

of fire" has been replaced with "fire hazards", the original wording from the current rules and program handbook. (§ 982.401(l))

8. Smoke Detectors

The final rule implements the new statutory requirements concerning fire protection and safety under the Fire Administration Authorization Act of 1992. (Section 106 of Pub. L. 102-522, adding a new section 31 to the Federal Fire Prevention and Control Act of 1974) The new law prohibits the use of housing assistance for certain assisted and insured properties, unless various fire protection and safety standards are met.

A comment objects to the provision requiring smoke detectors specifically designed for hearing-impaired persons, because the proposed rule did not define "hearing-impaired person" and "hearing-impaired smoke detector". HUD notes that the requirement for smoke detectors with an alarm system for hearing-impaired persons is not new, and has been required by HUD since August 1992. Smoke detectors for the hearing-impaired must comply with the detailed technical specifications in National Fire Protection Association Standard (NFPA) 74 (or its successor standards). For assistance in determining specific requirements mandated by NFPA 74, HAs should contact State or local fire safety officials with jurisdiction over the proposed property and with expertise concerning such requirements.

HUD also declines to define hearing-impaired person in the rule. Residents who need visual alarms because of hearing impairment should advise owners and HAs of this need. The family may request any special equipment from the owner, since the family is the best judge of the individual needs of family members. (§ 982.401(n))

VII. Housing Assistance Payments Contract and Owner Responsibility

A. Family Contribution

Comments recommend that the rule should specify that the family is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment under the HAP contract when the HA stops making payment to the owner. This recommendation is adopted.

The final rule makes clear that the family is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment. The HA failure to pay the housing assistance payment to the owner is not a violation of the lease between the tenant and the

owner. The owner may not terminate the tenancy of the family for nonpayment of this amount. (§ 982.451(c)(4)(iii); § 982.310(b)) (The same provision is stated at two points.)

B. Fraud and Other Program Violation

The proposed rule would have provided that an owner breached the HAP contract if the owner committed fraud or made any false statement in connection with any federal housing assistance program or with a federally insured mortgage or HUD loan. The final rule provides that owner breach includes fraud, bribery or any other corrupt or criminal act in connection with any federal housing program. (§ 982.453(a)(4))

The proposed and final rule provide that violation of "any other" Section 8 assistance contract is a breach of the particular tenant-based HAP contract. (§ 982.453(a)(2)) The HA may terminate a tenant-based HAP contract because the owner has breached a tenant-based or project-based Section 8 HAP contract (between the owner and the same or another HA, or between the owner and HUD).

Comments assert that it is unfair to terminate a tenant-based HAP contract with an owner because the owner has breached another Section 8 assistance contract, and recommend that this provision be deleted. This recommendation is not adopted. The provision strengthens the HA's authority and leverage to induce owners to comply with Section 8 program requirements. The regulatory list of provisions which constitute a breach of the HAP contract is substantially based on language of the assistance contract forms currently used in the voucher and certificate programs. (§ 982.453)

C. HA Remedies for Owner Breach

The proposed rule provided that HA remedies for owner breach of the HAP contract included reduction of housing assistance payments. Comments recommend adding a provision confirming that payments may be "abated". The final rule provides that HA remedies include an "abatement or other reduction" of housing assistance payments. (§ 982.453(b))

D. Automatic HAP Contract Termination: No HA Payment for 6 Months

The proposed rule provided that the HAP contract terminated automatically three months after the last housing assistance payment. Comments object to this provision. Comments indicate that the time frame was too short, considering fluctuations in the job

market. Comments recommend a six month time frame. The final rule provides that the HAP contract terminates automatically six months (180 calendar days) after the last housing assistance payment to the owner. (§ 982.455(a)).

E. Late Payment by HA to Owner: Late Fee

Each month, the HA pays the housing assistance payment to the owner to subsidize occupancy by the family under the lease. The rule specifies that the HA is obligated to pay the owner promptly when payment is due to the owner in accordance with the HAP contract. (§ 982.451(c)(5))

Sometimes an HA may fail to pay the owner on time. In response to public questions, the final rule clarifies that the HA may be obligated to pay a late payment fee in accordance with State or local law. However, unless authorized by HUD, the HA may not use program receipts other than the following for payment of any such late payment fee:

- (1) The HA administrative fee or
- (2) The administrative fee reserve.

The federal rule does not itself grant an owner *any right* to a late fee for HA delay in payment to the owner. The rule is only intended to make clear that the federal regulatory scheme does not override State or local law that may give the owner a right to recover late fees from the HA for delinquent payments under the HAP contract.

F. 90 day Owner Termination Notice

By law, an owner must give notice to the family and HUD, 90 days before a "termination" of the HAP contract. (42 U.S.C. 1437f(c)(9)) For purpose of the termination notice requirement, "termination" means either:

- The owner's "refusal to renew", called an "opt-out", or
- The "expiration" of the HAP contract.

In the tenant-based programs, "opt-out" refers to an owner's decision to terminate tenancy of an assisted family after the initial year for a business or economic reason (such as desire to rent the unit for a higher rental, or to convert the property to another use). (§ 982.455(b)(2)(ii))

In the tenant-based programs, the HAP contract and the assisted lease do not have a pre-defined end of term. The term of the HAP contract is the same as the term of the lease. The contract and lease generally extend indefinitely until terminated by the owner for lease violation or other good cause. In this context, the rule provides that "expiration" means the occurrence of either of the following events: