

- Automatic termination of the HAP contract when six months (180 calendar days) have passed since the last housing assistance payment.
- An HA determination (in accordance with HUD requirements) that the HAP contract must be terminated because there is insufficient funding under the consolidated ACC to support continued assistance for families in the program. (§ 982.455(b)(2)(iii))

Comments recommend that the rule specify that an owner may not terminate any HAP contract, or evict a tenant, if HUD determines the termination is not lawful. The law provides that HUD must review the reasons for terminations as stated in the owner's termination notice. Upon such review, HUD must:

"issue a written finding of the legality of the termination and the reasons for the termination, including the actions considered or taken to avoid the termination".

The rule requires that on receiving the owner termination notice (in case of an "expiration" or "opt-out") the HUD field office must review the notice and consider whether there are additional actions which should be taken to avoid the termination. (§ 982.455(b)(4)) After HUD review of the owner notice, the HUD field office will issue a written finding, as provided by law, on the legality of the HAP contract termination, and the reasons for termination as stated in the owner's notice, including any actions taken to avoid the termination. (§ 982.455(b)(4)(iii)) Within 30 calendar days of HUD's finding, the owner must provide written notice of HUD's decision to the tenant.

The law does not require HUD approval of the termination. The final rule adds a new provision clarifying that the owner may proceed with eviction whether HUD approves or disapproves, or fails to complete the required review of the owner notice before expiration of the 90 day review period. (§ 982.455(b)(4)(iv))

## VIII. Family Obligations

### A. Statement of Family Obligations

The rule lists the grounds for which the HA is authorized to deny assistance to an applicant or terminate assistance to a participant because of the family's action or failure to act. (§ 982.552(b))

The HA may deny or terminate assistance for violation of family obligations. (§ 982.552(b)(1)) The final rule modifies the statement of family obligations under the program. (§ 982.551)

Some comments support HUD's proposed statement of family obligations, and other provisions on denial or termination of assistance.

Comments agree that the HA should have the power to terminate assistance for violation of the family's program obligations. Other comments recommend some changes in these provisions.

Comments note that family violation of program obligations may be unintentional, minor or beyond the family's control. The comments state that the HA should only be authorized to terminate assistance because of serious or repeated violation of the family's program obligations. This recommendation is not adopted. All family obligations are important. The family is responsible for compliance with all family obligations, and the HA may terminate assistance for any violation. To terminate assistance, the HA must show that the family has committed the violation charged. In general, the HA should not be required to show also that the violation of family obligations is "serious or repeated". To add this requirement would complicate and discourage the enforcement of program requirements. (However, an HA may only terminate assistance for a "serious or repeated" violation of the assisted lease. In this case, the regulatory standard for HA termination of assistance parallels the statutory authorization for eviction by the owner for "serious or repeated" violation of the lease.)

If the family has violated a program obligation, the HA has discretion to terminate assistance based on the facts of the particular case. (§ 982.552(c))

### B. Duty To Supply Required Information

The final rule restates provisions describing the family duty to supply information requested by the HA or HUD. (§ 982.551(b)) The family must supply any information that the HA or HUD determines is necessary in the administration of the program. Information includes any certification, release or other documentation requested by the HA or HUD. (§ 982.551(b)(1)) The final rule adds a new provision explicitly confirming that any information or documentation supplied by the family must be "true and complete". (§ 981.551(b)(4))

### C. Family Behavior and Violation of Lease

In this rulemaking, HUD has reexamined the appropriate role of program sanctions by the HA for family behavior in occupancy of an assisted unit, and for family violation of an assisted lease. Under current program rules, breach of the assisted lease with the landlord was not a violation of the family's program obligations, and was

not grounds for termination of assistance by the HA. Even after eviction, a family could move to a new unit with continued assistance in the tenant-based program.

The proposed rule expanded the obligations of a participant by providing that the family was responsible for certain types of HQS violation caused by the family. In addition, HUD specifically invited comment on whether lease violation by an assisted family should be designated as a distinct regulatory ground for termination of assistance.

### Comments

Some comments contend that the family's lease violation or behavior in occupancy should not be a ground for termination of assistance. According to these comments, the remedy lies with the family's landlord, who may evict the family for good cause. The HA should not displace the family if a landlord has not elected to evict, and should not usurp the decision of another landlord whether to rent to a family because of actions in a prior unit.

Comments state that Section 8 tenants should be treated like private tenants. The decision whether to accept or reject a tenant should be the landlord's private decision. The HA is not a party to the lease. HUD should not inject the HA into the relation between tenants and landlords. Comments recommend that the HA should not be permitted to condition program assistance on the family's suitability for tenancy. Comments also note that the HA is not equipped to investigate a landlord's claim of tenant misbehavior in occupancy. Comments claim that authorizing the HA to terminate assistance for breach of the lease "forces" the HA to assume the landlord's responsibility of enforcing the lease. This new role opens a Pandora's box for the HA.

Other comments urge that the HA should be permitted to terminate assistance for family violation of an assisted lease. The family should be held responsible for conduct during assisted occupancy. The HA should not allow a move by a family that fails to pay the rent or commits other violations of the lease. Allowing the HA to terminate assistance for family lease violation encourages improvement in family behavior. If a family violates the lease, denial of continued assistance saves scarce program resources for other, more deserving, families.

By statute, a Section 8 owner may evict for serious or repeated violation of the lease, as well as for other good cause. Comments state that the HA