

the owner for a period the dwelling unit was leased to and occupied by the family. The final rule provides that:

- Housing assistance payments shall be payable to the owner in accordance with the terms of the HAP contract.
- Housing assistance payments may only be paid to the owner during the lease term, and while the family is residing in the unit. (§ 982.311(a))

The final rule also specifies that housing assistance payments terminate if:

- The lease terminates,
- The HAP contract terminates, or
- The HA terminates assistance for the family. (§ 982.311(c))

The final rule clarifies the principles governing continuation of payments to an owner during an eviction. The final rule provides that:

“Housing assistance payments terminate when the lease is terminated by the owner in accordance with the lease. However, if the owner has commenced the process to evict the tenant, and if the family continues to reside in the unit, the HA must continue to make housing assistance payments to the owner in accordance with the HAP contract until the owner has obtained a court judgment or other process allowing the owner to evict the tenant. The HA may continue such payments until the family moves from or is evicted from the unit.” (§ 982.311(b))

J. Absence From Unit

Occupancy of Unit by Family

Section 8 is intended to provide subsidy for a unit leased to and occupied by a low-income family. (See 42 U.S.C. 1437f) The family is obligated to use the assisted dwelling for residence by members of the family. (§ 982.551(h)(1)) The unit must be the family's only residence.

The proposed and final rule state that the HA administrative plan must include provisions governing how long the family may be absent from the dwelling unit, and under what circumstances. The final rule includes a more complete statement regarding HA policy on absence of the assisted family from the unit. (§ 982.312)

The proposed rule would not have set any HUD-prescribed limit on the length of family absence from the assisted unit. In the proposed rule HUD invited comment on whether the regulation should establish a specific federally defined outer limit on the time for which subsidy may be paid for an empty unit, for specific causes or for any cause.

Absence From Unit: Comments

Public comments contain a spectrum of recommendations on the degree of

HA discretion to establish policies on the length of family absence from an assisted unit:

- The HA should not have any right to terminate subsidy because of family absence.
- The HA should have total discretion to set policy on family absence.
- The HA should have discretion to set policy within limits established by HUD.
- HUD should set policy on family absence. The HA should not have discretion to determine the policy.

Some comments object to granting the HA any power to limit family absence. The HA should not be permitted to terminate assistance unless the family abandons the unit. The family should be treated like any renter. Comments also object to requiring that the family must only use the assisted unit for residence by the family. Comments state that this requirement burdens the family's freedom of movement and choice of occupation.

Comments state that the HA should not establish a fixed cut-off because of family absence from the units. The HA should consider the facts of each case, including the length and reason for absence, and the family's intention to return. The HA should not be allowed to terminate assistance where the resident is absent:

- Because of employment, such as absence of a migrant worker.
- Because the resident is in drug treatment or prison.
- Because the resident is in a nursing home.

Comments state that an HA's absence policy should distinguish between voluntary absence, as opposed to absence because the resident is being treated for a disability. Comments state that the HA should not terminate assistance unless the family fails to pay for rent or utilities. Comments claim that termination of assistance because of family absence discriminates against single person families, and violates the Constitutional right to travel.

Most comments agree that HAS should have broad discretion to establish local limits on absence from the unit. Some comments recommend that HAS should have complete flexibility to determine policies on absence from the unit, and that HUD should not set any maximum. Other comments propose that HAS should have discretion within outer limits set by HUD. Comments state that a HUD-imposed maximum is appropriate so that practices of different HAS are consistent. Comments note that consistency is desirable because of

portability. Some comments recommend that HUD should establish uniform rules on family absence.

Comments also contain a wide range of recommendations on the maximum length of absence from the unit (from 30 days to one year), and of factors that should affect the period in which the HA continues payments for an unoccupied unit. For example, comments propose allowing a longer maximum absence period for cases where the resident is absent because of documented illness or employment; or that assistance should be terminated immediately if the resident is imprisoned. Comments propose that the maximum absence period should be the same as the period for automatic termination of assistance where the HA has not made any assistance payment under the HAP contract (i.e., where the income-based family share equals the full rent to owner).

Comments note that assistance should terminate right away if the family has permanently vacated the unit. The HA should have power to determine whether the family has vacated the unit.

Comments state that the HA must give the family notice and opportunity for a hearing before terminating assistance because of family absence.

Absence From Unit: Final Rule

The final rule provides that: “The family may be absent from the unit for brief periods. For longer absences, the HA administrative plan establishes the HA policy on how long the family may be absent from the assisted unit. However, the family may not be absent from the unit for a period of more than 180 consecutive calendar days in any circumstance, or for any reason. At its discretion, the HA may allow absence for a lesser period in accordance with HA policy. (§ 982.312(a))

“Absence” is defined to mean that no member of the family is residing in the unit. (§ 982.312(c))

The HA has broad discretion to set local policy on family absence, but must state these policies in the HA administrative plan. (§ 982.54(d)(10); § 982.312(e)) The policy includes:

- How the HA determines whether or when the family may be absent, and for how long. For example, the HA may establish policies on absences because of vacation, hospitalization or imprisonment. (§ 982.312(e)(1))
- Any provision for resumption of assistance after an absence, including readmission or resumption of assistance to the family. (§ 982.312(e)(2))

The final rule requires termination of housing assistance payments if the