

breach of family obligation. In this circumstance, the HA may deny or terminate assistance for business activity that violates the assisted lease.

Comments recommend that the family should only be allowed to engage in business activity with approval of the HA, and that the family should be required to give the HA information concerning the nature of activities in the unit. HUD is not persuaded that HAs should be given the power to approve or disapprove business activity in the unit (so long as business activity meets the standards expressed in the rule, i.e., that the activity is legal, and is incidental to residential use of the premises). Assisted families should be treated as private market tenants, who can engage in business activities with the consent of the owner.

The HA has an interest in assuring that the unit is used as the family residence, that the business activity does not result in a violation of the HQS, and that business income is reported in calculation of the family contribution. A family is required to supply the HA with information that is necessary for administration of the program. The HA may therefore require the family to supply program-related information concerning business activity in the assisted unit.

IX. Denial or Termination of Assistance: Grounds and Procedure

A. Grounds

1. General

The rule lists the grounds on which an HA may deny or terminate assistance for a family because of the family's action or failure to act.

Comments endorse the proposed rules on denial or termination of assistance. Comments note that the rules encourage family responsibility, and allow HAs to target assistance to families who cooperate with program rules.

Comments state that the HA should be required to take all feasible steps to avoid termination of assistance and displacement of the family. The comments state that the rule should prohibit termination unless the family has been relocated.

The comments are not adopted. The decision to proceed with termination in each case must be left to the administrative judgment of the HA, in keeping with the statutory policy that HAs should be vested with the "maximum amount of responsibility" in the administration of their housing programs. (42 U.S.C. 1437) The procedures recommended by the comments would severely impair HA action to enforce local and national

program policies. Rehousing of families is not a practical prerequisite for termination of housing assistance.

The rule defines when the HA may deny or terminate assistance because of an action or failure by a member of the family. However, the HA decides whether and how to exercise this authority and discretion in the circumstances of a particular case. The final rule specifies that the HA may consider all of the circumstances of the individual case, including seriousness of an offense, the extent of participation or culpability of individual family members, and the effects of program sanctions on family members not involved in a proscribed activity. (§ 982.552(c)(1)) Previously, the rule explicitly confirmed the HA's discretion in exercising the authority to deny or terminate assistance for criminal activity by a family member. There was no parallel provision on denial or termination for other reasons. The final rule makes clear that the HA has the same discretion in deciding whether to deny or terminate assistance for any allowable grounds, not only for criminal action by a member of the family.

The rule also confirms that the HA has the authority to devise an appropriate remedy. The HA may permit continued assistance for certain members of the family, but terminate assistance for other family members who bear a greater responsibility for violation of family obligations. (§ 982.552(c)(2))

2. Information for Family

Comments state that the HA should be required to give the family a written list of the grounds for termination, and should be prohibited from terminating unless the family has been given this information.

HUD agrees that HAs should help program families know their obligations, and the grounds for termination of assistance. This knowledge reinforces the family's sense of responsibility for its own actions. A participant family should also know that it can ask for a hearing if the HA wants to terminate assistance because of family actions.

The rule is amended to provide that the HA must give the family a written description of:

- Family obligations under the program.
- The grounds on which the HA may deny or terminate assistance because of family action or failure to act.
- HA informal hearing procedures. (§ 982.552(f))

For a new program family, information on these subjects is included in the family information

packet that is given to the family at selection for the program.

(§ 982.301(b)(15), (16) and (17)) The revision makes clear that this basic program information must be given to families who are already in the program, and have not received this information at selection for the program. The rule does not require two notices to any family.

HUD has not adopted the recommendation to prohibit termination unless the family has been furnished a list of the allowable grounds of termination under the program. Such a requirement might force HAs to maintain records that the information has been served on program participants, to show that this termination prerequisite has been met. If the HA needs to terminate assistance for a family, such a requirement could block termination of assistance for good and substantial grounds (for example, fraud by the family) on the grounds that the HA did not give the family general program information listing the grounds for termination of assistance. If the HA moves to terminate assistance in a particular case, the family receives specific notice of the reasons for the proposed termination and opportunity for hearing. (§ 982.555(c)(2))

3. Distinction Between Denial or Termination

Comments ask HUD to clarify the distinction between "denial or termination" of assistance. HUD's prior rules refer to "denial" of assistance both for an applicant and a participant. In general, the term "denial" in the old rule refers to HA withholding or refusing to take any HA action or approval leading to a commitment or commencement of assistance for the family, including refusing to issue a certificate or voucher, approve a lease or execute a HAP contract.

In the case of a participant, the old rule distinguished between:

- The grounds for which the HA could "deny" a new commitment of assistance to a program participant who wants to move to a new unit (by refusing to issue a new certificate or voucher, approve a new lease or execute a new HAP contract).
- The grounds for which the HA could "terminate" housing assistance payments under an outstanding HAP contract.

The new rule eliminates this distinction. The rule no longer distinguishes between grounds for "denial" or "termination" of assistance for a program participant. (This distinction was the source of the so-