

(ii) Advise the Family that if a judicial proceeding for eviction is instituted, the tenant may present a defense in that proceeding.

(iii) Be served on the Family by sending a prepaid first class properly addressed letter (return receipt requested) to the tenant at the dwelling unit or by delivering a copy of the notice to the dwelling unit.

(3) *Substitution of State and local requirements.* In the case of failure to pay rent, a notice of termination which is issued pursuant to State or local law or is common practice in the locality and which satisfies paragraph (c)(2) may be substituted for or run concurrently with the notice required herein.

(e) *Eviction.* All evictions must be carried out through judicial process under State and local law. "Eviction" means the dispossession of the Family from the dwelling unit pursuant to State or local court action.

(f) *Lease.* The requirements of this section shall be incorporated into the dwelling lease between the Owner and the Family.

[47 FR 34383, Aug. 9, 1982, as amended at 63 FR 23855, Apr. 30, 1998]

§ 882.512 Reduction of number of units covered by contract.

(a) *Limitation on leasing to ineligible Families.* Owners must lease all assisted units under Contract to Eligible Families. Leasing of vacant, assisted units to ineligible tenants is a violation of the Contract and grounds for all available legal remedies, including suspension or debarment from HUD programs and reduction of the number of units under the Contract, as set forth in paragraph (b) of this section. Once the PHA has determined that a violation exists, the PHA must notify HUD of its determination and the suggested remedies. At the direction of HUD, the PHA must take the appropriate action.

(b) *Reduction for failure to lease to Eligible Families.* If, at any time beginning six months after the effective date of the Contract, the Owner fails for a period of six continuous months to have at least 90 percent of the assisted units leased or available for leasing by Eligible Families (because families initially eligible have become ineligible), the PHA may, on at least 30 days' notice,

reduce the number of units covered by the Contract. The PHA may reduce the number of units to the number of units actually leased or available for leasing by Eligible Families plus 10 percent (rounded up). If the Owner has only one unit under Contract and if one year has elapsed since the date of the last housing assistance payment, the Contract may be terminated with the consent of the Owner.

(c) *Restoration.* The PHA will agree to an amendment of the Contract, to provide for subsequent restoration of any reduction made pursuant to paragraph (b) if:

(1) The PHA determines that the restoration is justified by demand,

(2) The Owner otherwise has a record of compliance with obligations under the Contract, and

(3) Contract authority is available.

§ 882.513 Public notice to low-income families; waiting list.

(a) *Public notice to low-income Families.* (1) If the PHA does not have a waiting list which is sufficient to provide applicants for the units under the Moderate Rehabilitation Program, the PHA must, promptly after receiving the executed ACC, make known to the public the availability of the Program.

(i) The notice must state that assistance under this Program will be available only in specified units which have been rehabilitated under the Program.

(ii) The notice must be made in accordance with the PHA's HUD-approved application and with the HUD guidelines for fair housing requiring the use of the equal housing opportunity logotype, statement and slogan.

(b) *Waiting list.* The PHA must maintain a waiting list for applicants for the Moderate Rehabilitation Program. This requirement may be met through the use of waiting lists for other subsidized housing programs such as the Existing Housing Program.

§ 882.514 Family participation.

(a) *Initial determination of family eligibility.* (1) The PHA is responsible for receipt and review of applications, and determination of family eligibility for participation in accordance with HUD regulations (see 24 CFR parts 5, 750 and 760). The PHA is responsible for

verifying the sources and amount of the family's income and other information necessary for determining income eligibility and the amount of the assistance payments.

(2) A PHA may determine that an applicant Family is ineligible for participation because one or more Family members have engaged in drug-related criminal activity or violent criminal activity, as defined in § 882.413(b).

(3) PHA records on applicants and Families selected to participate must be maintained so as to provide HUD with racial, gender, and ethnic data.

(b) *Selection of Families for participation.* When vacancies occur, the PHA will refer to the Owner one or more appropriate size Families on its waiting list. The PHA must select Families for participation in accordance with the provisions of the Program and in accordance with the PHA's application, including any PHA requirement or preferences as approved by HUD. The PHA must select Families eligible for housing assistance payments currently residing in units that are designated for rehabilitation under the Program without requiring that these Families be placed on the waiting list. Notwithstanding the fact that the PHA may not be accepting additional applications for participation because of the length of the waiting list, the PHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for participation and claims that he or she qualifies for a Federal preference as provided in 24 CFR part 5, unless the PHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions under this part, that—

(1) There is an adequate pool of applicants who are likely to qualify for a Federal preference and

(2) It is unlikely that, on the basis of the PHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for assistance before other applicants on the waiting list.

(c) *Owner selection of Families.* All vacant units under Contract must be

rented to Eligible Families referred by the PHA from its waiting list. However, if the PHA is unable to refer a sufficient number of interested applicants on the waiting list to the Owner within 30 days of the Owner's notification to the PHA of a vacancy, the Owner may advertise or solicit applications from Low-Income Families and refer such Families to the PHA to determine eligibility. Since the Owner is responsible for tenant selection, the Owner may refuse any Family provided that the Owner does not unlawfully discriminate. Should the Owner reject a Family, and should the Family believe that the Owner's rejection was the result of unlawful discrimination, the Family may request the assistance of the PHA in resolving the issue. If the issue cannot be resolved promptly, the Family may file a complaint with HUD, and the PHA may refer the Family to the next available Moderate Rehabilitation unit.

(d) *Briefing of Families.* (1) When a Family is initially determined to be eligible for housing assistance payments or is selected for participation in accordance with this section, the PHA must provide the Family with information as to the Tenant Rent and the PHA's schedule of Utility Allowances. Each Family must also, either in group or individual sessions, be provided with a full explanation of the following:

(i) Family and Owner responsibilities under the Lease and Contract;

(ii) Significant aspects of the applicable State and local laws;

(iii) Significant aspects of Federal, State and local fair housing laws;

(iv) The fact that the subsidy is tied to the unit and the Family must occupy a unit rehabilitated under the Program;

(v) The Family's options under the Program should the Family be required to move due to an increase or decrease in Family size; and

(vi) The advisability and availability of blood lead level screening for children under seven years of age and HUD's requirements for inspecting, testing and, in certain circumstances, abating lead-based paint.

(2) For all Families to be temporarily relocated, the briefing must include a discussion of the relocation policies.

(e) *Continued participation of Family when Contract is terminated.* If an Owner evicts an assisted family in violation of the Contract or otherwise breaches the Contract, and the Contract for the unit is terminated, and if the Family was not at fault and is eligible for continued assistance, the Family may continue to receive housing assistance through the conversion of the Moderate Rehabilitation assistance to tenant-based assistance under the Section 8 certificate or voucher program. The Family must then be issued a certificate or voucher, and treated as any participant in the tenant-based programs under 24 CFR part 982, and must be assisted by the PHA in finding a suitable unit. All requirements of 24 CFR part 982 will be applicable except that the term of any housing assistance payments contract may not extend beyond the term of the initial Moderate Rehabilitation Contract. If the Family is determined ineligible for continued assistance, the certificate or voucher may be offered to the next Family on the PHA's waiting list. The unit will remain under the Moderate Rehabilitation ACC which provides for such a conversion of the units; therefore no amendment to the ACC will be necessary to convert to the Section 8 tenant-based assistance programs.

(f) *Families determined by the PHA to be ineligible.* If a Family is determined to be ineligible in accordance with the PHA's HUD-approved application, either at the application stage or after assistance has been provided on behalf of the Family, the PHA shall promptly notify the Family by letter of the determination and the reasons for it and the letter shall state that the Family has the right within a reasonable time (specified in the letter) to request an informal hearing. If, after conducting such an informal hearing, the PHA determines, based on a preponderance of the evidence, that the Family is ineligible, it shall notify the Family in writing. The procedures of this paragraph do not preclude the Family from exercising its other rights if it believes it is being discriminated against on the basis of race, color, religion, sex, age, handicap, familial status, or national origin. The informal review provisions for the denial of a Federal selection

preference under § 882.517 are contained in paragraph (k) of that section. The informal hearing requirements for denial and termination of assistance on the basis of ineligible immigration status are contained in 24 CFR part 5.

(g) *Considerations in certain denials and terminations.* In determining whether to deny or terminate assistance based on drug-related criminal activity or violent criminal activity:

(1) A PHA may deny or terminate assistance if the preponderance of evidence indicates that a Family member has engaged in such activity, regardless of whether the Family member has been arrested or convicted;

(2) A PHA shall have discretion to consider all of the circumstances in each case, including the seriousness of the offense, the extent of participation by Family members, and the effects that denial or termination would have on Family members not involved in the proscribed activity. PHAs, in appropriate cases, may permit the remaining members of the Family to continue receiving assistance and may impose a condition that Family members determined to have engaged in the proscribed activities will not reside in the unit. A PHA may require a Family member that has engaged in the illegal use of drugs to submit evidence of successful completion of a treatment program as a condition to being allowed to reside in the unit.

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§ 882.515 Reexamination of family income and composition.

(a) *Regular reexaminations.* The PHA must reexamine the income and composition of all families at least once every 12 months. After consultation with the family and upon verification of the information, the PHA must make appropriate adjustments in the Total Tenant Payment in accordance