

§ 982.455 Termination of HAP contract: Expiration and opt-out.

(a) *Automatic.* The HAP contract terminates automatically 180 calendar days after the last housing assistance payment to the owner.

(b) *Owner termination notice.* (1) *Law.* Paragraph (b) of this section implements Section 8(c) (9) and (10) of the 1937 Act (42 U.S.C. 1437f(c) (9) and (10)) for the tenant-based Section 8 programs.

(2) *Definitions.* The following terms are defined for purposes of this section:

(i) *Termination.* Termination of the HAP contract because of:

(A) Owner opt-out; or

(B) Expiration of the HAP contract.

(ii) *Opt-out.* Owner's decision to terminate tenancy of an assisted family for "other good cause" that is a business or economic reason for termination of tenancy. See § 982.310 (a)(3) and (d).

(iii) *Expiration.* "Expiration" means the occurrence of either of the following events:

(A) Automatic termination of the HAP contract when 180 calendar days have passed since the last housing assistance payment.

(B) An HA determination, in accordance with HUD requirements, that the HAP contract must be terminated because there is insufficient funding under the consolidated ACC to support continued assistance for families in the program.

(3) *Owner termination notice.* Not less than 90 calendar days before a termination of a tenant-based HAP contract because of an opt-out or expiration, the owner must provide written notice of the termination to the HUD field office, the HA and the family. The owner's notice must specify the reasons for the termination. The notice must contain sufficient detail to enable the HUD field office to evaluate whether the termination is lawful and whether there are additional actions that can be taken by HUD to avoid the termination. The owner's notice must state that the owner and the HA may agree to a renewal of the HAP contract, thus avoiding the termination.

(4) *HUD review of owner termination notice.* (i) The HUD field office must review the owner's notice, and consider

whether there are additional actions which should be taken to avoid the termination.

(ii) For a unit assisted under the certificate program:

(A) The HUD field office will determine whether the HA has properly adjusted the contract rent in accordance with the HAP contract and HUD regulations. If not the HUD field office will require the HA to make a proper adjustment of the contract rent in accordance with the HAP contract and the regulation.

(B) In case of termination because of an opt-out, the owner must be offered the opportunity to enter into a new HAP contract (and assisted lease) at the maximum initial contract rent allowed (within the FMR/exception rent limit). However, the rent to owner may not exceed the reasonable rent for a comparable unassisted unit.

(iii) The HUD field office will issue a written finding of the legality of the HAP contract termination and the reasons for the termination as stated in the owner's notice, including any actions taken to avoid the termination. Within 30 calendar days of HUD's finding, the owner must provide written notice of HUD's decision to the tenant.

(iv) The owner may proceed with eviction whether the HUD field office approves or disapproves, or fails to complete the required review of the owner notice, before expiration of the 90 calendar day review period.

(Approved by the Office of Management and Budget under control number 2577-0169)

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§ 982.456 Third parties.

(a) Even if the family continues to occupy the unit, the HA may exercise any rights and remedies against the owner under the HAP contract.

(b) The family is not a party to or third party beneficiary of the HAP contract. The family may not exercise any right or remedy against the owner under the HAP contract. (However, the tenant may exercise any right or remedies against the owner under the lease between the tenant and the owner.)

(c) The HAP contract shall not be construed as creating any right of the family or other third party (other than