

including the family obligation to obtain HA approval to add a new family member. Comments state that this requirement will prevent the practice of "borrowing" children or "cousins" to keep the same unit size. Comments ask HUD to make clear whether the resident must get HA approval for residence by a girlfriend or boyfriend. Comments recommend that the owner should have the right to approve new unit occupants.

Some comments suggest that HUD should limit HA authority to approve or disapprove adding new family members. The HA should be required to adopt "reasonable policies". Comments recommend that HUD should eliminate the requirement for HA approval of new family members. The HA should adopt a "hands off" policy. The only program interest is to insure that a unit meets the subsidy standards, and subsidy is adjusted to reflect additional income of new unit occupants. Families are afraid to report new family members. A hands off policy may result in more accurate reporting of new family members and family income. Comments ask if the HA may deny approval of a child not living with the family when admitted to the program, and question whether such denial may constitute familial discrimination. Comments note that HA policy may not discriminate on the basis of familial status.

The final rule retains the requirement for HA approval to add new family members. The rule provides that composition of the assisted family residing in the dwelling unit must be approved by the HA. The family must promptly inform the HA of the birth, adoption or court-awarded custody of a child. The family must request HA approval to add any other family member as an occupant of the unit. (§ 982.551(h)(2))

HUD has not adopted the recommendations to restrict HA discretion, or to eliminate HA approval of new family members. Unrestricted admission of family members distorts the system for fair and orderly allocation of Section 8 assistance through the HA waiting list. Addition of new family members may also overcrowd the unit, or result in need for a larger unit size and a larger subsidy. In addition, assistance may only be provided to a "family", not to any self-selected group of individuals. The HA has the authority and responsibility to determine that the group of assisted individuals, including new residents, constitutes a family (under the definition utilized by the particular HA). In exercising its discretion to admit or deny new family members, the HA is subject to equal opportunity

requirements, including the prohibition of familial status discrimination.

The final rule does not add, as a family program obligation, a requirement to obtain the owner's approval for any new unit occupants. Of course, the owner has a legitimate proprietary interest in controlling occupancy of the owner's unit. The lease may, and typically will, include provisions that specify who can live in the unit, and require owner approval of additional unit occupants.

#### *Occupancy by Live-in-Aide or Foster Child*

The rule provides that a foster child or live-in-aide may only reside in the assisted unit with the consent of the HA. The HA may adopt policies defining when the HA may give or deny approval for occupancy by a foster child or live-in-aide. (§ 982.551(h)(4))

A live-in-aide resides in the unit to care for a person who is elderly, near-elderly (50 to 61) or disabled. (42 U.S.C. 1437a(b)(3)(B); "live-in-aide" definition at § 813.102; see § 982.201(c)(3)) The live-in-aide is not a member of the assisted family. Income of the live-in-aide is not included in family income (used to calculate family eligibility and contribution to rent).

Comments object to granting the HA "veto-power" over occupancy by a foster child or live-in-aide, and recommend that the requirement for HA approval should be eliminated. The HA is not qualified to determine whether the family can live independently without assistance of a live-in-aide. Comments claim that HAs do not have requisite procedural safeguards for such decisions. Denying approval for a live-in-aide could subject the HA to liability under the Fair Housing Act.

Other comments state that the rule should allow the HA to specify whether live-in-aides may reside in the unit, how many, and in what circumstances.

The final rule retains the requirement, as proposed, that the family must obtain HA approval for occupancy by a live-in-aide or foster child. In both cases there are important program interests in retaining the HA authority over such occupancy. In both cases, however, the HA must exercise its discretion in accordance with the Fair Housing Act. The HA must not discriminate on the basis of disability or familial status.

#### *Reduction in Size of Family*

The final rule adds a new provision stating that the family must promptly notify the HA if any family member no longer resides in the dwelling unit. (§ 982.551(h)(3))

#### *F. Business in Unit*

The rule provides that members of the family may engage in legal "profitmaking" activities in the assisted unit. Any use of the unit for business activities by family members must be incidental to primary use of the unit for residence by members of the family, and must be in accordance with local law. (§ 982.551(h)(5)) These provisions are intended to encourage work and earning by assisted families.

Most comments agree that the rule should allow legal profitmaking activity by the assisted family. Other comments suggest that the authorization for legal profitmaking activity may encourage illegal activities.

Comments argue that business activity should only be allowed with approval of the owner, and in accordance with the lease. Comments point out that an owner has a legitimate interest in controlling business activities in the owner's unit (for example a laundry business where owner supplies water; or engine repairs in the living room).

HUD agrees that the landlord's interest is affected by the tenant's conduct of business activity in the apartment. Tenant business could damage the unit or disturb other residents. However, an owner may exert control over occupant activities in the same fashion as for any tenancy—by including lease provisions on business use of the unit, and by enforcing such lease provisions. The lease (or owner's house rules under the lease) may require the tenant to get the owner's permission for any business use of the property, and may otherwise regulate use of the unit for business purposes. Provisions concerning business use of a unit are commonly included in boilerplate of residential leases, and are not inconsistent with HUD regulatory requirements or HUD-required lease addendum governing the assisted tenancy.

HUD has not added provisions requiring a tenant to secure landlord consent for any business use of the unit. The rule provisions allowing business activity by the assisted resident are intended to define the family's program obligation, and therefore the grounds for termination of assistance by the HA. Conversely, the statement of family obligations is not intended or required to establish the family's obligations to the owner under the lease.

Under this rule, an HA may terminate assistance for serious or repeated violation of the assisted lease. Where the lease prohibits or regulates business activity in the unit, a serious or repeated violation of this lease requirement is a