

with continued assistance under the program, either inside the HA jurisdiction, or under the portability procedures. (See §982.353)

(2) The HA may establish:

(i) Policies that prohibit any move by the family during the initial year of assisted occupancy; and

(ii) Policies that prohibit more than one move by the family during any one year period.

(3) The HA policies may apply to moves within the HA jurisdiction by a participant family, and to moves by a participant family outside the HA jurisdiction under portability procedures.

(d) *Notice that family wants to move.* (1) If the family terminates the lease on notice to the owner, the family must give the HA a copy of the notice at the same time.

(2) If the family wants to move to a new unit, the family must notify the HA and the owner before moving from the old unit. If the family wants to move to a new unit that is located outside the initial HA jurisdiction, the notice to the initial HA must specify the area where the family wants to move. See portability procedures in subpart H of this part.

(e) *When HA may deny permission to move.* (1) The HA may deny permission to move if the HA does not have sufficient funding for continued assistance.

(2) At any time, the HA may deny permission to move in accordance with §982.552 (grounds for denial or termination of assistance).

§982.315 Family break-up.

(a) The HA has discretion to determine which members of an assisted family continue to receive assistance in the program if the family breaks up. The HA administrative plan must state HA policies on how to decide who remains in the program if the family breaks up.

(b) The factors to be considered in making this decision under the HA policy may include:

(1) Whether the assistance should remain with family members remaining in the original assisted unit.

(2) The interest of minor children or of ill, elderly or disabled family members.

(3) Whether family members are forced to leave the unit as a result of actual or threatened physical violence against family members by a spouse or other member of the household.

(4) Other factors specified by the HA.

(c) If a court determines the disposition of property between members of the assisted family in a divorce or separation under a settlement or judicial decree, the HA is bound by the court's determination of which family members continue to receive assistance in the program.

§982.316 Live-in aide.

(a) A family that consists of one or more elderly, near-elderly or disabled persons may request that the HA approve a live-in aide to reside in the unit and provide necessary supportive services for a family member who is a person with disabilities. The HA must approve a live-in aide if needed as a reasonable accommodation in accordance with 24 CFR part 8 to make the program accessible to and usable by the family member with a disability. (See §982.402(b)(6) concerning effect of live-in aide on family unit size.)

(b) At any time, the HA may refuse to approve a particular person as a live-in aide, or may withdraw such approval, if:

(1) The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;

(2) The person commits drug-related criminal activity or violent criminal activity; or

(3) The person currently owes rent or other amounts to the HA or to another HA in connection with Section 8 or public housing assistance under the 1937 Act.

[63 FR 23860, Apr. 30, 1998; 63 FR 31625, June 10, 1998]

Subpart H—Where Family Can Live and Move

SOURCE: 60 FR 34695, July 3, 1995, unless otherwise noted.

§982.351 Overview.

This subpart describes what kind of housing is eligible for leasing, and the

areas where a family can live with tenant-based assistance. The subpart covers:

(a) Assistance for a family that rents a dwelling unit in the jurisdiction of the HA that originally selected the family for tenant-based assistance.

(b) "Portability" assistance for a family that rents a unit outside the jurisdiction of the initial HA.

§ 982.352 Eligible housing.

(a) *Ineligible housing.* The following types of housing may not be assisted by an HA in the tenant-based programs:

(1) A public housing or Indian housing unit;

(2) A unit receiving project-based assistance under section 8 of the 1937 Act (42 U.S.C. 1437f);

(3) Nursing homes, board and care homes, or facilities providing continual psychiatric, medical, or nursing services;

(4) College or other school dormitories;

(5) Units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions;

(6) A unit occupied by its owner or by a person with any interest in the dwelling unit. (However, assistance may be provided for a family residing in a cooperative. Assistance may be provided to the owner of a manufactured home leasing a manufactured home space. In the case of shared housing, an owner unrelated to the assisted family may reside in the unit, but assistance may not be paid on behalf of the resident owner. For provisions on cooperative housing, manufactured home space rental, and shared housing, see part 982, subpart M.); and

(7) For provisions on HA disapproval of an owner, see § 982.306.

(b) *HA-owned housing.* (1) A unit that is owned by the HA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the HA) may only be assisted under the tenant-based program if:

(i) The family has been informed by the HA, both orally and in writing, that the family has the right to select any eligible dwelling unit, and an HA-owned unit is freely selected by the

family, without HA pressure or steering;

(ii) The unit is not ineligible housing;

(iii) During assisted occupancy, the family does not benefit from any form of housing subsidy prohibited under paragraph (c) of this section;

(iv) The initial contract rent (for a certificate program unit) and the initial rent to owner (for a voucher program unit) has been approved by HUD before execution of the HAP contract and commencement of the assisted lease term; and

(v) Any adjustment of the contract rent (for a certificate program unit) and any changes in the rent to owner (for a voucher program unit) is approved in advance by HUD.

(2) The HA as owner is subject to the same program requirements that apply to other owners in the program.

(c) *Prohibition against other housing subsidy.* A family may not receive the benefit of tenant-based assistance while receiving the benefit of any of the following forms of other housing subsidy, for the same unit or for a different unit:

(1) Public or Indian housing assistance;

(2) Other Section 8 assistance (including other tenant-based assistance);

(3) Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);

(4) Section 101 rent supplements;

(5) Section 236 rental assistance payments;

(6) Tenant-based assistance under the HOME Program;

(7) Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);

(8) Any local or State rent subsidy;

(9) Section 202 supportive housing for the elderly;

(10) Section 811 supportive housing for persons with disabilities;

(11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or

(12) Any other duplicative federal, State, or local housing subsidy, as determined by HUD. For this purpose, "housing subsidy" does not include the