

called "ABC" problem under the old rule.)

The final rule states the grounds for which an HA may "deny" assistance for an applicant or "terminate" assistance for a participant. (§ 982.552(a)(2) and (3)) The rule also clarifies that

"Termination of assistance for a participant may include any or all of the following: refusing to enter into a HAP contract or approve a lease, terminating housing assistance payments under an outstanding HAP contract, and refusing to process or provide assistance under portability procedures." (§ 982.552(a)(3))

If there are grounds for termination of assistance to a participant, the HA may terminate assistance "at any time", and can therefore at any time exercise any of the remedies comprised in the concept of termination. (§ 982.552(b))

#### 4. Crime by Family Member

The final rule provides that the HA may deny or terminate assistance at any time if members of the family have engaged in drug-related criminal activity or violent criminal activity. (§ 982.553(a)) "Drug-related criminal activity" includes both drug-trafficking and illegal use or possession of drugs. "Violent criminal activity" refers to criminal use of physical force against a person or property. (§ 982.4) The HA may deny or terminate assistance if the preponderance of evidence indicates that a family member has committed the crime, regardless of whether the family member has been arrested or convicted. (§ 982.553(c))

The rule provides that an HA may only deny or terminate assistance for drug use or possession by a family member if the criminal act occurred in the last year *before* the HA gave notice of proposed denial or termination of assistance for this reason. The HA may not terminate assistance for past use of drugs by a rehabilitated user who has not used drugs in the last year. Comments propose that the HA should only deny assistance for drug use or possession *after* HA notice. As HUD understands this proposal, assistance could be terminated for future drug use or possession, but could not be terminated for drug use or possession in the year preceding the HA notice. The recommendation is not adopted.

The HA may deny assistance for an addict who currently uses or possesses drugs. The proposed rule would have provided that the HA may not deny assistance for past drug use by an addict who "has recovered" from drug addiction. The final rule provides that the HA may not deny assistance for an addict who "is recovering, or has recovered from" an addiction.

(§ 982.553(b)(2)) The HA may require a family member who has engaged in the illegal use of drugs to submit evidence of participation in, or successful completion of, a treatment program as a condition to being allowed to reside in the unit.

Some comments approve the provisions allowing the HA to deny or terminate assistance for criminal activity by members of the family. Other comments object to these provisions.

Comments state that HAs do not have capability to investigate criminal activity. Termination because of criminal activity by a family member harms other members of the household, and may cause homelessness. Family members may be victims of domestic violence, and may need counseling, assistance and advocacy. HUD should prohibit the HA from terminating assistance for other family members where the family is unable to control a teenage youth. Termination could force a mother to give up her children to stay in the unit.

Comments recommend that the HA should be directed to provide continuing program assistance to remaining family members. Comments claim that HUD does not have statutory authority to allow termination of assistance because of crime by family members (although the law deals with the effect of drug related criminal activity in preferences for admission, and in evictions by an owner).

The program statutes do not contain a comprehensive or exclusive statement of grounds for denial or termination of assistance. HUD has discretion to issue program regulations consistent with statutory requirements (see 42 U.S.C. 3535(d)), including regulations on denial or termination of assistance by the HA for criminal activity by members of an applicant or participant family. These rules are a reasonable exercise of HUD's rulemaking authority. The rules promote significant national and program objectives, including the critical struggle against violent or drug-related crime.

By law and this rule, Section 8 owners may terminate tenancy for certain drug-related or other criminal activity by members of the assisted household and its guests. (42 U.S.C. 1437f(d)(1)(B)(iii); § 982.310(c)) Under this rule, the statutory grounds for eviction by the owner under the lease because of criminal activity substantially overlap the regulatory grounds for termination of program assistance by the HA because of such activity.

In addition, an owner may evict for serious or repeated violation of the

assisted lease. Under this rule, the HA may terminate program assistance for such violation. (§ 982.551(e); § 982.552(b)) Thus, in addition to the provisions which specifically and separately allow the HA to terminate for criminal activity (§ 982.553), the HA may terminate assistance for criminal activity that is a serious or repeated violation of the assisted lease.

The final rule provisions on criminal activity are largely the same as provisions of the prior program regulations, with a few technical revisions and editorial changes. The prior regulations concerning termination of certificate or voucher assistance because of criminal activity were published on July 11, 1990 (at 55 FR 28538). The issues considered by HUD in adoption of the prior rule are discussed at length in the Preamble to that publication. In particular, the Preamble discusses a number of the issues again raised by comments on the present rule. Points discussed in that Preamble need not be repeated here.

The rule gives the HA discretion to terminate assistance for criminal activity. However, the rule does not direct the HA to terminate assistance in any particular case. The HA has therefore the power to adopt and implement local policies, and to decide the application of local policies to particular cases.

The rule confirms that the HA has discretion to consider all the circumstances of each case. (§ 982.552(c)(1)) In exercise of its discretion, the HA may consider the character of the crime. The HA may also consider whether family members have participated in, colluded in, or benefited from criminal activity, and the impact of any termination on other family members, including children. The HA may also properly consider the broader effects of HA action or non-action on the program and community, including:

- How termination of assistance for criminal activity by assisted families may affect or discourage criminal activity in the community.
- The effect of HA termination policy on the Section 8 program, and the ability of program families to find good housing.

Comments suggest that HUD should not merely allow the HA to consider "all" circumstances of each case, but should require that the HA consider all the circumstances. This comment is not adopted. In this rule, HUD does not enumerate or prescribe all the factors that can or should be considered by the HA. Rather, the rule confirms that the HA has ample discretion to consider the