elimination of the old claim system eliminates the need to develop and operate a claims process that is fair to both families and owners.
- Since HAs will not pay owner claims, HAs will not deny or terminate assistance for failure to pay such claims. The change will tend to eliminate over time issues concerning denial or termination of a family's assistance for failure to reimburse amounts paid by the HA in owner claims on behalf of the families, including the need for repayment agreements or for hearings to determine whether an owner's claim was properly paid.
- Elimination of the old claim system saves both the amounts paid out in claims and the cost of administration.

12. HA Payment After Family Move-Out

The rule provides that if a family moves out, the owner may keep the housing assistance payment for the month when the family moves out. The HA may not make any further payments. (§ 982.311(d)(1)) Comments state that HUD should allow vacancy payments for an additional month. The comments claim that an additional vacancy payment is an incentive for owner participation, and is needed to attract owners of higher quality units. Comments state that the elimination of vacancy claims for the month after move-out is unfair to participating owners.

The final rule provides, as proposed, that payments will not be made after the month of move-out. In the voucher program, the statute prohibits assistance payments after the month the unit is vacated. (42 U.S.C. 1437f(o)(4)) The provision of a vacancy payment absorbs funds that can be used to subsidize actual occupancies. Further, the use of subsidy payments for vacant units is an unnecessary departure from normal private market incentives and practice. In the tenant-based programs as in the private market, owners can charge a rent comparable to rents for a private unassisted rental. HUD is not persuaded that this additional incentive is

necessary or desirable to give program families a reasonable access to units in the rental market. The voucher program has functioned well without this incentive to owner participation.

13. New Rule: Effect on Existing Tenancy

Comments ask how the changes under this rule affect existing tenancies, and HAP contracts, that were entered before the new rule. Comments ask if existing HAP contracts continue until termination, or if contracts must be amended at the next recertification. Comments express concern that the mode of implementing new regulatory requirements may cause administrative burden and expense.

Nothing in the rule overrides or impairs the terms of outstanding HAP contracts or leases entered into under the old regulations. The rights of owners and tenants are determined by the provisions of existing HAP contracts and leases. Owners and tenants are not required to enter into new HAP contracts and leases. Housing assistance payments will be made to the owners in accordance with the terms of the existing HAP contracts.

An HA may encourage owners and tenants to execute new leases and HAP contracts, in place of the existing contracts. However, the HA is not required to convert the old contracts, and may not force the owners and families to execute new contracts in accordance with the new requirements. Any HAP contract entered into after the effective date of the new rule must comply with requirements of the rule, and must be executed on the HUD-prescribed form. Similarly, the HA may not approve any new lease or revision unless the lease is in accordance with the new rule.

H. Illegal Discrimination—HA Help for Family

Several provisions of the proposed rule indicate that an HA must help a family that can't lease a unit because of illegal discrimination. Comments ask HUD to state what the HA should do to assist the family. The final rule requires that when a family claims that illegal discrimination prevents the family from leasing a suitable unit under the program, the HA must give the family information on how to fill out and file a housing discrimination complaint. (§ 982.304)

I. When Housing Assistance Payments May Be Paid to Owner

The proposed rule would have provided that the HA could only have made housing assistance payments to