

(i) The payment standard for the family unit size; or

(ii) The payment standard for the unit size rented by the family.

(3) *Voucher program.* For a voucher tenancy, the HA establishes payment standards by number of bedrooms. The payment standards for the family must be the lower of:

(i) The payment standards for the family unit size; or

(ii) The payment standard for the unit size rented by the family.

(d) *Size of unit occupied by family.* (1) The family may lease an otherwise acceptable dwelling unit with fewer bedrooms than the family unit size. However, the dwelling unit must meet the applicable HQS space requirements.

(2) The family may lease an otherwise acceptable dwelling unit with more bedrooms than the family unit size.

[60 FR 34695, July 3, 1995, as amended at 63 FR 23861, Apr. 30, 1998]

**§ 982.403 Terminating HAP contract: When unit is too big or too small.**

(a) *Violation of HQS space standards.*

(1) Paragraph (a) of this section applies to the tenant-based certificate program and voucher program.

(2) If the HA determines that a unit does not meet the HQS space standards because of an increase in family size or a change in family composition, the HA must issue the family a new certificate or voucher, and the family and HA must try to find an acceptable unit as soon as possible.

(3) If an acceptable unit is available for rental by the family, the HA must terminate the HAP contract in accordance with its terms.

(b) *Certificate program only—Subsidy too big for family size.* (1) Paragraph (b) of this section applies to the tenant-based certificate program.

(2) The HA must issue the family a new certificate, and the family and HA must try to find an acceptable unit as soon as possible if:

(i) The family is residing in a dwelling unit with a larger number of bedrooms than appropriate for the family unit size under the HA subsidy standards; and

(ii) The gross rent for the unit (sum of the contract rent plus any utility al-

lowance for the unit size leased) exceeds the FMR/exception rent limit for the family unit size under the HA subsidy standards.

(3) The HA must notify the family that exceptions to the subsidy standards may be granted, and the circumstances in which the grant of an exception will be considered by the HA.

(4) If an acceptable unit is available for rental by the family within the FMR/exception rent limit, the HA must terminate the HAP contract in accordance with its terms.

(c) *Termination.* When the HA terminates the HAP contract (under paragraphs (a) or (b) of this section):

(1) The HA must notify the family and the owner of the termination; and

(2) The HAP contract terminates at the end of the calendar month that follows the calendar month in which the HA gives such notice to the owner.

(3) The family may move to a new unit in accordance with § 982.314.

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[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995]

**§ 982.404 Maintenance: Owner and family responsibility; HA remedies.**

(a) *Owner obligation.* (1) The owner must maintain the unit in accordance with HQS.

(2) If the owner fails to maintain the dwelling unit in accordance with HQS, the HA must take prompt and vigorous action to enforce the owner obligations. HA remedies for such breach of the HQS include termination, suspension or reduction of housing assistance payments and termination of the HAP contract.

(3) The HA must not make any housing assistance payments for a dwelling unit that fails to meet the HQS, unless the owner corrects the defect within the period specified by the HA and the HA verifies the correction. If a defect is life threatening, the owner must correct the defect within no more than 24 hours. For other defects, the owner must correct the defect within no more than 30 calendar days (or any HA-approved extension).

(4) The owner is not responsible for a breach of the HQS that is not caused by the owner, and for which the family is

responsible (as provided in § 982.404(b) and § 982.551(c)). (However, the HA may terminate assistance to a family because of HQS breach caused by the family.)

(b) *Family obligation.* (1) The family is responsible for a breach of the HQS that is caused by any of the following:

(i) The family fails to pay for any utilities that the owner is not required to pay for, but which are to be paid by the tenant;

(ii) The family fails to provide and maintain any appliances that the owner is not required to provide, but which are to be provided by the tenant; or

(iii) Any member of the household or guest damages the dwelling unit or premises (damages beyond ordinary wear and tear).

(2) If an HQS breach caused by the family is life threatening, the family must correct the defect within no more than 24 hours. For other family-caused defects, the family must correct the defect within no more than 30 calendar days (or any HA-approved extension).

(3) If the family has caused a breach of the HQS, the HA must take prompt and vigorous action to enforce the family obligations. The HA may terminate assistance for the family in accordance with § 982.552.

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[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995]

**§ 982.405 HA periodic unit inspection.**

(a) The HA must inspect the unit leased to a family at least annually, and at other times as needed, to determine if the unit meets HQS.

(b) The HA must conduct supervisory quality control HQS inspections.

(c) In scheduling inspections, the HA must consider complaints and any other information brought to the attention of the HA.

(d) The HA must notify the owner of defects shown by the inspection.

(e) The HA may not charge the family or owner for initial inspection or re-inspection of the unit.

**§ 982.406 Enforcement of HQS.**

Part 982 does not create any right of the family, or any party other than

HUD or the HA, to require enforcement of the HQS requirements by HUD or the HA, or to assert any claim against HUD or the HA, for damages, injunction or other relief, for alleged failure to enforce the HQS.

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[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995]

**Subpart J—Housing Assistance Payments Contract and Owner Responsibility**

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

**§ 982.451 Housing assistance payments contract.**

(a)(1) The HAP contract must be in the form required by HUD.

(2) The term of the HAP contract is the same as the term of the lease.

(b)(1) The amount of the monthly housing assistance payment by the HA to the owner is determined by the HA in accordance with HUD regulations and other requirements. The amount of the housing assistance payment is subject to change during the HAP contract term.

(2) The monthly housing assistance payment by the HA is credited toward the monthly rent to owner under the family's lease.

(3) The total of rent paid by the tenant plus the HA housing assistance payment to the owner may not be more than the rent to owner. The owner must immediately return any excess payment to the HA.

(4)(i) The part of the rent to owner which is paid by the tenant may not be more than:

- (A) The rent to owner; minus
- (B) The HA housing assistance payment to the owner.

(ii) The owner may not demand or accept any rent payment from the tenant in excess of this maximum, and must immediately return any excess rent payment to the tenant.

(iii) The family is not responsible for payment of the portion of rent to owner covered by the housing assistance payment under the HAP contract