

Chapter 8

HOUSING QUALITY STANDARDS AND RENT REASONABLENESS DETERMINATIONS

[24 CFR 982 Subpart I and 24 CFR 982.507]

INTRODUCTION

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV) assistance meet HUD's Housing Quality Standards (HQS) and permits the HHA to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and HHA established requirements. HQS inspections are required before the Housing Assistance Payments (HAP) Contract is signed and at least annually during the term of the contract.

HUD also requires HHA to determine that units rented by families assisted under the HCV program have rents that are reasonable when compared to comparable unassisted units in the market area.

This chapter explains HUD and HHA requirements related to housing quality and rent reasonableness as follows:

Part I. Physical Standards. This part discusses the physical standards required of units occupied by HCV-assisted families and identifies decisions about the acceptability of the unit that may be made by the family based upon the family's preference. It also identifies life-threatening conditions that must be addressed on an expedited basis.

Part II. The Inspection Process. This part describes the types of inspections the HHA will make and the steps that will be taken when units do not meet HQS.

Part III. Rent Reasonableness Determinations. This part discusses the policies the HHA will use to make rent reasonableness determinations.

Special HQS requirements for homeownership, manufactured homes, and other special housing types are discussed in Chapter 15 to the extent that they apply in this jurisdiction.

PART I: PHYSICAL STANDARDS

8.I.A. GENERAL HUD REQUIREMENTS

HUD Performance and Acceptability Standards

HUD's performance and acceptability standards for HCV-assisted housing are provided in 24 CFR 982.401. These standards cover the following areas:

- Sanitary facilities

- Food preparation and refuse disposal
- Space and Security
- Thermal Environment
- Illumination and electricity
- Structure and materials
- Interior Air Quality
- Water Supply
- Lead-based paint
- Access
- Site and neighborhood
- Sanitary condition
- Smoke Detectors

A summary of HUD performance criteria is provided in Attachment 8-1. Additional guidance on these requirements is found in the following HUD resources:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)
- HUD Notice 2003-31, Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988.

Tenant Preference Items

HUD requires the HHA to enforce minimum HQS but also requires that certain judgments about acceptability be left to the family. For example, the HHA must ensure that the unit contains the required sanitary facilities, but the family decides whether the cosmetic condition of the facilities is acceptable. Attachment 8-2 summarizes those items that are considered tenant preferences.

Modifications to Provide Accessibility

Under the Fair Housing Act of 1988 an owner must not refuse the request of a family that contains a person with a disability to make necessary and reasonable modifications to the unit. Such modifications are at the family's expense. The owner may require restoration of the unit to its original condition if the modification would interfere with the owner or next occupant's full enjoyment of the premises. The owner may not increase a customarily required security deposit. However, the landlord may negotiate a restoration agreement that requires the family to restore the unit and, if necessary to ensure the likelihood of restoration, may require the tenant to pay a reasonable amount into an interest bearing escrow account over a reasonable period of time. The interest in any such account accrues to the benefit of the tenant. The owner may also require

reasonable assurances that the quality of the work will be acceptable and that any required building permits will be obtained.[24 CFR 100.203; Notice 2003-31].

Modifications to units to provide access for a person with a disability must meet all applicable HQS requirements and conform to the design, construction, or alteration of facilities contained in the UFAS and the ADA Accessibility Guidelines (ADAAG) [28 CFR 35.151(c) and Notice 2003-31] See Chapter 2 of this plan for additional information on reasonable accommodations for persons with disabilities.

HHA Policy

Any owner that intends to negotiate a restoration agreement or require an escrow account must submit the agreement(s) to the HHA for review.

8.I.B. ADDITIONAL LOCAL REQUIREMENTS

The HHA may impose additional quality standards as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choice. HUD approval is required if more stringent standards are imposed. HUD approval is not required if the HHA additions are clarifications of HUD's acceptability criteria or performance standards [24 CFR 982.401(a)(4)].

Thermal Environment [HCV GB p.10-7]

The HHA must define a "healthy living environment" for the local climate. This may be done by establishing a temperature that the heating system must be capable of maintaining, that is appropriate for the local climate.

Clarifications of HUD Requirements

HHA Policy

As permitted by HUD, the HHA has adopted the following specific requirements that elaborate on HUD standards.

Walls

In areas where plaster or drywall is sagging, severely cracked, or otherwise damaged, it must be repaired or replaced.

Windows

Window sashes must be in good condition, solid and intact, and properly fitted to the window frame. Damaged or deteriorated sashes must be replaced.

Windows must be weather-stripped as needed to ensure a weather-tight seal.

Window screens must be in good condition (applies only if screens are present).

Doors

All exterior doors must be weather-tight to avoid any air or water infiltration, be lockable, have no holes, have all trim intact, and have a threshold.

All interior doors must have no holes, have all trim intact, and be openable without the use of a key.

Floors

All wood floors must be sanded to a smooth surface and sealed. Any loose or warped boards must be re-secured and made level. If they cannot be leveled, they must be replaced.

All floors must be in a finished state. Raw wood or unsealed concrete is not permitted.

All floors should have some type of baseboard, trim, or sealing for a "finished look." Vinyl baseboard is permitted.

Sinks

All sinks and commode water lines must have shut off valves, unless faucets are wall mounted.

All worn or cracked toilet seats and tank lids must be replaced and toilet tank lid must fit properly.

All sinks must have functioning stoppers.

Security

If window security bars or security screens are present on emergency exit windows, they must be equipped with a quick release system. The owner is responsible for ensuring that the family is instructed on the use of the quick release system.

8.I.C. LIFE THREATENING CONDITIONS [24 CFR 982.404(a)]

HUD requires the HHA to define life threatening conditions and to notify the owner or the family (whichever is responsible) of the corrections required. The responsible party must correct life-threatening conditions within 24 hours of HHA notification.

HHA Policy

The following are considered life-threatening conditions:

- Any condition that jeopardizes the security of the unit
- Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling
- Natural or LP gas or fuel oil leaks
- Any electrical problem or condition that could result in shock or fire
- Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit.
- Utilities not in service, including no running hot water
- Conditions that present the imminent possibility of injury
- Obstacles that prevent safe entrance or exit from the unit
- Absence of a functioning toilet in the unit
- Inoperable smoke detectors
- Inoperable refrigerator or stove

If an owner fails to correct life threatening conditions as required by the HHA, the housing assistance payment will be abated and the HAP contract will be terminated. See 8-II-G.

If a family fails to correct a family caused life threatening condition as required by the HHA, the HHA may terminate the family's assistance. See 8-II.H.

The owner will be required to repair an inoperable smoke detector unless the HHA determines the family has intentionally disconnected it (by removing batteries or other means). In this case, the family will be required to repair the smoke detector within 24 hours.

8-I.D. OWNER AND FAMILY RESPONSIBILITIES [24 CFR 982.404]**Family Responsibilities**

The family is responsible for correcting the following HQS deficiencies:

- Tenant-paid utilities not in service
- Failure to provide or maintain family-supplied appliances
- Damage to the unit or premises caused by a household member or guest beyond normal wear and tear. "Normal wear and tear" is defined as items that could not be charged against the tenant's security deposit under state law or court practice.

Owner Responsibilities

The owner is responsible for all HQS violations not listed as a family responsibility above, even if the violation is caused by the family's living habits (e.g., vermin infestation). However, if the family's actions constitute a serious or repeated lease violation the owner may take legal action to evict the family.

8-I-E. SPECIAL REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL [24 CFR 35.1225]

If a HHA is notified by a public health department or other medical health care provider, or verifies information from a source other than a public health department or medical health care provider, that a child of less than 6 years of age, living in an HCV-assisted unit has been identified as having an environmental intervention blood lead level, the HHA must complete a risk assessment of the dwelling unit. The risk assessment must be completed in accordance with program requirements, and the result of the risk assessment must be immediately provided to the owner of the dwelling unit. In cases where the public health department has already completed an evaluation of the unit, this information must be provided to the owner.

Within 30 days after receiving the risk assessment report from the HHA, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and 35.1330]. If the owner does not complete the "hazard reduction" as required, the dwelling unit is in violation of HQS and the HHA will take action in accordance with Section 8-II.G.

HHA reporting requirements, and data collection and record keeping responsibilities related to children with an environmental intervention blood lead level are discussed in Chapter 16.

8-I-F. VIOLATION OF HQS SPACE STANDARDS [24 CFR 982.403]

If the HHA 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 HHA must issue the family a new voucher, and the family and HHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the HHA must terminate the HAP contract in accordance with its terms.

PART II: THE INSPECTION PROCESS

8-II.A. OVERVIEW [24 CFR 982.405]

Types of Inspections

The HHA conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow.

- *Initial Inspections.* The HHA conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program. The unit must pass the HQS inspection before the effective date of the HAP Contract.
- *Annual Inspections.* HUD allows the HHA to inspect each unit under lease annually to confirm that the unit still meets HQS. The inspection may be conducted in conjunction with the family's annual reexamination but also may be conducted separately.
- *Biennial Inspections.* 2014 Appropriations allows PHAs to comply with the requirement to inspect assisted dwelling units during the term of a HAP contract by inspecting such units not less than biennially instead of annually.
- *Special Inspections.* A special inspection may be requested by the owner, the family, or a third party as a result of problems identified with a unit between annual inspections.
- *Quality Control Inspections.* HUD requires that a sample of units be re-inspected by a supervisor or other qualified individual to ensure that HQS are being enforced correctly and uniformly by all inspectors.

Inspection of HHA-owned Units [24 CFR 982.352(b)]

The HHA must obtain the services of an independent entity to perform all HQS inspections in cases where an HCV family is receiving assistance in a HHA-owned unit. A HHA-owned unit is defined as a unit that is owned by the HHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the HHA). The independent agency must communicate the results of each inspection to the family and the HHA. The independent agency must be approved by HUD, and may be the unit of general local government for the HHA jurisdiction (unless the HHA is itself the unit of general local government or an agency of such government).

Inspection Costs

The HHA may not charge the family or owner for unit inspections [24 CFR 982.405(e)]. In the case of inspections of HHA-owned units, the HHA may compensate the independent agency from ongoing administrative fee for inspections performed. The HHA and the independent agency may not charge the family any fee or charge for the inspection [24 CFR.982.352(b)].

Notice and Scheduling

The family must allow the HHA to inspect the unit at reasonable times with reasonable notice [24 CFR 982.551(d)].

HHA Policy

Both the family and the owner will be given reasonable notice of all inspections. Except in the case of a life threatening emergency, reasonable notice is considered to be not less than 48 hours. Inspections may be scheduled between 7:00 a.m. and 7:00 p.m. Generally inspections will be conducted on business days only. In the case of a life threatening emergency, the HHA will give as much notice as possible, given the nature of the emergency.

Attendance at inspections by owner and family.

HUD permits the HHA to set policy regarding family and owner presence at the time of inspection [HCV GB p. 10-27].

HHA Policy

When a family occupies the unit at the time of inspection an adult family member must be present for the inspection. The presence of the owner or the owner's representative is encouraged but is not required.

At initial inspection of a vacant unit, the HHA will inspect the unit in the presence of the owner or owner's representative. The presence of a family representative is permitted, but is not required.

8-II.B. INITIAL HQS INSPECTION [24 CFR 982.401(a)]**Timing of Initial Inspections**

HUD requires the unit to pass HQS before the effective date of the lease and HAP Contract. HUD requires PHAs with fewer than 1,250 budgeted units to complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA). For PHAs with 1,250 or more budgeted units, to the extent practicable such inspection and determination must be completed within 15 days. The 15-day period is suspended for any period during which the unit is not available for inspection [982.305(b)(2)].

HHA Policy

The HA will complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA).

Inspection Results and Re-inspections

HHA Policy

For all new lease ups, HHA will re-inspect the unit within a reasonable time after receiving verification that corrections have been made.

For Annual Inspections only:

If any HQS violations are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by the HHA for good cause.

For serious HQS deficiencies; such as (health and safety etc..) The HHA will reinspect the unit within a reasonable time after receiving the owner notification that the required corrections have been made.

For minor HQS deficiencies; such as (cracked switch plates, peeling and chipping paint etc., not all inclusive) the HHA will accept written certification and/or pictures of the corrected repairs from the owner.

If the time period for correcting the deficiencies (or any HHA-approved extension) has elapsed, or the unit fails HQS at the time of the re-inspection, the HHA will notify the owner and the family the unit has been rejected and the family must search for another unit.

The HHA may agree to conduct a second re-inspection, for good cause, at the request of the family and owner.

Following a failed re-inspection, the family may submit a new Request for Tenancy Approval for the unit if the family has not found another unit by the time the owner completes all repairs and the family continues to wish to live in the unit.

Utilities

Generally, at initial lease-up the owner is responsible for demonstrating that all utilities are in working order including those utilities that the family will be responsible for paying.

HHA Policy

If utility service is not available for testing at the time of the initial inspection, the HHA will allow the utilities to be placed in service after the unit has met all other HQS requirements. The HHA will reinspect the unit to confirm that utilities are operational before the HAP contract is executed by the HHA.

Appliances

HHA Policy

If the family is responsible for supplying the stove and/or refrigerator, the HHA will allow the stove and refrigerator to be placed in the unit after the unit has met all other HQS requirements. The required appliances must be in place before the HAP contract is executed by the HHA. The HHA will execute the HAP contract based upon a certification from the family that the appliances have been installed and are working. A

confirmatory inspection for family supplied appliances will be scheduled within 30 days of HAP contract approval.

8.II.C. ANNUAL HQS INSPECTIONS [24 CFR 982.405(a)]**Scheduling the Inspection**

Section 220 of the HUD Appropriations Act of 2014 allows PHA's to conduct biennial HQS inspections. PHA's are still required to conduct an initial inspection for a housing unit.

Further, PHAs are also allowed to accept an alternative inspection for existing voucher assisted units.

HHA Policy

HHA will use as an alternative inspection if a Low Income Housing Tax Credit (LIHTC) or HOME program has conducted an inspection using UPCS regulations for annual or biennial inspections only. The HHA will use HQS guidelines for initial inspections.

Each unit under HAP contract must have an annual or biennial inspection not less than 12 months or no more than 24 months after the most recent inspection.

At HHA discretion, if a unit passes an inspection; initial or annual the HHA may elect to not inspect the unit within 12 months, but biennially.

HHA Policy

If an adult family member cannot be present on the scheduled date, the family should request that the HHA reschedule the inspection. If the family misses the first scheduled appointment without requesting a new inspection date, the HHA will automatically schedule a second inspection. If the family misses two scheduled inspections without HHA approval, the HHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

8-II.D. SPECIAL INSPECTIONS [HCV GB p. 10-30]

The HHA will conduct a special inspection if the owner, family, or another source reports HQS violations in the unit.

HHA Policy

During a special inspection, the HHA generally will inspect only those deficiencies that were reported. However, the inspector will record any additional HQS deficiencies that are observed and will require the responsible party to make the necessary repairs.

If the annual inspection has been scheduled or is due within 90 days of the date the special inspection is scheduled the HHA may elect to conduct a full annual inspection.

8-II.E. QUALITY CONTROL INSPECTIONS [24 CFR 982.405(b), HCV GB p. 10-32]

HUD requires a HHA supervisor or other qualified person to conduct quality control inspections of a sample of units to ensure that each inspector is conducting accurate and complete inspections and that there is consistency in the application of the HQS.

The unit sample must include only units that have been inspected within the preceding 2 months. The selected sample will include (1) each type of inspection (initial, annual, and special), (2) inspections completed by each inspector, and (3) units from a cross-section of neighborhoods.

8.II.F. INSPECTION RESULTS AND REINSPECTIONS FOR UNITS UNDER HAP CONTRACT

Notification of Corrective Actions

The owner and the family will be notified in writing of the results of all inspections. When an inspection identifies HQS failures, the HHA will determine (1) whether or not the failure is a life threatening condition and (2) whether the family or owner is responsible.

HHA Policy

When life threatening conditions are identified, the HHA will immediately notify both parties by telephone, facsimile, or email. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within 24 hours of the HHA's notice.

When failures that are not life threatening are identified, the HHA will send the owner and the family a written notification of the inspection results within 5 business days of the inspection. The written notice will specify who is responsible for correcting the violation, and the time frame within which the failure must be corrected. No more than 30 days will be allowed for the correction unless an extension for good cause is determined by the Housing Program Manager.

The notice of inspection results will inform the owner that if life threatening conditions are not corrected within 24 hours, and non-life threatening conditions are not corrected within the specified time frame (or any HHA-approved extension), the owner's HAP will be abated in accordance with HHA policy (see 8-II.G.). Likewise, in the case of family caused deficiencies, the notice will inform the family that if corrections are not made within the specified time frame (or any HHA-approved extension, if applicable) the family's assistance will be terminated in accordance with HHA policy (see Chapter 12).

Extensions

For conditions that are life-threatening, the HHA cannot grant an extension to the 24 hour corrective action period. For conditions that are not life-threatening, the HHA may grant an exception to the required time frames for correcting the violation, if the HHA determines that an extension is appropriate [24 CFR 982.404].

HHA Policy

Extensions will be granted in cases where the HHA has determined that the owner has made a good faith effort to correct the deficiencies and is unable to for reasons beyond the owner's control. Reasons may include, but are not limited to:

A repair cannot be completed because required parts or services are not available.

A repair cannot be completed because of weather conditions.

A reasonable accommodation is needed because the family includes a person with disabilities.

The length of the extension will be determined on a case by case basis, but will not exceed 60 days, except in the case of delays caused by weather conditions. In the case of weather conditions, extensions may be continued until the weather has improved sufficiently to make repairs possible. The necessary repairs must be made within 15 calendar days, once the weather conditions have subsided.

Re-inspections

HHA Policy

If any HQS violations are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by HHA for good cause.

For serious HQS deficiencies, HHA will re-inspect the unit within a reasonable time after receiving the owner notification that the required corrections have been made.

For minor HQS deficiencies, the HHA will accept written certification and/or pictures of the corrected repairs from the owner.

If the time period for correcting the deficiencies (or any approved extension) has elapsed, or the unit fails HQS at the time of the re-inspection, the HHA will notify the owner and the family that the unit has been rejected and that the family must search for another unit.

The HHA will conduct a re-inspection immediately following the end of the corrective period, or any HHA approved extension. It is the responsibility of the landlord to notify the Housing Authority representative the repairs have been completed. The Housing Authority will consider the repairs are completed based on the day the landlord reported the unit is ready for re-inspection.

If the deficiencies have not been corrected by the time of the re-inspection, the HHA will send a notice of abatement to the owner, or in the case of family caused violations, a notice of termination to the family, in accordance with HHA policies. If the HHA is unable to gain entry to the unit in order to conduct the scheduled re-inspection, the HHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

8.II.G. NFORCING OWNER COMPLIANCE

If the owner fails to maintain the dwelling unit in accordance with HQS, the HHA must take prompt and vigorous action to enforce the owner obligations.

HAP Abatement

If an owner fails to correct HQS deficiencies by the time specified by the HHA, HUD requires the HHA to abate housing assistance payments no later than the first of the month following the specified correction period (including any approved extension) [24 CFR 985.3(f)]. No retroactive payments will be made to the owner for the period of time the rent was abated. Owner rents are not abated as a result of HQS failures that are the family's responsibility.

HHA Policy

The HHA will make all HAP abatements effective the first of the month following the expiration of the HHA specified correction period (including any extension).

The HHA will inspect abated units within 5 business days of the owner's notification that the work has been completed. Payment will resume effective on the day the unit passes inspection.

During any abatement period the family continues to be responsible for its share of the rent. The owner must not seek payment from the family for abated amounts and may not use the abatement as cause for eviction. The landlord is not entitled to any back rent from the HHA for units that have been abated due to a failed HQS.

HAP Contract Termination

The HHA must decide how long any abatement period will continue before the HAP contract will be terminated. The HHA should not terminate the contract until the family finds another unit, provided the family does so in a reasonable time [HCV GB p. 10-29] and must give the owner reasonable notice of the termination. The HHA will issue a voucher to permit the family to move to another unit as described in Chapter 10.

HHA Policy

The maximum length of time that a HAP may be abated is 90 days. However, if the owner completes corrections and notifies the HHA before the termination date of the HAP contract, the HHA may rescind the termination notice if (1) the family still resides in the unit and wishes to remain in the unit and (2) the unit passes inspection.

Reasonable notice of HAP contract termination by the HHA is 30 days.

8.II.H. ENFORCING FAMILY COMPLIANCE WITH HQS [24 CFR 982.404(b)]

Families are responsible for correcting any HQS violations listed in paragraph 8.I.D. If the family fails to correct a violation within the period allowed by the HHA (and any extensions), the HHA will terminate the family's assistance, according to the policies described in Chapter 12.

If the owner carries out a repair for which the family is responsible under the lease, the owner may bill the family for the cost of the repair.

PART III: RENT REASONABLENESS [24 CFR 982.507]**8-III.A. OVERVIEW**

No HAP contract can be approved until the HHA has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

HUD regulations define a reasonable rent as one that does not exceed the rent charged for comparable, unassisted units in the same market area. HUD also requires that owners not charge more for assisted units than for comparable units on the premises. This part explains the method used to determine whether a unit's rent is reasonable.

HHA-owned Units [24 CFR 982.352(b)]

In cases where an HCV family is receiving assistance in a HHA-owned unit, the HHA must obtain the services of an independent entity to determine rent reasonableness in accordance with program requirements, and to assist the family in negotiating the contract rent when the family requests assistance. A HHA-owned unit is defined as a unit that is owned by the HHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the HHA). The independent agency must communicate the results of the rent reasonableness determination to the family and the HHA. The independent agency must be approved by HUD, and may be the unit of general local government for the HHA jurisdiction (unless the HHA is itself the unit of general local government or an agency of such government).

8-III.B. WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED**Owner-initiated Rent Determinations**

The HHA must make a rent reasonableness determination at initial occupancy and whenever the owner requests a rent adjustment.

The owner and family first negotiate the rent for a unit. The HHA (or independent agency in the case of HHA-owned units) will assist the family with the negotiations upon request. At initial occupancy the HHA must determine whether the proposed rent is reasonable before a HAP Contract is signed. The owner must not change the rent during the initial lease term. Subsequent requests for rent adjustments must be consistent with the lease between the owner and the family. Rent increases will not be approved unless any failed items identified by the most recent HQS inspection have been corrected.

HHA Policy

After the initial occupancy period, the owner may request a rent adjustment in accordance with the owner's lease. For rent increase requests after initial lease-up, the HHA may request owners to provide information about the rents charged for other units on the premises, if the premises include more than 4 units. In evaluating the proposed rents in comparison to other units on the premises the HHA will consider unit size and length of tenancy in the other units.

The HHA will determine whether the requested increase is reasonable within 15 business days of receiving the request from the owner. The owner will be notified of the determination by the inspector either in writing or orally.

All rents adjustments will be effective the first of the month following 60 days after the HHA's receipt of the owner's request or on the date specified by the owner, whichever is later.

HHA- and HUD-Initiated Rent Reasonableness Determinations

HUD requires the HHA to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 5 percent decrease in the Fair Market Rent that goes into effect at least 60 days before the contract anniversary date. HUD also may direct the HHA to make a determination at any other time. The HHA may decide that a new determination of rent reasonableness is needed at any time.

HHA Policy

In addition to the instances described above, the HHA will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) the HHA determines that the initial rent reasonableness determination was in error or (2) the HHA determines that the information provided by the owner about the unit or other units on the same premises was incorrect.

8-III.C. HOW COMPARABILITY IS ESTABLISHED

Factors to Consider

HUD requires HHAs to take into consideration the factors listed below when determining rent comparability. The HHA may use these factors to make upward or downward adjustments to the rents of comparison units when the units are not identical to the HCV-assisted unit.

- Location and age
- Unit size including the number of rooms and square footage of rooms
- The type of unit including construction type (e.g., single family, duplex, garden, low-rise, high-rise)
- The quality of the units including the quality of the original construction, maintenance and improvements made.
- Amenities, services, and utilities included in the rent

Units that Must Not be Used as Comparables

Comparable units must represent unrestricted market rents. Therefore, units that receive some form of federal, state, or local assistance that imposes rent restrictions cannot be considered comparable units. These include units assisted by HUD through any of the following programs: Section 8 project-based assistance, Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR) projects, HOME or Community Development Block Grant (CDBG) program-assisted units in which the rents are subsidized; units subsidized through federal, state, or local tax credits; units subsidized by the Department of Agriculture rural housing programs, and units that are rent-controlled by local ordinance.

Rents Charged for Other Units on the Premises

The Request for Tenancy Approval (HUD-52517) requires owners to provide information, on the form itself, about the rent charged for other unassisted comparable units on the premises if the premises include more than 4 units. HHA will use the RTA as a method to determine rent reasonable for multifamily units in accordance with HUD's PIH Notice.

By accepting the HHA payment each month the owner certifies that the rent is not more than the rent charged for comparable unassisted units on the premises. If asked to do so, the owner must give the HHA information regarding rents charged for other units on the premises.

8-III.D. HHA RENT REASONABLENESS METHODOLOGY**How Market Data is Collected**HHA Policy

The HHA will collect and maintain data on market rents in the HHA's jurisdiction. Information sources include newspapers, realtors, market surveys, inquiries of owners and other available sources. The data will be maintained by bedroom size and market areas. Market areas may be defined by zip codes, census tract, neighborhood, and identifiable natural or man-made boundaries. The data will be updated on an ongoing basis and rent information that is more than 12 months old will be eliminated from the database.

How Rents are DeterminedHHA Policy

The rent for a unit proposed for HCV assistance will be compared to the rent charged for comparable units in the same market area. The HHA will develop a range of prices for comparable units by bedroom size within defined market areas. Units proposed for HCV assistance will be compared to the units within this rent range. Because units may be similar, but not exactly like the unit proposed for HCV assistance, the HHA may make adjustments to the range of prices to account for these differences.

The adjustment must reflect the local market. Not all differences in units require adjustments (e.g., the presence or absence of a garbage disposal may not affect the rent in some market areas).

Adjustments may vary by unit type (e.g., a second bathroom may be more valuable in a three-bedroom unit than in a two-bedroom).

The adjustment must reflect the rental value of the difference – not its construction costs (e.g., it might cost \$20,000 to put on a new roof, but the new roof might not make any difference in what a tenant would be willing to pay because rents units are presumed to have functioning roofs).

When a comparable project offers rent concessions (e.g., first month rent-free, or reduced rent) reported monthly rents will be adjusted accordingly. For example, if a comparable project reports rents of \$500/month but new tenants receive the first month's rent free, the actual rent for the unit would be calculated as follows: $\$500 \times 11 \text{ months} = 5500/12 \text{ months} = \text{actual monthly rent of } \488 .

The HHA will notify the owner of the rent the HHA can approve based upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. The HHA will confirm the accuracy of the information provided and consider this additional information when making rent determinations. The owner must submit any additional information within 5 business days of the HHA's request for information or the owner's request to submit information.

Before any increase in rent to the owner is approved, any increase of more than 5% will not be approved without a Management review and approval. The management review could be a result of the contract being lowered.

EXHIBIT 8-1: OVERVIEW OF HUD HOUSING QUALITY STANDARDS

Note: This document provides an overview of HQS. For more detailed information see the following documents:

- 24 CFR 982.401, Housing Quality Standards (HQS)
- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

Sanitary Facilities

The dwelling unit must include sanitary facilities within the unit. The sanitary facilities must be usable in privacy and must be in proper operating condition and adequate for personal cleanliness and disposal of human waste.

Food Preparation and Refuse Disposal

The dwelling unit must have space and equipment suitable for the family to store, prepare, and serve food in a sanitary manner.

Space and Security

The dwelling unit must provide adequate space and security for the family. This includes having at least one bedroom or living/sleeping room for each two persons.

Thermal Environment

The unit must have a safe system for heating the dwelling unit. Air conditioning is not required but if provided must be in proper operating condition. The dwelling unit must not contain unvented room heaters that burn gas, oil, or kerosene. Portable electric room heaters or kitchen stoves with built-in heating units are not acceptable as a primary source of heat for units located in climatic areas where permanent heat systems are required.

Illumination and Electricity

Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The dwelling unit must have sufficient electrical sources so occupants can use essential electrical appliances. Minimum standards are set for different types of rooms. Once the minimum standards are met, the number, type and location of electrical sources are a matter of tenant preference.

Structure and Materials

The dwelling unit must be structurally sound. Handrails are required when four or more steps (risers) are present, and protective railings are required when porches, balconies, and stoops are thirty inches or more off the ground. The elevator servicing the unit must be working [if there is one]. Manufactured homes must have proper tie-down devices capable of surviving wind loads common to the area.

Interior Air Quality

The dwelling unit must be free of air pollutant levels that threaten the occupants' health. There must be adequate air circulation in the dwelling unit. Bathroom areas must have one openable window or other adequate ventilation. Any sleeping room must have at least one window. If a window was designed to be opened, it must be in proper working order.

Water Supply

The dwelling unit must be served by an approved public or private water supply that is sanitary and free from contamination. Plumbing fixtures and pipes must be free of leaks and threats to health and safety.

Lead-Based Paint

Lead-based paint requirements apply to dwelling units built prior to 1978 that are occupied or can be occupied by families with children under six years of age, excluding zero bedroom dwellings. Owners must:

- Disclose known lead-based paint hazards to prospective tenants before the lease is signed,
- Provide all prospective families with "Protect Your Family from Lead in Your Home",
- Stabilize deteriorated painted surfaces and conduct hazard reduction activities when identified by the HHA
- Notify tenants each time such an activity is performed
- Conduct all work in accordance with HUD safe practices
- As part of ongoing maintenance ask each family to report deteriorated paint.

For units occupied by environmental intervention blood lead level (lead poisoned) children under six years of age, a risk assessment must be conducted (paid for by the HHA). If lead hazards are identified during the risk assessment, the owner must complete hazard reduction activities.

See HCV GB p. 10-15 for a detailed description of these requirements. For additional information on lead-based paint requirements see 24 CFR 35, Subparts A, B, M, and R.

Access

Use and maintenance of the unit must be possible without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire.

Site and Neighborhood

The site and neighborhood must be reasonably free from disturbing noises and reverberations, excessive trash or vermin, or other dangers to the health, safety, and general welfare of the occupants.

Sanitary Condition

The dwelling unit and its equipment must be in sanitary condition and free of vermin and rodent infestation. The unit must have adequate barriers to prevent infestation.

Smoke Detectors

Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any person with a hearing impairment, smoke detectors must have an appropriate alarm system as specified in NFPA 74 (or successor standards).

Hazards and Health/Safety

The unit, interior and exterior common areas accessible to the family, the site, and the surrounding neighborhood must be free of hazards to the family's health and safety.

**EXHIBIT 8-2: SUMMARY OF TENANT PREFERENCE AREAS
RELATED TO HOUSING QUALITY**

Note: This document provides an overview of unit and site characteristics and conditions for which the family determines acceptability. For more detailed information see the following documents:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

Provided the minimum housing quality standards have been met, HUD permits the family to determine whether the unit is acceptable with regard to the following characteristics.

- *Sanitary Facilities.* The family may determine the adequacy of the cosmetic condition and quality of the sanitary facilities, including the size of the lavatory, tub, or shower; the location of the sanitary facilities within the unit; and the adequacy of the water heater.
- *Food Preparation and Refuse Disposal.* The family selects size and type of equipment it finds acceptable. When the family is responsible for supplying cooking appliances, the family may choose to use a microwave oven in place of a conventional oven, stove, or range. When the owner is responsible for providing cooking appliances, the owner may offer a microwave oven in place of an oven, stove, or range only if other subsidized and unsubsidized units on the premises are furnished with microwave ovens only. The adequacy of the amount and type of storage space, the cosmetic conditions of all equipment, and the size and location of the kitchen are all determined by the family.
- *Space and Security.* The family may determine the adequacy of room sizes and room locations. The family is also responsible for deciding the acceptability of the type of door and window locks.

- *Energy conservation items.* The family may determine whether the amount of insulation, presence of absence of storm doors and windows and other energy conservation items are acceptable.
 - *Illumination and Electricity.* The family may determine whether the location and the number of outlets and fixtures (over and above those required to meet HQS standards) are acceptable or if the amount of electrical service is adequate for the use of appliances, computers, or stereo equipment.
- (6) *Structure and Materials.* Families may determine whether minor defects, such as lack of paint, or worn flooring or carpeting will affect the livability of the unit.
- (7) *Indoor Air.* Families may determine whether window and door screens, filters, fans, or other devices for proper ventilation are adequate to meet the family's needs. However, if screens are present they must be in good condition.
- (8) *Sanitary Conditions.* The family determines whether the sanitary conditions in the unit, including minor infestations, are acceptable.
- (9) *Neighborhood conditions.* Families may determine whether neighborhood conditions such as the presence of drug activity, commercial enterprises, and convenience to shopping will affect the livability of the unit.

Families have no discretion with respect to lead-based paint standards and smoke detectors.

Chapter 9

GENERAL LEASING POLICIES

INTRODUCTION

This Section covers the lease-up process from the family's submission of a Request for Tenancy Approval to execution of the HAP contract.

In order for the HHA to assist a family in a particular dwelling unit, or execute a Housing Assistance Payments (HAP) contract with the owner of a dwelling unit, the HHA must determine that all the following program requirements are met:

- The unit itself must qualify as an eligible unit [24 CFR 982.305(a)]
- The unit must be inspected by the HHA and meet the Housing Quality Standards (HQS) [24 CFR 982.305(a)]
- The lease offered by the owner must be approvable and must include the required Tenancy Addendum [24 CFR 982.305(a)]
- The rent to be charged by the owner for the unit must be reasonable [24 CFR 982.305(a)]
- The owner must be an eligible owner, approvable by the HHA, with no conflicts of interest [24 CFR 982.306]
- For families initially leasing a unit only: Where the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family cannot exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]

9-I.A. TENANT SCREENING

The HHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy [24 CFR 982.307(a)(1)].

The HHA may elect to screen applicants for family behavior or suitability for tenancy. See Chapter 3 for a discussion of the HHA's policies with regard to screening applicant families for program eligibility [24 CFR 982.307(a)(1)].

The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before HHA approval of the tenancy, the HHA must inform the owner that screening and selection for tenancy is the responsibility of the owner [24 CFR 982.307(a)(2)].

The HHA must provide the owner with the family's current and prior address (as shown in the HHA records); and the name and address (if known to the HHA) of the landlord at the family's current and prior address. [24 CFR 982.307 (b)(1)].

The HHA is permitted, but not required, to offer the owner other information in the HHA's possession about the family's tenancy [24 CFR 982.307(b)(2)].

The HHA's policy on providing information to the owner must be included in the family's briefing packet [24 CFR 982.307(b)(3)].

HHA Policy

The HHA will not screen applicants for suitability for tenancy.

The HHA will not provide additional screening information to the owner.

9-I.B. REQUESTING TENANCY APPROVAL [Form HUD-52517]

After the family is issued a voucher, the family must locate an eligible unit, with an owner or landlord willing to participate in the voucher program. Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the owner and the family must request the HHA to approve the assisted tenancy in the selected unit.

The owner and the family must submit two documents to the HHA:

- Completed Request for Tenancy Approval (RTA) – Form HUD-52517
- Copy of the proposed lease, including the HUD-prescribed Tenancy Addendum – Form HUD-52641-A

The RTA contains important information about the rental unit selected by the family, including the unit address, number of bedrooms, structure type, year constructed, utilities included in the rent, and the requested beginning date of the lease, necessary for the HHA to determine whether to approve the assisted tenancy in this unit. For multifamily units, the owner shall provide the last 3 comparable unit's rent that were leased at the complex.

Owners must certify to the most recent amount of rent charged for the unit and provide an explanation for any difference between the prior rent and the proposed rent.

Owners must certify that they are not the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the HHA has granted a request for reasonable accommodation for a person with disabilities who is a member of the tenant household.

For units constructed prior to 1978, owners must either 1) certify that the unit, common areas, and exterior have been found to be free of lead-based paint by a certified inspector; or 2) attach a lead-based paint disclosure statement.

Both the RTA and the proposed lease must be submitted no later than the expiration date stated on the voucher. [HCV GB p.8-15].

HHA Policy

The RTA must be signed by both the family and the owner.

The owner may submit the RTA on behalf of the family.

Completed RTA (including the proposed dwelling lease) must be submitted as hard copies, in-person, by mail, or by fax.

The family may not submit, and the HHA will not process, more than one (1) RTA at a time.

When the family submits the RTA, the HHA will review the RTA for completeness.

If the RTA is incomplete (including lack of signature by family, owner, or both), or if the dwelling lease is not submitted with the RTA, the HHA will notify the family and the owner of the deficiencies.

Missing information and/or missing documents will only be accepted as hard copies, in-person, by mail, or by fax. The HHA will not accept missing information over the phone.

When the family submits the RTA and proposed lease, the HHA will also review the terms of the RTA for consistency with the terms of the proposed lease.

If the terms of the RTA are not consistent with the terms of the proposed lease, the HHA will notify the family and the owner of the discrepancies.

Corrections to the terms of the RTA and/or the proposed lease will only be accepted as hard copies, in-person, by mail or by fax. The HHA will not accept corrections by phone.

Because of the time sensitive nature of the tenancy approval process, the HHA will attempt to communicate with the owner and family by phone, fax, or email. The HHA will use mail when the parties can't be reached by phone, fax, or email.

9-I.C. OWNER PARTICIPATION

The HHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the HHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)]

See Chapter 13 for a full discussion of owner qualification to participate in the HCV program.

9-I.D. ELIGIBLE UNITS

There are a number of criteria that a dwelling unit must meet in order to be eligible for assistance under the voucher program. Generally, a voucher-holder family may choose any available rental dwelling unit on the market in the HHA's jurisdiction. This includes the dwelling unit they are currently occupying.

Ineligible Units [24 CFR 982.352(a)]

The HHA may not assist a unit under the voucher program if the unit is a public housing or Indian housing unit; a unit receiving project-based assistance under section 8 of the 1937 Act (42

U.S.C. 1437f); nursing homes, board and care homes, or facilities providing continual psychiatric, medical, or nursing services; college or other school dormitories; units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions; a unit occupied by its owner or by a person with any interest in the unit.

HHA-Owned Units [24 CFR 982.352(b)]

Otherwise eligible units that are owned or substantially controlled by the HHA issuing the voucher may also be leased in the voucher program. In order for a HHA-owned unit to be leased under the voucher program, the unit must not be ineligible housing and the HHA must inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease and that the family is free to select a HHA-owned unit without any pressure or steering by the HHA.

HHA Policy

The HHA does not have any eligible HHA-owned units available for leasing under the voucher program.

Special Housing Types [24 CFR 982 Subpart M]

HUD regulations permit, but do not generally require, the HHA to permit families to use voucher assistance in a number of special housing types in accordance with the specific requirements applicable to those programs. These special housing types include single room occupancy (SRO) housing, congregate housing, group home, shared housing, manufactured home space (where the family owns the manufactured home and leases only the space), cooperative housing and homeownership option.

The regulations do require the HHA to permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

HHA participates in the following special housing types:

Manufactured Home Space (where the family owns the manufacture home and leases only the space.

Homeownership Option

MANUFACTURED HOMES [24 CFR 982.620 through 982.624]

OVERVIEW

A manufactured home is a manufactured structure, transportable in one or more parts that is built on a permanent chassis, and designed for use as a principal place of residence. HCV-assisted families may occupy manufactured homes in two different ways.

(1) A family can choose to rent a manufactured home already installed on a space and the PHA must permit it. In this instance program rules are the same as when a family rents any other residential housing, except that there are special HQS requirements as provided in 15-VI.D below.

(2) HUD also permits an otherwise eligible family that owns a manufactured home to rent a space for the manufactured home and receive HCV assistance with the rent for the space. PHAs may, but are not required to, provide assistance for such families.

SPECIAL POLICIES FOR MANUFACTURED HOME OWNERS WHO LEASE A SPACE

Family Income

In determining the annual income of families leasing manufactured home spaces, the value of the family's equity in the manufactured home in which the family resides is not counted as a family asset.

Lease and HAP Contract

There is a separate Tenancy Addendum (Form 52642-a) and separate HAP Contract (Form 52642) for this special housing type.

PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION

Payment Standards

The FMR for a manufactured home space is generally 40 percent of the published FMR for a 2-bedroom unit or, where approved by HUD, the 40th percentile of the rental distribution of manufactured home spaces for the FMR area. The PHA may establish a payment standard for manufactured home spaces that is between 90-110 percent of the FMR for manufactured home spaces.

Utility Allowance

The PHA must establish utility allowances for manufactured home space rental. For the first 12 months of the initial lease term only, the allowance must include an amount for a utility hook-up charge if the family actually incurred a hook-up charge because of a move. This allowance will not be given to a family that leases in place. Utility allowances for manufactured home space must not include the costs of digging a well or installing a septic system.

Space Rent

The space rent is the sum of the rent to the owner for the manufactured home space, any charges for maintenance and management provided by the owner, and the utility allowance for tenant-paid utilities.

Housing Assistance Payment

The HAP for a manufactured home space under the housing choice voucher program is the lower of the payment standard minus the TTP or the (gross) manufactured home space rent minus the TTP.

Rent Reasonableness

Initially, and annually thereafter the PHA must determine that the rent for the manufactured home space is reasonable based on rents for comparable manufactured home spaces. The PHA must consider the location and size of the space, and any services and maintenance to be provided by the owner. By accepting the monthly HAP check, the owner certifies that the rent does not exceed rents charged by the owner for comparable unassisted spaces in the Manufactured Home Park or elsewhere.

HOUSING QUALITY STANDARDS

Under either type of occupancy described in 15-VI.A above, the manufactured home must meet all HQS performance requirements and acceptability criteria discussed in Chapter 8 of this plan. In addition, the following requirement applies:

Manufactured Home Tie-Down

A manufactured home must be placed on the site in a stable manner, and must be free from hazards such as sliding or wind damage.

- Helena Housing Authority has a waiver from HUD dated March 9, 2006 to waive the tie-down requirement for manufactured homes in the Helena, Montana area.

HOMEOWNERSHIP OPTION

General Description and Information

This option will provide eligible families the opportunity of purchasing and owning a home using HCV assistance.

A family assisted under this program must be a qualified existing HCV participant who has been receiving HHA HCV assistance for a minimum of one year.

HHA Homeownership vouchers will limit the number of vouchers to be used for Homeownership during each fiscal year:

The policies on the Homeownership are listed in Chapter 16.

Duplicative Assistance [24 CFR 982.352(c)]

A family may not receive the benefit of HCV 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:

- Public or Indian housing assistance;
- Other Section 8 assistance (including other tenant-based assistance);
- Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);
- Section 101 rent supplements;
- Section 236 rental assistance payments;
- Tenant-based assistance under the HOME Program;
- Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);
- Any local or State rent subsidy;
- Section 202 supportive housing for the elderly;
- Section 811 supportive housing for persons with disabilities; (11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or
- Any other duplicative federal, State, or local housing subsidy, as determined by HUD. For this purpose, 'housing subsidy' does not include the housing component of a welfare

payment, a social security payment received by the family, or a rent reduction because of a tax credit.

Housing Quality Standards (HQS) [24 CFR 982.305 and 24 CFR 982.401]

In order to be eligible, the dwelling unit must be in decent, safe and sanitary condition. This determination is made using HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD. See Chapter 8 for a full discussion of the HQS standards, as well as the process for HQS inspection at initial lease-up.

Unit Size

In order to be eligible, the dwelling unit must be appropriate for the number of persons in the household. A family must be allowed to lease an otherwise acceptable dwelling unit with fewer bedrooms than the number of bedrooms stated on the voucher issued to the family, provided the unit meets the applicable HQS space requirements [24 CFR 982.402(d)]. The family must be allowed to lease an otherwise acceptable dwelling unit with more bedrooms than the number of bedrooms stated on the voucher issued to the family. See Chapter 5 for a full discussion of subsidy standards.

Rent Reasonableness [24 CFR 982.305 and 24 CFR 982.507]

In order to be eligible, the dwelling unit must have a reasonable rent. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See Chapter 8 for a full discussion of rent reasonableness and the rent reasonableness determination process.

Rent Burden [24 CFR 982.508]

Where a family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the dwelling unit rent must be at a level where the family's share of rent does not exceed 40 percent of the family's monthly adjusted income. See Chapter 6 for a discussion of calculation of gross rent, the use of payment standards, and calculation of family income, family share of rent and HAP.

9-I.E. LEASE AND TENANCY ADDENDUM

The family and the owner must execute and enter into a written dwelling lease for the assisted unit. This written lease is a contract between the tenant family and the owner; the HHA is not a party to this contract.

The tenant must have legal capacity to enter a lease under State and local law. 'Legal capacity' means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner [24 CFR 982.308(a)]

Lease Form and Tenancy Addendum [24 CFR 982.308]

If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease. The HAP contract prescribed by HUD contains the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease is in such standard form.

All provisions in the HUD-required Tenancy Addendum must also be added word-for-word to the owner's standard lease form, for use with the assisted family. The Tenancy Addendum includes the tenancy requirements for the program and the composition of the household as approved by the HHA. As a part of the lease, the tenant shall have the right to enforce the Tenancy Addendum against the owner and the terms of the Tenancy Addendum shall prevail over any other provisions of the lease.

HHA Policy

The HHA does not provide a model or standard dwelling lease for owners to use in the HCV program.

Lease Information [24 CFR 982.308(d)]

The assisted dwelling lease must contain all of the required information as listed below:

- The names of the owner and the tenant:
- The unit rented (address, apartment number, and any other information needed to identify the contract unit)
- The term of the lease (initial term and any provisions for renewal)
- The amount of the monthly rent to owner
- A specification of what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family

Term of Assisted Tenancy

The initial term of the assisted dwelling lease must be for at least one year [24 CFR 982.309]. The initial lease term is also stated in the HAP contract.

The HUD program regulations permit the HHA to approve a shorter initial lease term if certain conditions are met.

HHA Policy

The HHA will not approve an initial lease term of less than one (1) year.

During the initial term of the lease, the owner may not raise the rent to the tenant [24 CFR 982.309].

Any provisions for renewal of the dwelling lease will be stated in the dwelling lease [HCV Guidebook, pg. 8-22]. There are no HUD requirements regarding any renewal extension terms, except that they must be in the dwelling lease if they exist.

The HHA may execute the HAP contract even if there is less than one year remaining from the beginning of the initial lease term to the end of the last expiring funding increment under the consolidated ACC. [24 CFR 982.309(b)].

Security Deposit [24 CFR 982.313 (a) and (b)]

The owner may collect a security deposit from the tenant. The HHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. However, if the HHA chooses to do so, language to this effect must be added to Part A of the HAP contract [Form HUD-52641].

HHA Policy

The HHA will allow the owner to collect any security deposit amount the owner determines is appropriate. Therefore, no modifications to the HAP contract will be necessary.

Separate Non-Lease Agreements between Owner and Tenant

Owners may not demand or accept any rent payment from the family in excess of the rent to the owner minus the HHA's housing assistance payments to the owner [24 CFR 982.451(b)(4)].

The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)].

HHA Policy

The HHA permits owners and families to execute separate and reasonable cost, non-lease agreements for services, appliances (other than range and refrigerator) and other items that are not included in the lease.

Any items, appliances, or other services that are customarily provided to unassisted families as part of the dwelling lease with those families, or are permanently installed in the dwelling unit must be included in the dwelling lease for the assisted family. These items, appliances or services cannot be placed under a separate non-lease agreement between the owner and family. Side payments for additional rent, or for items, appliances or services customarily provided to unassisted families as part of the dwelling lease for those families, are prohibited.

Any items, appliances, or other services that are not customarily provided to unassisted families as part of the dwelling lease with those families, are not permanently installed in the dwelling unit and where the family has the sole option of not utilizing the item,

appliance or service, may be included in a separate non-lease agreement between the owner and the family.

The family is not liable and cannot be held responsible under the terms of the assisted dwelling lease for any charges pursuant to a separate non-lease agreement between the owner and the family. Non-payment of any charges pursuant to a separate non-lease agreement between the owner and the family cannot be a cause for eviction or termination of tenancy under the terms of the assisted dwelling lease.

Separate non-lease agreements that involve additional items, appliances or other services may be considered amenities offered by the owner and may be taken into consideration when determining the reasonableness of the rent for the property.

HHA Review of Lease

The HHA will review the dwelling lease for compliance with all applicable requirements. HHA Policy

If the dwelling lease is incomplete or incorrect, the HHA will notify the family and the owner of the deficiencies. Missing and corrected lease information will only be accepted as hard copies, in-person, by mail, or by fax. The HHA will not accept missing and corrected information over the phone

Because the initial leasing process is time-sensitive, the HHA will attempt to communicate with the owner and family by phone, fax, or email. The HHA will use mail when the parties can't be reached by phone, fax, or email.

The HHA is permitted, but is not required, to review the lease to determine if the lease complies with State and local law and is permitted to decline to approve the tenancy if the HHA determines that the lease does not comply with State or local law [24 CFR 982.308(c)]

HHA Policy

The HHA will not review the owner's lease for compliance with state/local law.

9-I.F. TENANCY APPROVAL [24 CFR 982.305]

After receiving the family's Request for Tenancy Approval, with proposed dwelling lease, the HHA must promptly notify the family and owner whether the assisted tenancy is approved.

Prior to approving the assisted tenancy and execution of a HAP contract, the HHA must ensure that all required actions and determinations, discussed in Part I of this chapter have been completed.

These actions include ensuring that the unit is eligible; the unit has been inspected by the HHA and meets the Housing Quality Standards (HQS); the lease offered by the owner is approvable and includes the required Tenancy Addendum; the rent to be charged by the owner for the unit must be reasonable; where the family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]; the owner is an eligible owner, not disapproved by the HHA, with no conflicts of interest [24 CFR 982.306]; the family and the owner have executed the lease, including the Tenancy Addendum, and the lead-based paint disclosure information [24 CFR 982.305(b)].

HHA Policy

The HHA will complete its determination within 10 business days of receiving all required information.

If the terms of the RTA/proposed lease are changed for any reason, including but not limited to negotiation with the HHA, the HHA will obtain corrected copies of the RTA and proposed lease, signed by the family and the owner.

Corrections to the RTA/proposed lease will only be accepted as hard copies, in-person, by mail, or by fax. The HHA will not accept corrections over the phone.

If the HHA determines the tenancy cannot be approved for any reason, the owner and the family will be notified in writing and given the opportunity to address any reasons for disapproval. The HHA will instruct the owner and family of the steps that are necessary to approve the tenancy.

Where the tenancy is not approvable because the unit is not approvable, the family must continue to search for eligible housing within the timeframe of the issued voucher.

If the tenancy is not approvable due to rent affordability (including rent burden and rent reasonableness), the HHA will attempt to negotiate the rent with the owner. If a new, approvable rent is negotiated, the tenancy will be approved. If the owner is not willing to negotiate an approvable rent, the family must continue to search for eligible housing within the timeframe of the issued voucher.

9-I.G. HAP CONTRACT EXECUTION [24 CFR 982.305]

The HAP contract is a written agreement between the HHA and the owner of the dwelling unit occupied by a housing choice voucher assisted family. Under the HAP contract, the HHA agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit and obliges the owner to comply with all program requirements.

The HAP contract format is prescribed by HUD.

If the HHA has given approval for the family of the assisted tenancy, the owner and the HHA execute the HAP contract.

The term of the HAP contract must be the same as the term of the lease [24 CFR 982.451(a)(2)].

The HHA is permitted to execute a HAP contract even if the funding currently available does not extend for the full term of the HAP contract.

The HHA must make a best effort to ensure that the HAP contract is executed before the beginning of the lease term. Regardless, the HAP contract must be executed no later than 60 calendar days from the beginning of the lease term.

The HHA may not pay any housing assistance payment to the owner until the HAP contract has been executed. If the HAP contract is executed during the period of 60 calendar days from the beginning of the lease term, the HHA will pay housing assistance payments after execution of the HAP contract (in accordance with the terms of the HAP contract), to cover the portion of the lease term before execution of the HAP contract (a maximum of 60 days).

Any HAP contract executed after the 60 day period is void, and the HHA may not pay any housing assistance payment to the owner.

HHA Policy

The owner and the assisted family will execute the dwelling lease and the owner must provide a copy to the HHA. The HHA will ensure that both the owner and the assisted family receive copies of the dwelling lease.

The owner and the HHA will execute the HAP contract. The HHA will not execute the HAP contract until the owner has submitted IRS form W-9. The HHA will ensure the owner receives a copy of the executed HAP contract.

See Chapter 13 for a discussion of the HAP contract and contract provisions.

9-I.H. CHANGES IN LEASE OR RENT [24 CFR 982.308]

If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give the HHA a copy of such changes. The lease, including any changes, must remain in accordance with the requirements of this chapter.

Generally, HHA approval of tenancy and execution of a new HAP contract are not required for changes in the lease. However, under certain circumstances, voucher assistance in the unit shall not be continued unless the HHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner. These circumstances include:

- Changes in lease requirements governing tenant or owner responsibilities for utilities or

appliances

- Changes in lease provisions governing the term of the lease
- The family moves to a new unit, even if the unit is in the same building or complex

In these cases, if the HCV assistance is to continue, the family must submit a new Request for Tenancy Approval (RTA) along with a new dwelling lease containing the altered terms. A new tenancy must then be approved in accordance with this chapter.

Where the owner is changing the amount of rent, the owner must notify the HHA of any changes in the amount of the rent to owner at least 60 days before any such changes go into effect [24 CFR 982.308(g)(4)]. The HHA will agree to such an increase only if the amount of the rent to owner is considered reasonable according to the rent reasonableness standards discussed in Chapter 8. If the requested rent is not found to be reasonable, the owner must either reduce the requested rent increase, or give the family notice in accordance with the terms of the lease.

No rent increase is permitted during the initial term of the lease [24 CFR

982.309(a)(3)]. HHA Policy

Where the owner is requesting a rent increase, the HHA will determine whether the requested increase is reasonable within 15 business days of receiving the request from the owner. The owner will be notified of the determination in writing or orally.

Rent increases will go into effect on the first of the month following the 60 day period after the owner notifies the HHA of the rent change or on the date specified by the owner, whichever is later. Any rent increase greater than 5% will warrant a Management Review before the increase is granted.

Chapter 10

MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY

INTRODUCTION

Freedom of choice is a hallmark of the housing choice voucher (HCV) program. In general, therefore, HUD regulations impose few restrictions on where families may live or move with HCV assistance. This chapter sets forth HUD regulations and HHA policies governing moves within or outside the HHA's jurisdiction in two parts:

Part I: Moving with Continued Assistance. This part covers the general rules that apply to all moves by a family assisted under the HHA's HCV program, whether the family moves to another unit within the HHA's jurisdiction or to a unit outside the HHA's jurisdiction under portability.

Part II: Portability. This part covers the special rules that apply to moves by a family under portability, whether the family moves out of or into the HHA's jurisdiction. This part also covers the special responsibilities that the HHA has under portability regulations and procedures.

PART I. MOVING WITH CONTINUED ASSISTANCE

10-I.A. ALLOWABLE MOVES

HUD regulations list five conditions under which an assisted family is allowed to move to a new unit with continued assistance. Permission to move is subject to the restrictions set forth in section 10-I.B.

- The family has a right to terminate the lease on notice to the owner (for the owner's breach or otherwise) and has given a notice of termination to the owner in accordance with the lease [24 CFR 982.314(b)(3)]. If the family terminates the lease on notice to the owner, the family must give the HHA a copy of the notice at the same time [24 CFR 982.314(d)(1)].
- The lease for the family's unit has been terminated by mutual agreement of the owner and the family [24 CFR 982.314(b)(1)(ii)].

HHA Policy

If the family and the owner mutually agree to terminate the lease for the family's unit, the family must use the HHA termination agreement.

- The owner has given the family a notice to vacate, has commenced an action to evict the family, or has obtained a court judgment or other process allowing the owner to evict the family [24 CFR 982.314(b)(2)]. The family must give the HHA a copy of any owner eviction notice [24 CFR 982.551(g)].

- The HHA has terminated the assisted lease for the family's unit for the owner's breach [24 CFR 982.314(b)(1)(i)].
- The HHA determines the family's current unit does not meet the HQS space standards because of an increase in family size or a change in family composition. In such cases, the HHA must issue the family a new voucher, and the family and HHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, the HHA must terminate the HAP contract for the family's old unit in accordance with the HAP contract terms and must notify both the family and the owner of the termination. The HAP contract terminates at the end of the calendar month that follows the calendar month in which the HHA gives notice to the owner. [24 CFR 982.403(a) and (c)]

10-I.B. RESTRICTIONS ON MOVES

A family's right to move is generally contingent upon the family's compliance with program requirements [24 CFR 982.1(b)(2)]. HUD specifies two conditions under which the HHA may deny a family permission to move and two ways in which the HHA may restrict moves by a family.

Denial of Moves

HUD regulations permit the HHA to deny a family permission to move under the following conditions:

Insufficient Funding

The HHA may deny a family permission to move if the HHA does not have sufficient funding for continued assistance [24 CFR 982.314(e)(1)].

HHA Policy

The HHA will deny a family permission to move on grounds the HHA does not have sufficient funding for continued assistance if (a) the move is initiated by the family, not the owner or the HHA; (b) the HHA can demonstrate that the move will, in fact, result in higher subsidy costs; and (c) the HHA can demonstrate, in accordance with the policies in Part VIII of Chapter 12, that it does not have sufficient funding in its annual budget to accommodate the higher subsidy costs. This policy applies to moves within the HHA's jurisdiction as well as to moves outside it under portability.

Grounds for Denial or Termination of Assistance

The HHA has grounds for denying or terminating the family's assistance [24 CFR 982.314(e)(2)].

HHA Policy

If the HHA has grounds for denying or terminating a family's assistance, the HHA will act on those grounds in accordance with the regulations and policies set forth in Chapters 3 and 12, respectively. In general, it will not deny a family permission to move for this reason; however, it retains the discretion to do so under special circumstances.

Restrictions on Elective Moves [24 CFR 982.314(c)]

HUD regulations permit the HHA to prohibit any elective move by a participant family during the family's initial lease term. They also permit the HHA to prohibit more than one elective move by a participant family during any 12-month period.

HHA Policy

The HHA will deny a family permission to make an elective move during the family's initial lease term. This policy applies to moves within the HHA's jurisdiction or outside it under portability.

The HHA will also deny a family permission to make more than one elective move during any 12-month period. This policy applies to all assisted families residing in the HHA's jurisdiction.

The HHA will consider exceptions to these policies for the following reasons: to protect the health or safety of a family member (e.g., lead-based paint hazards, domestic violence, dating violence, sexual assault, stalking, witness protection programs), to accommodate a change in family circumstances (e.g., new employment, school attendance in a distant area), or to address an emergency situation over which a family has no control.

In addition, the HHA will allow exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities (see Chapter 2).

10-I.C. MOVING PROCESS**Notification**

If a family wishes to move to a new unit, the family must notify the HHA and the owner before moving out of the old unit or terminating the lease on notice to the owner [24 CFR 982.314(d)(2)]. If the family wishes to move to a unit outside the HHA's jurisdiction under portability, the notice to the HHA must specify the area where the family wishes to move [24 CFR 982.314(d)(2), Notice PIH 2004-12]. The notices must be in writing [24 CFR 982.5].

Approval**HHA Policy**

Upon receipt of a family's notification that it wishes to move, the HHA will determine whether the move is approvable in accordance with the regulations and policies set forth in sections 10-I.A and 10-I.B. The HHA will notify the family in writing of its determination within 10 business days following receipt of the family's notification.

Reexamination of Family Income and Composition**HHA Policy**

For families approved to move to a new unit within the HHA's jurisdiction, the HHA will perform a new annual reexamination in accordance with the policies set forth in Chapter 11 of this plan.

For families moving into or families approved to move out of the HHA's jurisdiction under portability, the HHA will follow the policies set forth in Part II of this chapter.

Voucher Issuance and Briefing

HHA Policy

For families approved to move to a new unit within the HHA's jurisdiction, the HHA will issue a new voucher within 10 business days of the HHA's written approval to move. No briefing is required for these families. The HHA will follow the policies set forth in Chapter 5 on voucher term, extension, and expiration. If a family does not locate a new unit within the term of the voucher and any extensions, the family may remain in its current unit with continued voucher assistance if the owner agrees and the HHA approves. Otherwise, the family will lose its assistance.

For families moving into or families approved to move out of the HHA's jurisdiction under portability, the HHA will follow the policies set forth in Part II of this chapter.

Housing Assistance Payments [24 CFR 982.311(d)]

When a family moves out of an assisted unit, the HHA may not make any housing assistance payment to the owner for any month **after** the month the family moves out. The owner may keep the housing assistance payment for the month when the family moves out of the unit.

If a participant family moves from an assisted unit with continued tenant-based assistance, the term of the assisted lease for the new assisted unit may begin during the month the family moves out of the first assisted unit. Overlap of the last housing assistance payment (for the month when the family moves out of the old unit) and the first assistance payment for the new unit, is not considered to constitute a duplicative housing subsidy.

HHA Policy

HHA will not cross subsidize from one unit to another.

PART II: PORTABILITY

10-II.A. OVERVIEW

Within the limitations of the regulations and this plan, a participant family or an applicant family that has been issued a voucher has the right to use tenant-based voucher assistance to lease a unit anywhere in the United States providing that the unit is located within the jurisdiction of a PHA administering a tenant-based voucher program [24 CFR 982.353(b)]. The process by which a family obtains a voucher from one PHA and uses it to lease a unit in the jurisdiction of another PHA is known as portability. The first PHA is called the **initial PHA**. The second is called the **receiving PHA**.

The receiving PHA has the option of administering the family's voucher for the initial PHA or absorbing the family into its own program. Under the first option, the receiving PHA bills the initial PHA for the family's housing assistance payments and the fees for administering the family's voucher. Under the second option, the receiving PHA pays for the family's assistance out of its own program funds, and the initial PHA has no further relationship with the family.

The same PHA commonly acts as the initial PHA for some families and as the receiving PHA for others. Each role involves different responsibilities. The HHA will follow the rules and policies in section 10-II.B when it is acting as the initial PHA for a family. The HHA will follow the rules and policies in section 10-II.C when it is acting as the receiving PHA for a family.

10-II.B. INITIAL PHA ROLE

Allowable Moves under Portability

A family may move with voucher assistance only to an area where there is at least one PHA administering a voucher program [24 CFR 982.353(b)]. If there is more than one PHA in the area, the family may choose the receiving PHA [24 CFR 982.355(b)].

Applicant families that have been issued vouchers as well as participant families may qualify to lease a unit outside the HHA's jurisdiction under portability. The initial PHA, in accordance with HUD regulations and HHA's policy, determines whether a family qualifies.

Applicant Families

Under HUD regulations, most applicant families qualify to lease a unit outside the PHA's jurisdiction under portability. However, HUD gives the HHA discretion to deny a portability move by an applicant family for the same two reasons that it may deny any move by a participant family: insufficient funding and grounds for denial or termination of assistance.

HHA Policy

In determining whether or not to deny an applicant family permission to move under portability because the HHA lacks sufficient funding or has grounds for denying assistance to the family, HHA will follow the policies established in section 10-I.B of this chapter.

In addition, HHA may establish a policy denying the right to portability to nonresident applicants during the first 12 months after they are admitted to the program [24 CFR 982.353(c)].

HHA Policy

If neither the head of household nor the spouse/cohead of an applicant family had a domicile (legal residence) in the HHA's jurisdiction at the time the family's application for assistance was submitted, the family must live in the HHA's jurisdiction with voucher assistance for at least 12 months before requesting portability.

The HHA will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2). However, any exception to this policy is subject to the approval of the receiving PHA [24 CFR 982.353(c)(3)].

Participant Families

The HHA must not provide portable assistance for a participant if a family has moved out of its assisted unit in violation of the lease. [24 CFR 982.3539b.)]

HHA Policy

The HHA will determine whether a participant family may move out of the HHA's jurisdiction with continued assistance in accordance with the regulations and policies set forth here and in sections 10-I.A and 10-I.B of this chapter. The HHA will notify the family of its determination in accordance with the approval policy set forth in section 10-I.C of this chapter.

Determining Income Eligibility***Applicant Families***

An applicant family may lease a unit in a particular area under portability only if the family is income eligible for admission to the voucher program in that area [24 CFR 982.353(d)(3)]. The family must specify the area to which the family wishes to move [Notice 2004-12].

The initial PHA is responsible for determining whether the family is income eligible in the area to which the family wishes to move [24 CFR 982.355(c)(1)]. If the applicant family is not income eligible in that area, the PHA must inform the family that it may not move there and receive voucher assistance [Notice PIH 2004-12].

Participant Families

The income eligibility of a participant family is not redetermined if the family moves to a new jurisdiction under portability [24 CFR 982.353(d)(2), 24 CFR 982.355(c)(1)].

Reexamination of Family Income and Composition

No new reexamination of family income and composition is required for an applicant family. HHA Policy

For a participant family approved to move out of its jurisdiction under portability, the HHA generally will conduct a reexamination of family income and composition only if the family's annual reexamination must be completed on or before the initial billing deadline specified on form HUD-52665, Family Portability Information.

The HHA will make any exceptions to this policy necessary to remain in compliance with HUD regulations.

Briefing

The regulations and policies on briefings set forth in Chapter 5 of this plan require the HHA to provide information on portability to all applicant families that qualify to lease a unit outside the HHA's jurisdiction under the portability procedures. Therefore, no special briefing is required for these families.

HHA Policy

No formal briefing will be required for a participant family wishing to move outside the HHA's jurisdiction under portability. However, the HHA will provide the family with the same oral and written explanation of portability that it provides to applicant families selected for admission to the program (see Chapter 5). The HHA will provide the name, address, and phone of the contact for the HHA in the jurisdiction to which they wish to move. The HHA will advise the family which PHAs policies and procedures that they will be under, including subsidy standards and voucher extension policies.

Voucher Issuance and Term

An applicant family has no right to portability until after the family has been issued a voucher [24 CFR 982.353(b)]. In issuing vouchers to applicant families, the HHA will follow the regulations and procedures set forth in Chapter 5. A new voucher is not required for portability purposes.

HHA Policy

For families approved to move under portability, the HHA will issue a new voucher within 10 business days of the HHA's written approval to move.

The initial term of the voucher will be 60 days.

Voucher Extensions and Expiration

HHA Policy

The HHA will approve **no** extensions to a voucher issued to an applicant or participant family porting out of the HHA's jurisdiction except under the following circumstances: (a) the initial term of the voucher will expire before the portable family will be issued a voucher by the receiving PHA, (b) the family decides to return to the initial PHA's jurisdiction and search for a unit there, or (c) the family decides to search for a unit in a third PHA's jurisdiction. In such cases, the policies on voucher extensions set forth in Chapter 5, section 5-II.E, of this plan will apply, including the requirement that the family apply for an extension in writing prior to the expiration of the initial voucher term.

To receive or continue receiving assistance under the initial PHA's voucher program, a family that moves to another PHA's jurisdiction under portability must be under HAP contract in the receiving PHA's jurisdiction within 60 days following the expiration date of the initial PHA's voucher term (including any extensions). (See below under "Initial Billing Deadline" for one exception to this policy.)

Initial Contact with the Receiving PHA

Prior to approving a family's request to move under portability, the initial PHA must contact the receiving PHA to determine if the receiving PHA will be billings or absorbing. The receiving PHA must respond to this request in writing. If the receiving PHA agrees to absorb the voucher, it cannot reverse its decision at a later date without consent of the initial PHA.

After approving a family's request to move under portability, the initial PHA must promptly notify the receiving PHA to expect the family [24 CFR 982.355(c)(2)]. This means that the initial PHA must contact the receiving PHA directly on the family's behalf [Notice PIH 2004-12]. The initial PHA must also advise the family how to contact and request assistance from the receiving PHA [24 CFR 982.355(c)(2)].

HHA Policy

Because the portability process is time-sensitive, the HHA will notify the receiving PHA by phone, fax, or e-mail to expect the family. The HHA will also ask the receiving PHA to provide any information the family may need upon arrival, including the name, fax, email and telephone number of the staff person responsible for business with incoming portable families and procedures related to appointments for voucher issuance. The HHA will pass this information along to the family. The HHA will also ask for the name, address, telephone number, fax and email of the person responsible for processing the billing information.

Sending Documentation to the Receiving PHA

The HHA is required to send the receiving PHA the following documents:

- Form HUD-52665, Family Portability Information, with Part I filled out [Notice PIH 2004-12]
- A copy of the family's voucher [Notice PIH 2004-12]
- A copy of the family's most recent form HUD-50058, Family Report, or, if necessary in the case of an applicant family, family and income information in a format similar to that of form HUD-50058 [24 CFR 982.355(c)(4), Notice PIH 2004-12]
- Copies of the income verifications backing up the form HUD-50058 [24 CFR 982.355(c)(4), Notice PIH 2004-12]

HHA Policy

In addition to these documents, the HHA will provide the following information, if available, to the receiving PHA:

Social security Numbers (SSNs)

Documentation of SSNs for all family members

Documentation of legal identity

Documentation of citizenship or eligible immigration status

Documentation of participation in the earned income disallowance (EID) benefit

EIV information

The HHA will notify the family in writing regarding any information provided to the receiving PHA [HCV GB, p. 13-3].

Initial Billing Deadline [Notice PIH 2004-12]

When the HHA sends form HUD-52665 to the receiving PHA, it specifies in Part I the deadline by which it must receive the initial billing notice from the receiving PHA. This deadline is 60 days following the expiration date of the voucher issued to the family by the initial PHA. If the initial PHA does not receive a billing notice by the deadline and does not intend to honor a late billing submission, it must contact the receiving PHA to determine the status of the family. If the receiving PHA reports that the family is not yet under HAP contract, the initial PHA may refuse to accept a late billing submission. If the receiving PHA reports that the family is under HAP contract and the receiving PHA cannot absorb the family, the initial PHA must accept a late billing submission; however, it may report to HUD the receiving PHA's failure to comply with the deadline.

HHA Policy

If the HHA has not received an initial billing notice from the receiving PHA by the deadline specified on form HUD-52665, it will contact the receiving PHA by phone, fax, or e-mail on the next business day. If the PHA reports that the family is not yet under HAP contract, the HHA will inform the receiving PHA that it will not honor a late billing submission and will return any subsequent billings that it receives on behalf of the family. The HHA will send the receiving PHA a written confirmation of its decision by mail.

The HHA will allow an exception to this policy if the family includes a person with disabilities and the late billing is a result of a reasonable accommodation granted to the family by the receiving PHA.

Monthly Billing Payments [24 CFR 982.355(e), Notice PIH 2004-12]

If the receiving PHA is administering the family's voucher, the initial PHA is responsible for making billing payments in a timely manner. The first billing amount is due within 30 calendar days after the initial PHA receives Part II of form HUD-52665 from the receiving PHA. Subsequent payments must be **received** by the receiving PHA no later than the fifth business day of each month. The payments must be provided in a form and manner that the receiving PHA is able and willing to accept.

The initial PHA may not terminate or delay making payments under existing portability billing arrangements as a result of over leasing or funding shortfalls. The PHA must manage its tenant-based program in a manner that ensures that it has the financial ability to provide assistance for families that move out of its jurisdiction under portability and are not absorbed by receiving PHAs as well as for families that remain within its jurisdiction.

HHA Policy

The HHA will utilize direct deposit to ensure that the payment is received by the deadline unless the receiving PHA notifies the HHA that direct deposit is not acceptable to them.

Annual Updates of Form HUD-50058

If the HHA is being billed on behalf of a portable family, it should receive an updated form HUD-50058 each year from the receiving PHA. If the HHA fails to receive an updated 50058 by

the family's annual reexamination date, the HHA should contact the receiving PHA to verify the status of the family.

Subsequent Family Moves

Within the Receiving PHA's Jurisdiction [24 CFR 314(e)(1), Notice PIH 2005-1]

The initial PHA has the authority to deny subsequent moves by portable families whom it is assisting under portability billing arrangements if it does not have sufficient funding for continued assistance.

HHA Policy

If the HHA determines that it must deny moves on the grounds that it lacks sufficient funding (see section 10-I.B), it will notify all receiving PHAs with which it has entered into portability billing arrangements that they, too, must deny moves to higher cost units by portable families from the HHA's jurisdiction.

The HHA will allow exceptions to this policy for purposes of reasonable accommodation of a family member who is a person with disabilities.

Outside the Receiving PHA's Jurisdiction [Notice PIH 2004-12]

If the HHA is assisting a portable family under a billing arrangement and the family subsequently decides to move out of the receiving PHA's jurisdiction, the HHA is responsible for issuing the family a voucher while the family is either being assisted or has a voucher from the receiving PHA and, if the family wishes to port to another jurisdiction, sending form HUD-52665 and supporting documentation to the new receiving PHA. Any extensions of the HHA's voucher necessary to allow the family additional search-time to return to the HHA's jurisdiction or to move to another jurisdiction would be at the discretion of the HHA.

Denial or Termination of Assistance [24 CFR 982.355(c)(9)]

If the HHA has grounds for denying or terminating assistance for a portable family that has not been absorbed by the receiving PHA, the HHA may act on those grounds at any time. (For HHA policies on denial and termination, see Chapters 3 and 12, respectively.)

10-II.C. RECEIVING PHA ROLE

If a family has a right to lease a unit in the receiving PHA's jurisdiction under portability, the receiving PHA must provide assistance for the family [24 CFR 982.355(10)].

The receiving PHA's procedures and preferences for selection among eligible applicants do not apply, and the receiving PHA's waiting list is not used [24 CFR 982.355(10)]. However, the family's unit, or voucher, size is determined in accordance with the subsidy standards of the receiving PHA [24 CFR 982.355(7)], and the amount of the family's housing assistance payment

is determined in the same manner as for other families in the receiving PHA's voucher program [24 CFR 982.355(e)(2)].

Initial Contact with Family

When a family moves into the HHA's jurisdiction under portability, the family is responsible for promptly contacting the HHA and complying with the HHA's procedures for incoming portable families [24 CFR 982.355(c)(3)].

If the voucher issued to the family by the initial PHA has expired, the HHA does not process the family's paperwork but instead refers the family back to the initial PHA [Notice PIH 2004-12].

When a portable family requests assistance from the HHA, the HHA must promptly inform the initial PHA whether the HHA will bill the initial PHA for assistance on behalf of the portable family or will absorb the family into its own program [24 CFR 982.355(c)(5)]. If the HHA initially bills the initial PHA for the family's assistance, it may later decide to absorb the family into its own program [Notice PIH 2004-12]. (See later under "Absorbing a Portable Family" for more on this topic.)

HHA Policy

Within 10 business days after a portable family requests assistance, the HHA will notify the initial PHA whether it intends to bill the initial PHA on behalf of the portable family or absorb the family into its own program.

If for any reason the HHA refuses to process or provide assistance to a family under the portability procedures, the family must be given the opportunity for an informal review or hearing [Notice PIH 2004-12]. (For more on this topic, see later under "Denial or Termination of Assistance.")

Briefing

HUD allows the HHA to require a briefing for an incoming portable family as long as the requirement does not unduly delay the family's search [Notice PIH 2004-12].

HHA Policy

The HHA will require the family to attend a briefing. The HHA will provide the family with a briefing packet (as described in Chapter 5) and, inform the family about the HHA's payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process.

Income Eligibility and Reexamination

HUD allows the HHA to conduct its own income reexamination of a portable family [24 CFR 982.355(c)(4)]. However, the HHA may not delay voucher issuance or unit approval until the reexamination process is complete unless the reexamination is necessary to determine that an applicant family is income eligible for admission to the program in the area where the family

wishes to lease a unit [Notice PIH 2004-12, 24 CFR 982.201(b)(4)]. The HHA does not redetermine income eligibility for a portable family that was already receiving assistance in the initial PHA's voucher program [24 CFR 982.355(c)(1)].

HHA Policy

For any family moving into its jurisdiction under portability, the HHA will conduct a new reexamination of family income and composition. However, the HHA will not delay issuing the family a voucher for this reason. Nor will the HHA delay approving a unit for the family until the reexamination process is complete unless the family is an applicant and the HHA cannot otherwise confirm that the family is income eligible for admission to the program in the area where the unit is located.

In conducting its own reexamination, the HHA will rely upon any verifications provided by the initial PHA to the extent that they (a) accurately reflect the family's current circumstances and (b) were obtained within the last 120 days. Any new information may be verified by documents provided by the family and adjusted, if necessary, when third party verification is received.

Voucher Issuance

When a family moves into its jurisdiction under portability, the HHA is required to issue the family a voucher [24 CFR 982.355(b)(6)]. The family must submit a request for tenancy approval to the HHA during the term of the HHA's voucher [24 CFR 982.355(c)(6)].

Timing of Voucher Issuance

HUD expects the HHA to issue the voucher within two weeks after receiving the family's paperwork from the initial PHA if the information is in order, the family has contacted the HHA, and the family complies with the HHA's procedures [Notice PIH 2004-12].

HHA Policy

When a family ports into its jurisdiction, the HHA will issue the family a voucher based on the paperwork provided by the initial PHA unless the family's paperwork from the initial PHA is incomplete, the family's voucher from the initial PHA has expired or the family does not comply with the HHA's procedures. The HHA will update the family's information when verification has been completed.

Voucher Term

The term of the HHA's voucher may not expire before 30 calendar days from the term of the initial PHA's voucher [24 CFR 982.355(c)(6)].

HHA Policy

The HHA's voucher will expire 30 calendar days from the term of the initial PHA's voucher.

Voucher Extensions [24 CFR 982.355(c)(6), Notice 2004-12]

The HHA may provide additional search time to the family beyond the expiration date of the initial PHA's voucher; however, if it does so, it must inform the initial PHA of the extension. It must also bear in mind the billing deadline provided by the initial PHA. Unless willing and able to absorb the family, the HHA should ensure that any voucher expiration date would leave sufficient time to process a request for tenancy approval, execute a HAP contract, and deliver the initial billing to the initial PHA.

HHA Policy

The HHA generally will not extend the term of the voucher that it issues to an incoming portable family unless the HHA plans to absorb the family into its own program, in which case it will follow the policies on voucher extension set forth in section 5-II.E.

The HHA will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see Chapter 2).

Notifying the Initial PHA

The HHA must promptly notify the initial PHA if the family has leased an eligible unit under the program or if the family fails to submit a request for tenancy approval for an eligible unit within the term of the HHA's voucher [24 CFR 982.355(c)(8)]. The HHA is required to use Part II of form HUD-52665, Family Portability Information, for this purpose [24 CFR 982.355(e)(5), Notice PIH 2004-12]. (For more on this topic and the deadline for notification, see below under "Administering a Portable Family's Voucher.")

If an incoming portable family ultimately decides not to lease in the jurisdiction of the HHA but instead wishes to return to the initial PHA's jurisdiction or to search in another jurisdiction, the HHA must refer the family back to the initial PHA. In such a case the voucher of record for the family is once again the voucher originally issued by the initial PHA. Any extension of search time provided by the HHA's voucher is only valid for the family's search in the HHA's jurisdiction. [Notice PIH 2004-12]

Administering a Portable Family's Voucher

Initial Billing Deadline

If a portable family's search for a unit is successful and the HHA intends to administer the family's voucher, the HHA must submit its initial billing notice (Part II of form HUD-52665) (a) no later than 10 business days following the date the HHA **executes** a HAP contract on behalf of the family **and** (b) in time that the notice will be **received** no later than 60 days following the expiration date of the family's voucher issued by the initial PHA [Notice PIH 2004-12]. A copy of the family's form HUD-50058, Family Report, completed by the HHA must be attached to the initial billing notice. The HHA may send these documents by mail, fax, or e-mail.

HHA Policy

The HHA will send its initial billing notice by fax or e-mail, if necessary, to meet the billing deadline but will also send the notice by regular mail.

If the HHA fails to send the initial billing within 10 business days following the date the HAP contract is executed, it is required to absorb the family into its own program unless (a) the initial PHA is willing to accept the late submission or (b) HUD requires the initial PHA to honor the late submission (e.g., because the HHA is over leased) [Notice PIH 2004-12].

Ongoing Notification Responsibilities [Notice PIH 2004-12, HUD-52665]

Annual Reexamination. The HHA must send the initial PHA a copy of a portable family's updated form HUD-50058 after each annual reexamination for the duration of time the HHA is billing the initial PHA on behalf of the family, regardless of whether there is a change in the billing amount.

HHA Policy

The HHA will send a copy of the updated HUD-50058 by regular mail at the same time the participant and owner are notified of the reexamination results.

Change in Billing Amount. The HHA is required to notify the initial PHA, using form HUD-52665, of any change in the billing amount for the family as a result of:

- A change in the HAP amount (because of a reexamination, a change in the applicable payment standard, a move to another unit, etc.)
- An abatement or subsequent resumption of the HAP payments
- Termination of the HAP contract
- Payment of a damage/vacancy loss claim for the family
- Termination of the family from the program

The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. Under no circumstances should the notification be later than 10 business days following the effective date of the change in the billing amount.

Late Payments [Notice PIH 2004-12]

If the initial PHA fails to make a monthly payment for a portable family by the fifth business day of the month, the HHA must promptly notify the initial PHA in writing of the deficiency. The notice must identify the family, the amount of the billing payment, the date the billing payment was due, and the date the billing payment was received (if it arrived late). The HHA must send a copy of the notification to the Office of Public Housing (OPH) in the HUD area office with jurisdiction over the HHA. If the initial PHA fails to correct the problem by the second month following the notification, the HHA may request by memorandum to the director of the OPH with jurisdiction over the HHA that HUD transfer the unit in question. A copy of the initial

notification and any subsequent correspondence between the PHAs on the matter must be attached. The HHA must send a copy of the memorandum to the initial PHA. If the OPH decides to grant the transfer, the billing arrangement on behalf of the family ceases with the transfer, but the initial PHA is still responsible for any outstanding payments due to the HHA.

Overpayments [Notice PIH 2004-12]

In all cases where the HHA has received billing payments for billing arrangements no longer in effect, the HHA is responsible for returning the full amount of the overpayment (including the portion provided for administrative fees) to the initial PHA.

In the event that HUD determines billing payments have continued for at least three months because the HHA failed to notify the initial PHA that the billing arrangement was terminated, the HHA must take the following steps:

- Return the full amount of the overpayment, including the portion provided for administrative fees, to the initial PHA.
- Once full payment has been returned, notify the Office of Public Housing in the HUD area office with jurisdiction over the HHA of the date and the amount of reimbursement to the initial PHA.

At HUD's discretion, the HHA will be subject to the sanctions spelled out in Notice PIH 2004-12.

Denial or Termination of Assistance

At any time, the HHA may make a determination to deny or terminate assistance to a portable family for family action or inaction [24 CFR 982.355(c)(9), 24 CFR 982.355(c)(10)].

In the case of a termination, the HHA should provide adequate notice of the effective date to the initial PHA to avoid having to return a payment. In no event should the HHA fail to notify the initial PHA later than 10 business days following the effective date of the termination of the billing arrangement. [Notice PIH 2004-12]

HHA Policy

If the HHA elects to deny or terminate assistance for a portable family, the HHA will notify the initial PHA within 10 business days after the informal review or hearing if the denial or termination is upheld. The HHA will base its denial or termination decision on the policies set forth in Chapter 3 or Chapter 12, respectively. The informal review or hearing will be held in accordance with the policies in Chapter 16. The HHA will furnish the initial PHA with a copy of the review or hearing decision.

Absorbing a Portable Family

The HHA may absorb an incoming portable family into its own program when the HHA executes a HAP contract on behalf of the family or at any time thereafter providing that (a) the

HHA has funding available under its annual contributions contract (ACC) and (b) absorbing the family will not result in over leasing [24 CFR 982.355(d)(1), Notice PIH 2004-12].

If the HHA absorbs a family from the point of admission, the admission will be counted against the income-targeting obligation of the HHA [24 CFR 982.201(b)(2)(vii)].

If the HHA absorbs a family after providing assistance for the family under a billing arrangement with the initial PHA, HUD encourages the HHA to provide adequate advance notice to the initial PHA to avoid having to return an overpayment. The HHA must specify the effective date of the absorption of the family. [Notice PIH 2004-12]

HHA Policy

If the HHA decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, the HHA will notify the initial PHA by the initial billing deadline specified on form HUD-52665. The effective date of the HAP contract will be the effective date of the absorption.

If the HHA decides to absorb a family after that, it will provide the initial PHA with 30 days' advance notice.

Following the absorption of an incoming portable family, the family is assisted with funds available under the consolidated ACC for the HHA's voucher program [24 CFR 982.355(d)], and the HHA becomes the initial PHA in any subsequent moves by the family under portability.

Chapter 11

REEXAMINATIONS

INTRODUCTION

The HHA is required to reexamine each family's income and composition at least annually, and to adjust the family's level of assistance accordingly. Interim reexaminations are also needed in certain situations. This chapter discusses both annual and interim reexaminations, and the recalculation of family share and subsidy that occurs as a result. HUD regulations and HHA policies concerning reexaminations are presented in three parts:

Part I: Annual Reexaminations. This part discusses the process for conducting annual reexaminations.

Part II: Interim Reexaminations. This part details the requirements for families to report changes in family income and composition between annual reexaminations.

Part III: Recalculating Family Share and Subsidy Amount. This part discusses the recalculation of family share and subsidy amounts based on the results of annual and interim reexaminations.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this plan, apply to both annual and interim reexaminations.

PART I: ANNUAL REEXAMINATIONS [24 CFR 982.516]

11-I.A. OVERVIEW

The HHA must conduct a reexamination of family income and composition at least annually. This includes gathering and verifying current information about family composition, income, and expenses. Based on this updated information, the family's income and rent must be recalculated. This part discusses the schedule for annual reexaminations, the information to be collected and verified, and annual reexamination effective dates.

11-I.B. SCHEDULING ANNUAL REEXAMINATIONS

The HHA must establish a policy to ensure that the annual reexamination for each family is completed *within* a 12-month period, and may require reexaminations more frequently [HCV GB p. 12-1].

HHA Policy

The HHA will begin the annual reexamination process 120 days in advance of its scheduled effective date. Generally, the HHA will schedule annual reexamination effective dates to coincide with the family's anniversary date.

Anniversary date is defined as 12 months from the effective date of the family's last annual reexamination or, during a family's first year in the program, from the effective date of the family's initial examination (admission).

If the family moves to a new unit, the HHA will perform a new annual reexamination.

The HHA also may schedule an annual reexamination for completion prior to the anniversary date for administrative purposes.

Notification of and Participation in the Annual Reexamination Process

The HHA is required to obtain the information needed to conduct annual reexaminations. How that information will be collected is left to the discretion of the HHA.

HHA Policy

Families generally are required to participate in an annual reexamination interview, which must be attended by the head of household, spouse, or cohead. If participation in an in-person interview poses a hardship because of a family member's disability, the family should contact the HHA to request a reasonable accommodation (see Chapter 2).

Notification of annual reexamination interviews will be sent by first-class mail and will contain the date, time, and location of the interview. In addition, it will inform the family of the information and documentation that must be brought to the interview.

If the family is unable to attend a scheduled interview, the family should contact the HHA in advance of the interview to schedule a new appointment. If a family does not attend the scheduled interview, the HHA will send a second notification with a new interview appointment time.

If a family fails to attend two scheduled interviews without HHA approval, or if the notice is returned by the post office with no forwarding address, a notice of termination (see Chapter 12) will be sent to the family's address of record, and to any alternate address provided in the family's file.

An advocate, interpreter, or other assistant may assist the family in the interview process. The family and the HHA must execute a certification attesting to the role and assistance of any such third party.

11-I.C. CONDUCTING ANNUAL REEXAMINATIONS

As part of the annual reexamination process, families are required to provide updated information to the HHA regarding the family's income, expenses, and composition [24 CFR 982.551(b)].

HHA Policy

Families will be asked to bring all required information (as described in the reexamination notice) to the reexamination appointment. The required information will include a HHA-designated reexamination form, an Authorization for the Release of Information/Privacy Act Notice, as well as supporting documentation related to the family's income, expenses, and family composition.

Any required documents or information that the family is unable to provide at the time of the interview must be provided within 10 business days of the interview. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension.

If the family does not provide the required documents or information within the required time frame (plus any extensions), the family will be sent a notice of termination (See Chapter 12).

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the agency has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

- Legal identity
- Age
- Social security Numbers
- A person's disability status
- Citizenship or immigration status

If adding a new family member to the unit causes overcrowding according to the Housing Quality Standards (HQS) (see Chapter 8), the HHA must issue the family a new voucher, and the family and HHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the HHA must terminate the HAP contract in accordance with its terms [24 CFR 982.403].

11-I.D. EFFECTIVE DATES

The HHA must establish policies concerning the effective date of changes that result from an annual reexamination [24 CFR 982.516].

HHA Policy

In general, an *increase* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date, and the family will be notified at least 30 days in advance.

If less than 30 days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the 30-day notice period.

If a family moves to a new unit, the increase will take effect on the effective date of the new lease and HAP contract, and no 30-day notice is required.

If the HHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the HHA, but will always allow for the 30-day notice period.

If the family causes a delay in processing the annual reexamination, *increases* in the family share of the rent will be applied retroactively, to the scheduled effective date of the annual reexamination. The family will be responsible for any overpaid subsidy and will be required to pay the amount owed to HHA by the first of the following month as described in Chapter 14.

In general, a *decrease* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date.

If a family moves to a new unit, the decrease will take effect on the effective date of the new lease and HAP contract.

If the HHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the HHA.

If the family causes a delay in processing the annual reexamination, *decreases* in the family share of the rent will be applied prospectively, from the first day of the month following completion of the reexamination processing.

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by the HHA by the date specified, and this delay prevents the HHA from completing the reexamination as scheduled.

PART II: INTERIM REEXAMINATIONS [24 CFR 982.516]

11-II.A. OVERVIEW

Family circumstances may change throughout the period between annual reexaminations. HUD and HHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances the HHA must process interim reexaminations to reflect those changes. HUD regulations also permit the HHA to conduct interim reexaminations of income or family composition at any time. When an interim reexamination is conducted, only those factors that have changed are verified and adjusted [HCV GB, p. 12-10].

In addition to specifying what information the family must report, HUD regulations permit the family to request an interim determination if other aspects of the family's income or composition changes. The HHA must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and HHA policies describing what changes families are required to report, what changes families may choose to report, and how the HHA will process both HHA- and family-initiated interim reexaminations.

11-II.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION

The HHA must adopt policies prescribing when and under what conditions the family must report changes in family composition. However, due to family obligations under the program, the HHA has limited discretion in this area.

HHA Policy

The HHA will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations

New Family Members Requiring Approval

The addition of a family member as a result of birth, adoption, or court-awarded custody does require HHA approval. However, the family is required to promptly notify the HHA of the addition [24 CFR 982.551(h)(2)].

HHA Policy

The family must inform the HHA of the birth, adoption or court-awarded custody of a child within 30 days.

New Family and Household Members Requiring Approval

Members who join the family as a result of birth, adoption, or court-awarded custody, a family must request HHA approval to add a new family member [24 CFR 982.551(h)(2)] or other household member (live-in aide or foster child) [24 CFR 982.551(h)(4)].

When any new family member is added, the HHA must conduct a reexamination to determine any new income or deductions associated with the additional family member, and to make appropriate adjustments in the family share of the rent and the HAP payment [24 CFR 982.516(e)].

If a change in family size causes a violation of Housing Quality Standards (HQS) space standards (see Chapter 8), the HHA must issue the family a new voucher, and the family and HHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the HHA must terminate the HAP contract in accordance with its terms [24 CFR 982.403].

HHA Policy

Families must request HHA approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 30 consecutive days, or 90 cumulative days, within a twelve-month period, and therefore no longer qualifies as a “guest.” Requests must be made in writing and approved by the HHA prior to the individual moving in the unit.

The HHA will not approve the addition of a new family or household member unless the individual meets the HHA’s eligibility criteria (see Chapter 3).

The HHA will not approve the addition of a foster child or foster adult if it will cause a violation of HQS space standards.

If the HHA determines an individual meets the HHA's eligibility criteria as defined in Chapter 3, the HHA will provide written approval to the family. If the approval of a new family member or live-in aide will cause overcrowding according to HQS standards, the approval letter will explain that the family will be issued another voucher and will be required to move.

If the HHA determines that an individual does not meet the HHA's eligibility criteria as defined in Chapter 3, the HHA will notify the family in writing of its decision to deny approval of the new family or household member and the reasons for the denial.

The HHA will make its determination within 10 business days of receiving all information required to verify the individual's eligibility.

Departure of a Family or Household Member

Families must promptly notify the HHA if any family member no longer lives in the unit [24 CFR 982.551(h)(3)]. Because household members are considered when determining the family unit (voucher) size [24 CFR 982.402], the HHA also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit.

HHA Policy

If a household member ceases to reside in the unit, the family must inform the HHA within 10 business days. This requirement also applies to a family member who has been considered temporarily absent at the point that the family concludes the individual is permanently absent.

If a live-in aide, foster child, or foster adult ceases to reside in the unit, the family must inform the HHA within 30 business days.

11-II.C. CHANGES AFFECTING INCOME OR EXPENSES

At any time, the PHA may conduct an Interim reexamination of family income because of any changes since the family's last rent determination. The PHA must adopt policies prescribing when and under what conditions the family must report a change in family income and the effective date of a change in the housing assistance payment resulting from an interim redetermination.

HHA-Initiated Interim Reexaminations

HHA-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by the HHA. They are not scheduled because of changes reported by the family.

HHA Policy

The HHA will conduct interim reexaminations in each of the following instances:

For families receiving the Earned Income Disallowance (EID), the HHA will conduct an interim reexamination at the start of the 12 month 100% exclusion period, at the start of the second 12-month exclusion period (50 percent phase-in period) and at the conclusion of the Earned Income Disallowance (EID).

The HHA may conduct an interim reexamination at any time in order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint.

Family-Initiated Interim Reexaminations

The HHA must adopt policies prescribing when and under what conditions the family must report changes in family income or expenses [24 CFR 982.516(c)]. In addition, HUD regulations require that the family be permitted to obtain an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 982.516(b)(2)].

Required Reporting

HUD regulations give the HHA the freedom to determine the circumstances under which families will be required to report changes affecting income.

HHA Policy

Families are required to report all increases in earned income, including new employment, within 30 calendar days of the date the change takes effect.

HHA will not conduct interim reexaminations between annual re-certifications when families have an increase in income except in the following circumstances:

- Families with zero income will be required to report and verify all increases in income/assets within thirty (30) days of the change. An interim reexamination will be conducted;
- Families participating in the Family Self Sufficiency Program;
- At the start of the 12 month 100% exclusion period; at the start of the 50% exclusion period and at the end of the Earned Income Disallowance;
- To correct an income calculation error or incorrect information which resulted in an incorrect rent calculation;
- There is evidence or a pattern that the family is manipulating the program by a pattern of reducing income just prior to the annual recertification and increasing their income right after.
- Or if the family has an incremental income increase of \$5,000 or more annually.

Optional Reporting

The family may request an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 982.516(b)(2)]. The HHA must process

the request if the family reports a change that will result in a reduced family income [HCV GB, p. 12-9].

If a family reports a decrease in income from the loss of welfare benefits due to fraud or non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program, the family's share of the rent will not be reduced [24 CFR 5.615]. For more information regarding the requirement to impute welfare income see Chapter 6.

HHA Policy

If a family reports a change that it was not required to report and that would result in an increase in the family share of the rent, the HHA will note the file.

If a family reports a change that it was not required to report and that would result in a decrease in the family share of rent, the HHA will conduct an interim reexamination. See Section 11-II.D. for the effective dates.

Families may report changes in income or expenses at any time.

11-II.D. PROCESSING THE INTERIM REEXAMINATION

Method of Reporting

HHA Policy

The family must notify the HHA of changes in writing within 30 days of the change. The HHA will schedule an interim reexamination if required to conduct and interim reexamination, and the family must provide documentation of the change. If the family does not provide documentation during the reexamination if required, the family must submit any required information or documents within 10 business days to the HHA. This time frame may be extended for good cause with HHA approval. The HHA will accept required documentation by mail, by fax, or in person.

Effective Dates

The HHA must establish the time frames in which any changes that result from an interim reexamination will take effect [24 CFR 982.516(d)]. The changes may be applied either retroactively or prospectively, depending on whether there is to be an increase or a decrease in the family share of the rent, and whether the family reported any required information within the required time frames [HCV GB, p. 12-10].

HHA Policy

If the family share of the rent is to *increase*:

The increase generally will be effective on the first of the month following 30 days' notice to the family.

If a family fails to report a change within the required time frames, or fails to provide all required information within the required time frames, the increase will be applied retroactively, to the date it would have been effective had the

information been provided on a timely basis. The family will be responsible for any overpaid subsidy and may be required to pay the full amount the first of the following month in accordance with Chapter 12.

If the family share of the rent is to *decrease*:

The decrease will be effective on the first day of the month following the month in which the change was reported and all required documentation was submitted. In cases where the change cannot be verified until after the date the change would have become effective following the month the verification is received.

PART III: RECALCULATING FAMILY SHARE AND SUBSIDY AMOUNT

11-III.A. OVERVIEW

After gathering and verifying required information for an annual or interim reexamination, the HHA must recalculate the family share of the rent and the subsidy amount, and notify the family and owner of the changes [24 CFR 982.516(d)(2), HCV 12-6 and 12-10]. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

11-III.B. CHANGES IN PAYMENT STANDARDS AND UTILITY ALLOWANCES

In order to calculate the family share of the rent and HAP amount correctly, changes in payment standards, subsidy standards, or utility allowances may need to be updated and included in the HHA's calculations.

Specific policies governing how subsidy standards, payment standards, and utility allowances are applied are discussed below.

Payment Standards [24 CFR 982.505]

The family share of the rent and HAP calculations must use the correct payment standard for the family, taking into consideration the family unit size, the size of unit, and the area in which the unit is located [HCV GB, p. 12-5]. See Chapter 6 for information on how to select the appropriate payment standard.

When the HHA changes its payment standards or the family's situation changes, new payment standards are applied at the following times:

- If the HHA's payment standard amount changes during the term of the HAP contract, the date on which the new standard is applied depends on whether the standard has increased or decreased:
 - If the payment standard amount has *increased*, the increased payment standard will be applied at the *first annual* reexamination following the effective date of the increase in the payment standard.

- If the payment standard amount has *decreased*, the decreased payment standard for families under a housing assistance payment (HAP) contract at the time of the decrease in the payment standard, the previous higher payment standard will continue to be applied for the family's subsidy calculation for as long as the family continues to receive voucher assistance in that unit under the existing HAP contract. All other family subsidy calculation procedures remain the same.
- If the family moves to a new unit, or a new HAP contract is executed due to changes in the lease (even if the family remains in place) the current payment standard applicable to the family will be used when the new HAP contract is processed.

Subsidy Standards [24 CFR 982.505(c)(4)]

If there is a change in the family unit size that would apply to a family during the HAP contract term, either due to a change in family composition, or a change in the HHA's subsidy standards (see Chapter 5), the new family unit size must be used to determine the payment standard amount for the family at the family's *first annual* reexamination following the change in family unit size.

Utility Allowances [24 CFR 982.517(d)]

The family share of the rent and HAP calculations must reflect any changes in the family's utility arrangement with the owner, or in the HHA's utility allowance schedule [HCV GB, p. 12-5]. Chapter 6 discusses how utility allowance schedules are established.

When there are changes in the utility arrangement with the owner, the HHA must use the utility allowances in effect at the time the new lease and HAP contract are executed.

At reexamination, the HHA must use the HHA current utility allowance schedule [24 CFR 982.517(d)(2)].

HHA Policy

Revised utility allowances will be applied to a family's rent and subsidy calculations at the first annual or interim reexamination after the allowance is adopted.

11-III.C. NOTIFICATION OF NEW FAMILY SHARE AND HAP AMOUNT

The HHA must notify the owner and family of any changes in the amount of the HAP payment [HUD-52641, HAP Contract]. The notice must include the following information [HCV GB, p. 12-6]:

- The amount and effective date of the new HAP payment
- The amount and effective date of the new family share of the rent
- The amount and effective date of the new tenant rent to owner

The family must be given an opportunity for an informal hearing regarding the HHA's determination of their annual or adjusted income, and the use of such income to compute the housing assistance payment [24 CFR 982.555(a)(1)(i)] (see Chapter 16).

HHA Policy

The notice to the family will include the annual and adjusted income amounts that were used to calculate the family share of the rent and the housing assistance payment. The notice also will state the procedures for requesting an informal hearing.

11-III.D. DISCREPANCIES

During an annual or interim reexamination, the HHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, the HHA may discover errors made by the HHA. When errors resulting in the overpayment or underpayment of subsidy are discovered, corrections will be made in accordance with the policies in Chapter 14.

Chapter 12

TERMINATION OF ASSISTANCE AND TENANCY

HUD regulations specify the reasons for which a HHA can terminate a family's assistance, and the ways in which such terminations must take place. They also dictate the circumstances under which an owner may terminate the tenancy of an assisted family. This chapter presents the policies that govern voluntary and involuntary terminations of assistance, and termination of tenancy by the owner. It is presented in three parts:

Part I: Grounds for Termination of Assistance. This part discusses various reasons that a family's assistance may be terminated, including voluntary termination by the family, termination because the family no longer qualifies to receive subsidy, and termination by the HHA based on the family's behavior.

Part II: Approach to Termination of Assistance. This part describes the policies that govern how an involuntary termination takes place. It specifies the alternatives that the HHA may consider in lieu of termination, the criteria the HHA must use when deciding what action to take and the steps the HHA must take when terminating a family's assistance.

Part III: Termination of Tenancy by the Owner. This part presents the policies that govern the owner's right to terminate an assisted tenancy.

PART I: GROUNDS FOR TERMINATION OF ASSISTANCE

12-I.A. OVERVIEW

HUD requires the HHA to terminate assistance for certain offenses and when the family no longer requires assistance. HUD permits the HHA to terminate assistance for certain other actions family members take or fail to take. In addition, a family may decide to stop receiving HCV assistance at any time by notifying the HHA.

12-I.B. FAMILY NO LONGER REQUIRES ASSISTANCE [24 CFR 982.455]

As a family's income increases, the amount of HHA subsidy goes down. If the amount of HCV assistance provided by the HHA drops to zero and remains at zero for 180 consecutive calendar days the family's assistance terminates automatically.

HHA Policy

If a participating family receiving zero assistance experiences a change in circumstances that would cause the HAP payment to rise above zero, the family must notify the HHA of the changed circumstances and request an interim reexamination before the expiration of the 180-day period.

12-I.C. FAMILY CHOOSES TO TERMINATE ASSISTANCE

The family may request that the HHA terminate the family's assistance at any time. HHA Policy

The request to terminate assistance should be made in writing and signed by the head of household, spouse, or cohead. Before terminating the family's assistance, the HHA will follow the notice requirements in Section 12-II.E.

12-I.D. MANDATORY TERMINATION OF ASSISTANCE

HUD requires the HHA to terminate assistance in the following circumstances.

Eviction [24 CFR 982.552(b)(2)]

The HHA must terminate assistance whenever a family is evicted from a unit assisted under the HCV program for a serious or repeated violation of the lease.

HHA Policy

A family will be considered *evicted* if the family moves after a legal eviction order has been issued, whether or not physical enforcement of the order was necessary.

If a family moves after the owner has given the family an eviction notice for serious or repeated lease violations but before a legal eviction order has been issued, termination of assistance is not mandatory. However, the HHA will determine whether the family has committed serious or repeated violations of the lease based on available evidence and may terminate assistance or take any of the alternative measures described in Section 12-II.C.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criterion to be used is whether the reason for the eviction was through no fault of the tenant or guests.

Failure to Provide Consent [24 CFR 982.552(b)(3)]

The HHA must terminate assistance if any family member fails to sign and submit any consent form they are required to sign for a reexamination. See Chapter 7 for a complete discussion of consent requirements.

Failure to Document Citizenship [24 CFR 982.552(b)(4) and [24 CFR 5.514(c)]

The HHA must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family; or (3) a family member, as determined by the HHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit.

For (3) above, such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated. See Chapter 7 for a complete discussion of documentation requirements.

Failure to Provide Social Security Documentation [24 CFR 5.218(c)]

The HHA must terminate assistance if a participant family fails to provide the documentation or certification required for any family member who obtains a social security number, joins the family, or reaches 6 years of age.

Methamphetamine Manufacture or Production [24 CFR 982.553(b)(1)(ii)]

The HHA must terminate assistance if any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.

12-I.E. MANDATORY POLICIES AND OTHER AUTHORIZED TERMINATIONS**Mandatory Policies [24 CFR 982.553(b) and 982.551(l)]**

HUD requires the HHA to establish policies that permit the HHA to terminate assistance if the HHA determines that:

- Any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member has violated the family's obligation not to engage in any drug-related criminal activity
- Any household member has violated the family's obligation not to engage in violent criminal activity

Ineligibility of Students

The only group of participants who would be terminated if ineligible individually or jointly are students under 24 and not a veteran, married or with no dependents. This group includes independent students. Therefore, if the rule only applies to eligibility and not rent, there will be no effect on all other student participants.

Use of Illegal Drugs and Alcohol Abuse

HHA Policy

The HHA will terminate a family's assistance if any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

The HHA will terminate assistance if any household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

Currently engaged in is defined as any use of illegal drugs during the previous three-year period.

The HHA will consider all credible evidence, including but not limited to, any record of arrests, convictions, or eviction of household members related to the use of illegal drugs or abuse of alcohol.

In making its decision to terminate assistance, the HHA will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, the HHA may, on a case-by-case basis, choose not to terminate assistance.

Drug-Related and Violent Criminal Activity [24 CFR 5.100]

Drug means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

Drug-related criminal activity is defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.

Violent criminal activity means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

HHA Policy

The HHA will terminate a family's assistance if any household member has violated the family's obligation not to engage in any drug-related or violent criminal activity during participation in the HCV program.

The HHA will consider all credible evidence, including but not limited to, any record of arrests and/or convictions of household members related to drug-related or violent criminal activity, and any eviction or notice to evict based on drug-related or violent criminal activity.

In making its decision to terminate assistance, the HHA will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, the HHA may, on a case-by-case basis, choose not to terminate assistance.

Other Authorized Reasons for Termination of Assistance [24 CFR 982.552(c)]

HUD permits the HHA to terminate assistance under a number of other circumstances. It is left to the discretion of the HHA whether such circumstances in general warrant consideration for the termination of assistance.

HHA Policy

The HHA **will not** terminate a family's assistance because of the family's failure to meet its obligations under the Family Self-Sufficiency or Welfare to Work voucher programs.

The HHA **will** terminate a family's assistance if:

The family has failed to comply with any family obligations under the program. See Exhibit 12-1 for a listing of family obligations and related HHA policies.

Any family member has been evicted from federally-assisted housing in the last five years.

Any family member has been terminated from assistance under any federal program.

Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.

The family currently owes rent or other amounts to any HHA in connection with the HCV, Certificate, Moderate Rehabilitation or public housing programs.

The family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.

The family has breached the terms of a repayment agreement entered into with the HHA or other PHA.

A family member has engaged in or threatened violent or abusive behavior toward HHA personnel.

Abusive or violent behavior towards HHA personnel includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to terminate assistance, the HHA will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon

consideration of such alternatives and factors, the HHA may, on a case-by-case basis, choose not to terminate assistance.

Family Absence from the Unit [24 CFR 982.312]

The family may be absent from the unit for brief periods. The HHA must establish a policy on how long the family may be absent from the assisted unit. However, the family may not be absent from the unit for a period of more than 180 consecutive calendar days for any reason. Absence in this context means that no member of the family is residing in the unit.

HHA Policy

Families are required to notify HHA if they are going to be absent for more than 30 calendar days. A person with a disability may request an extension as an accommodation.

If the family is absent from the unit for more than 30 consecutive calendar days without approval from the HHA, the family's assistance will be terminated. Notice of termination will be sent in accordance with Section 12-II.E.

Insufficient Funding [24 CFR 982.454]

The HHA may terminate HAP contracts if the HHA determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program.

HHA Policy

The HHA will determine whether there is sufficient funding to pay for currently assisted families according to the policies in Part VIII of Chapter 12. If the HHA determines there is a shortage of funding, prior to terminating any HAP contracts, the HHA will determine if any other actions can be taken to reduce program costs. If after implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants, the HHA will terminate HAP contracts as a last resort.

Prior to terminating any HAP contracts, the HHA will inform the local HUD field office. The HHA will terminate the minimum number needed in order to reduce HAP costs to a level within the HHA's annual budget authority.

If the HHA must terminate HAP contracts due to insufficient funding, the HHA will do so in accordance with the following criteria and instructions:

HHA will terminate assistance to the most recent non-disabled or non-elderly family that has become a participant in the program, until such time as the HHA has sufficient funds to assist. The family will not be required to reapply for the program when sufficient funds are available, but will be provided the opportunity to be assisted. The reinstatement of assistance for families shall be provided in the reverse order of the HHA's list of termination of assistance for the lack of sufficient funds

PART II: APPROACH TO TERMINATION OF ASSISTANCE**12-II.A. OVERVIEW**

The HHA is required by regulation to terminate a family's assistance if certain program rules are violated. For other types of offenses, the regulations give the HHA the discretion to either terminate the family's assistance or to take another action. This part discusses the various actions the HHA may choose to take when it has discretion, and outlines the criteria the HHA will use to make its decision about whether or not to terminate assistance. It also specifies the requirements for the notice that must be provided before terminating assistance.

12-II.B. METHOD OF TERMINATION [24 CFR 982.552(a)(3)]

The way in which the HHA terminates assistance depends upon individual circumstances. HUD permits the HHA to terminate assistance by:

- Terminating housing assistance payments under a current HAP contract,
- Refusing to approve a request for tenancy or to enter into a new HAP contract, or
- Refusing to process a request for or to provide assistance under portability procedures.

12-II.C. ALTERNATIVES TO TERMINATION OF ASSISTANCE**Change in Household Composition**

As a condition of continued assistance, the HHA may require that any household member who participated in or was responsible for an offense and no longer resides in the unit [24 CFR 982.552(c)(2)(ii)].

HHA Policy

As a condition of continued assistance, the head of household must certify that the culpable family member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former family member's current address upon HHA request.

Repayment of Family DebtsHHA Policy

If a family owes amounts to the HHA or another PHA, as a condition of continued assistance, the HHA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the PHA of the amount owed. See Chapter 16 for policies on repayment agreements.

12-II.D. CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE**Evidence**

For criminal activity, HUD permits the HHA to terminate assistance if a *preponderance of the evidence* indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted [24 CFR 982.553(c)].

HHA Policy

The HHA will use the concept of the preponderance of the evidence as the standard for making all termination decisions.

Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence

Consideration of Circumstances [24 CFR 982.552(c)(2)(i)]

The HHA is permitted, but not required, to consider all relevant circumstances when determining whether a family's assistance should be terminated.

HHA Policy

The HHA will consider the following factors when making its decision to terminate assistance:

The seriousness of the case, especially with respect to how it would affect other residents

The effects that termination of assistance may have on other members of the family who were not involved in the action or failure

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities

The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future

In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully

The HHA will require the participant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.

In the case of program abuse, the dollar amount of the overpaid assistance and whether or not a false certification was signed by the family.

12- II.E. VIOLENCE AGAINST WOMEN ACT (P.L. 109-62, P.L. 109-271)

An incident or incidents or actual or threatened domestic violence, dating violence, sexual assault or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence, and shall not be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence.

The HHA may terminate the assistance to remove a lawful occupant or tenant who engages in criminal acts or threatened acts of violence or stalking to family members or others without terminating the assistance or evicting victimized lawful occupants.

The HHA may honor court orders regarding the rights of access or control of the property, including EPO's, DVO's, and other orders issued to protect the victim as disused to address the distribution or possession of property among household members where the family "breaks up."

There is no limitation on the ability of the HHA to terminate assistance for other good cause unrelated to the incident or incidents of domestic violence, dating violence, sexual assault or stalking, other than the victim may not be subject to a "more demanding standard" than non-victims.

There is no prohibition on the HHA terminating assistance if it "can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant's (victim's) assistance is not terminated."

Any protections provided by law which give greater protection to the victim are not superseded by these provisions.

The HHA may require certification by the victim of victim status on such forms as the HHA and/or HUD shall prescribe or approve.

HHA Policy

See Exhibit 12-2: HHA Violence Against Women Policy Board approved on March 9, 2007.

Reasonable Accommodation [24 CFR 982.552(c)(2)(iv)]

If the family includes a person with disabilities, the HHA's decision to terminate the family's assistance is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

HHA Policy

If a family indicates the behavior of a family member with a disability is the reason for a proposed termination of assistance, the HHA will determine whether the behavior is related to the disability. If so, upon the family's request, the HHA will determine whether alternative measures are appropriate as a reasonable accommodation. The HHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed termination of assistance. See Chapter 2 for a discussion of reasonable accommodation.

12-II.E. TERMINATION NOTICE [HCV GB, p. 15-7]

If a family's assistance is to be terminated, whether voluntarily or involuntarily, the HHA must give the family and the owner written notice that specifies:

- The reasons for which assistance has been terminated
- The effective date of the termination
- The family's right to an informal hearing as described in Chapter 16

If a criminal record is the basis of the termination, a copy of the record must accompany the notice. A copy of the criminal record also must be provided to the subject of the record [24 CFR 982.553(d)].

HHA Policy

When termination is initiated by the HHA, the notice to terminate will be sent to the family and the owner at least 30 calendar days prior to the effective date of the termination. However, if a family vacates the unit without informing the HHA, 30 days notice will not be given. In these cases, the notice to terminate will be sent at the time the HHA learns the family has vacated the unit.

When a family requests to be terminated from the program they must do so in writing to the HHA (see section 12-I.C.). The HHA will then send a confirmation notice to the family and the owner within 10 business days of the family's request, but no later than the termination effective date (as requested by the family).

Notice of Termination Based on Citizenship Status [24 CFR 5.514 (c) and (d)]

The HHA must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or eligible immigration status; (2) evidence of citizenship and eligible immigration status is submitted timely, but USCIS primary and secondary verification does not verify eligible immigration status of a family; or (3) the HHA determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3) above, such termination must be for a period of at least 24 months.

The notice of termination must advise the family of the reasons their assistance is being terminated, that they may be eligible for proration of assistance, the criteria and procedures for obtaining relief under the provisions for preservation of families, that they have the right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal, and that they have the right to request an informal hearing with the HHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Informal hearing procedures are contained in Chapter 16.

HHA Policy

The notice to terminate will be sent to the family and the owner at least 30 calendar days prior to the effective date of the termination.

12-II.F. HOW TERMINATION OF ASSISTANCE AFFECTS THE HAP CONTRACT AND LEASE

When the family's assistance is terminated, the lease and HAP contract terminate automatically [Form HUD-52641].

The owner may offer the family a separate unassisted lease [HCV GB, p. 15-8].

PART III: TERMINATION OF TENANCY BY THE OWNER**12-III.A. OVERVIEW**

Termination of an assisted tenancy is a matter between the owner and the family; the HHA is not directly involved. However, the owner is under some constraints when terminating an assisted tenancy, and the reasons for which a tenancy is terminated dictate whether assistance also will be terminated.

12-III.B. GROUNDS FOR OWNER TERMINATION OF TENANCY [24 CFR 982.310 and Form HUD-52641-A, Tenancy Addendum]

During the term of the lease, the owner is not permitted to terminate the tenancy except for serious or repeated violations of the lease, certain violations of state or local law, or other good cause.

Serious or Repeated Lease Violations

The owner is permitted to terminate the family's tenancy for serious or repeated violations of the terms and conditions of the lease. This includes failure to pay rent or other amounts due under the lease. However, the HHA's failure to make a HAP payment to the owner is not a violation of the lease between the family and the owner.

Violation of Federal, State, or Local Law

The owner is permitted to terminate the tenancy if a family member violates federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

Criminal Activity or Alcohol Abuse

The owner may terminate tenancy during the term of the lease if any *covered person*, meaning any member of the household, a guest or another person under the tenant's control commits any of the following types of criminal activity (for applicable definitions see 24 CFR 5.100):

- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises);
- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises;
- Any violent criminal activity on or near the premises; or
- Any drug-related criminal activity on or near the premises.

The owner may terminate tenancy during the term of the lease if any member of the household is:

- Fleeing to avoid prosecution, custody, or confinement after conviction for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or
- Violating a condition of probation or parole imposed under federal or state law.

The owner may terminate tenancy for criminal activity by a household member in accordance with this section if the owner determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

The owner may terminate tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

Evidence of Criminal Activity

The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person if the owner determines they have engaged in the criminal activity, regardless of arrest or conviction and without satisfying the standard of proof used for a criminal conviction.

Other Good Cause

During the initial lease term, the owner may not terminate the tenancy for “other good cause” unless the owner is terminating the tenancy because of something the family did or failed to do. During the initial lease term or during any extension term, other good cause includes the disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises.

After the initial lease term, “other good cause” for termination of tenancy by the owner includes:

- Failure by the family to accept the offer of a new lease or revision;
- The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or
- A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rent).

After the initial lease term, the owner may give the family notice at any time, in accordance with the terms of the lease.

12-III.C. EVICTION [24 CFR 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum]

The owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before commencement of the eviction action.

The notice of grounds may be included in, or may be combined with, any owner eviction notice to the tenant.

Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. The owner may only evict the tenant from the unit by instituting a court action. The owner must give the HHA a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give the HHA a copy of any eviction notice (see Chapter 5).

HHA Policy

If the eviction action is finalized in court, the owner must provide the HHA with documentation related to the eviction, including notice of the eviction date, as soon as possible, but no later than 5 business days following the court-ordered eviction.

12-III.D. DECIDING WHETHER TO TERMINATE TENANCY [24 CFR 982.310(h)]

An owner who has grounds to terminate a tenancy is not required to do so, and may consider all of the circumstances relevant to a particular case before making a decision. These might include:

- The seriousness of the offending action;
- The effect on the community of the termination, or of the owner's failure to terminate the tenancy;
- The extent of participation by the leaseholder in the offending action;
- The effect of termination of tenancy on household members not involved in the offending activity;
- The demand for assisted housing by families who will adhere to lease responsibilities;
- The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action;
- The effect of the owner's action on the integrity of the program.

The owner may require a family to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the owner may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions in 24 CFR 5.105.

12-III.E. EFFECT OF TERMINATION OF TENANCY ON THE FAMILY'S ASSISTANCE

If a termination is not due to a serious or repeated violation of the lease, and if the HHA has no other grounds for termination of assistance, the HHA may issue a new voucher so that the family can move with continued assistance (see Chapter 10).

EXHIBIT 12-1: STATEMENT OF FAMILY OBLIGATIONS
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Following is a listing of a participant family's obligations under the HCV program:

- The family must supply any information that the HHA or HUD determines to be necessary, including submission of required evidence of citizenship or eligible immigration status.
- The family must supply any information requested by the HHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- The family must disclose and verify social security numbers and sign and submit consent forms for obtaining information.
- Any information supplied by the family must be true and complete.
- The family is responsible for any Housing Quality Standards (HQS) breach by the family caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond normal wear and tear caused by any member of the household or guest.

HHA Policy

Damages beyond normal wear and tear will be considered to be damages that could be assessed against the security deposit.

- The family must allow the HHA to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this plan.
- The family must not commit any serious or repeated violation of the

lease. HHA Policy

The HHA will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, a court-ordered eviction, or an owner's notice to evict.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criterion to be used is whether the reason for the eviction was through no fault of the tenant or guests.

- The family must notify the HHA and the owner in writing before moving out of the unit or terminating the lease.

HHA Policy

The family must comply with lease requirements regarding written notice to the owner. The family must provide written notice to the HHA at the same time the owner is notified.

- The family must promptly give the HHA a copy of any owner eviction notice.
- The family must use the assisted unit for residence by the family. The unit must be the family's only residence.
- The composition of the assisted family residing in the unit must be approved by the HHA. The family must promptly notify the HHA in writing of the birth, adoption, or court-awarded custody of a child. The family must request HHA approval to add any other family member as an occupant of the unit.

HHA Policy

The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. The HHA will determine eligibility of the new member in accordance with the policies in Chapter 3.

- The family must promptly notify the HHA in writing if any family member no longer lives in the unit.
- If the HHA has given approval, a foster child or a live-in aide may reside in the unit. The HHA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when HHA consent may be given or denied. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see Chapter 3 (Sections I.K and I.M), and Chapter 11 (Section II.B).
- The family must not sublease the unit, assign the lease, or transfer the unit. HHA Policy

Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.

- The family must supply any information requested by the HHA to verify that the family is living in the unit or information related to family absence from the unit.
- The family must promptly notify the HHA when the family is absent from the

HHA Policy

Notice is required under this provision only when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30 calendar days. Written notice must be provided to the HHA at the start of the extended absence.

- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space, or HCV Homeownership Program).

- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).
- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and HHA policies related to drug-related and violent criminal activity.
- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in near the premises. See Chapter 12 for a discussion of HUD and HHA policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the HHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

EXHIBIT 12-2: Helena Housing Authority Violence Against Women Act (VAWA) PolicyI. Purpose and Applicability

The purpose of this policy (herein called “Policy”) is to implement the applicable provisions of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-162) and more generally to set forth HHA’s policies and procedures regarding domestic violence, dating violence, sexual assault and stalking, as hereinafter defined.

This Policy shall be applicable to the administration by HHA of all federally subsidized public housing and Section 8 rental assistance under the United States Housing Act of 1937 (42 U.S.C. §1437 *et seq.*). Notwithstanding its title, this policy is gender-neutral, and its protections are available to males who are victims of domestic violence, dating violence, sexual assault or stalking as well as female victims of such violence.

II. Goals and Objectives

This Policy has the following principal goals and objectives:

- A. Maintaining compliance with all applicable legal requirements imposed by VAWA;
- B. Ensuring the physical safety of victims of actual or threatened domestic violence, dating violence, sexual assault or stalking who are assisted by HHA;
- C. Providing and maintaining housing opportunities for victims of domestic violence dating violence, sexual assault or stalking;
- D. Creating and maintaining collaborative arrangements between HHA, law enforcement authorities, victim service providers, and others to promote the safety and well-being of victims of actual and threatened domestic violence, dating violence, sexual assault and stalking, who are assisted by HHA; and
- E. Taking appropriate action in response to an incident or incidents of domestic violence, dating violence, sexual assault or stalking, affecting individuals assisted by HHA.

III. Other HHA Policies and Procedures

This Policy shall be referenced in and attached to HHA’s Five-Year Public Housing Agency Plan and shall be incorporated in and made a part of HHA’s Admissions and Continued Occupancy Policy and HHA’s Housing Choice Voucher (HCV) (Section 8) Administrative Plan. HHA’s annual public housing agency plan shall also contain information concerning HHA’s activities, services or programs relating to domestic violence, dating violence, sexual assault and stalking.

To the extent any provision of this policy shall vary or contradict any previously adopted policy or procedure of HHA, the provisions of this Policy shall prevail.

IV. Definitions

As used in this Policy:

A. *Domestic Violence* – The term ‘domestic violence’ includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.”

B. *Dating Violence* – means violence committed by a person—

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship.

(ii) The type of relationship.

(iii) The frequency of interaction between the persons involved in the relationship.

C. *Stalking* – means –

(A) (i) engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(i) fear for the person’s individual safety or the safety of others; or

(ii) suffer substantial emotional distress.

D. *Sexual Assault* – means any non-consensual sexual act proscribed by Federal, Tribal or State Law, including when the victim lacks capacity to consent.

E. *Affiliated Individual* - means, with respect to a person –

(A) a spouse, parent, brother, sister, or child of that person, or an individual to whom that person stands in loco parentis; or

(B) any individual, tenant, or lawful occupant living in the household of that individual.

F. *Perpetrator* – means person who commits an act of domestic violence, dating violence, sexual assault or stalking against a victim.

V. Admissions and Screening

A. Non-Denial of Assistance. HHA will not deny admission to public housing or to the Housing Choice Voucher (Section 8) rental assistance program to any person because that person is or has been a victim of domestic violence, dating violence, sexual assault or stalking, provided that such person is otherwise qualified for such admission.

- B. Admissions Preference. Applicants for housing assistance from HHA will receive a preference in admissions by virtue of their status as victims of domestic violence, dating violence, sexual assault and stalking. This preference is particularly described as follows:

This preference is for applicants where actual or threatened physical violence is directed against the applicant or other members of the applicant's household within the past 6-months. HUD defines this as "actual or threatened physical violence directed against one of more members of the applicant's family by a spouse or other members of the applicant's household."

VI. Termination of Tenancy or Assistance

A. VAWA Protections. Under VAWA, public housing residents and persons assisted under the Housing Choice Voucher (Section 8) rental assistance program have the following specific protections, which will be observed by HHA:

1. An incident or incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking will not be considered to be a "serious or repeated" violation of the lease by the victim or threatened victim of that violence and will not be good cause for terminating the tenancy or occupancy rights of or assistance to the victim of that violence.
2. In addition to the foregoing, tenancy or assistance will not be terminated by HHA as a result of criminal activity, if that criminal activity is directly related to domestic violence, dating violence, sexual assault or stalking engaged in by a member of the assisted household, a guest or another person under the resident's control, and the resident or an immediate family member is the victim or threatened victim of this criminal activity. However, the protection against termination of tenancy or assistance described in this paragraph is subject to the following limitations:

- (a) Nothing contained in this paragraph shall limit any otherwise available authority of HHA' or a Section 8 owner or manager to terminate tenancy, evict, or to terminate assistance, as the case may be, for any violation of a lease or program requirement not premised on the act or acts of domestic violence, dating violence, sexual assault or stalking in question against the resident or a member of the resident's household. However, in taking any such action, neither HHA nor a HCV (Section 8) manager or owner may apply a more demanding standard to the victim of domestic violence, dating violence, sexual assault or stalking than that applied to other residents.
- (b) Nothing contained in this paragraph shall be construed to limit the authority of HHA or a HCV (Section 8) owner or manager to evict or terminate from assistance any resident or lawful applicant if the owner, manager or HHA, as

the case may be, can demonstrate an actual and imminent threat to other residents or to those employed at or providing service to the property, if the resident is not evicted or terminated from assistance.

- B. Removal of Perpetrator. Further, notwithstanding anything in paragraph VI.A.2. or Federal, State or local law to the contrary, HHA or a HCV (Section 8) owner or manager, as the case may be, may bifurcate a lease, or remove a household member from a lease, without regard to whether a household member is a signatory to a lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a resident or lawful occupant and who engages in acts of physical violence against family members or others.

Such action against the perpetrator of such physical violence may be taken without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also the resident or a lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by law applicable to terminations of tenancy and evictions by HHA. Leases used for all public housing operated by HHA and, at the option of Section 8 owners or managers, leases for dwelling units occupied by families assisted with Section 8 rental assistance administered by HHA, shall contain provisions setting forth the substance of this paragraph.

VII. Verification of Domestic Violence, Dating Violence, Sexual Assault or Stalking

- A. Requirement for Verification. The law allows, but does not require, HHA or a HCV (Section 8) owner or manager to verify that an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking claimed by a resident or other lawful occupant is bona fide and meets the requirements of the applicable definitions set forth in this policy. Subject only to waiver as provided in paragraph VII. C., HHA shall require verification in all cases where an individual claims protection against an action involving such individual proposed to be taken by HHA. HCV (Section 8) owners or managers receiving rental assistance administered by HHA may elect to require verification, or not to require it as permitted under applicable law.

Verification of a claimed incident or incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking may be accomplished in one of the following three ways:

1. *HUD-approved form* - by providing to HHA or to the requesting HCV (Section 8) owner or manager a written certification, on a form approved by the U.S. Department of Housing and Urban Development (HUD), that the individual is a victim of domestic violence, dating violence, sexual assault or stalking that the incident or incidents in question are bona fide incidents of actual or threatened abuse meeting the requirements of the applicable definition(s) set forth in this policy.

The incident or incidents in question must be described in reasonable detail as required in the HUD-approved form, and the completed certification must include the name of the perpetrator.

2. *Other documentation* - by providing to HHA or to the requesting HCV (Section 8) owner or manager documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional, from whom the victim has sought

assistance in addressing the domestic violence, dating violence, sexual assault or stalking, or the effects of the abuse, described in such documentation. The professional providing the documentation must sign and attest under penalty of perjury (28 U.S.C. 1746) to the professional's belief that the incident or incidents in question are bona fide incidents of abuse meeting the requirements of the applicable definition(s) set forth in this policy. The victim of the incident or incidents of domestic violence, dating violence, sexual assault or stalking described in the documentation must also sign and attest to the documentation under penalty of perjury.

3. *Police or court record* – by providing to HHA or to the requesting HCV (Section 8) owner or manager a Federal, State, tribal, territorial, or local police or court record describing the incident or incidents in question.

- B. *Time allowed to provide verification/ failure to provide.* An individual who claims protection against adverse action based on an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking, and who is requested by HHA, or a HCV (Section 8) owner or manager to provide verification, must provide such verification within 14 business days (*i.e.*, 14 calendar days, excluding Saturdays, Sundays, and federally-recognized holidays) after receipt of the request for verification. Failure to provide verification, in proper form within such time will result in loss of protection under VAWA and this policy against a proposed adverse action.
- C. *Waiver of verification requirement.* The Executive Director of HHA, or a HCV (Section 8) owner or manager, may, with respect to any specific case, waive the above-stated requirements for verification and provide the benefits of this policy based on the victim's statement or other corroborating evidence. Such waiver may be granted in the sole discretion of the Executive Director, owner or manager. Any such waiver must be in writing. Waiver in a particular instance or instances shall not operate as precedent for, or create any right to, waiver in any other case or cases, regardless of similarity in circumstances.

VIII. Confidentiality

A.Right of confidentiality. All information (including the fact that an individual is a victim of domestic violence, dating violence, sexual assault or stalking) provided to HHA or to a HCV (Section 8) owner or manager in connection with a verification required under section VII of this policy or provided in lieu of such verification where a waiver of verification is granted, shall be retained by the receiving party in confidence and shall neither be entered in any shared database nor provided to any related entity, except where disclosure is:

1. Requested or consented to by the individual in writing, or
2. Required for use in a public housing eviction proceeding or in connection with termination of HCV (Section 8) assistance, as permitted in VAWA, or
3. Otherwise required by applicable law.

- B. Notification of rights. All residents of public housing and residents participating in the HCV (Section 8) rental assistance program administered by HHA shall be notified in writing concerning their right to confidentiality and the limits on such rights to confidentiality.

VIII. Transfer to New Residence

- A. Application for transfer. In situations that involve significant risk of violent harm to an individual as a result of previous incidents or threats of domestic violence, dating violence, sexual assault or stalking, HHA will, if an approved unit size is available at a location that may reduce the risk of harm, approve transfer by a public housing or HCV (Section 8) resident to a different unit in order to reduce the level of risk to the individual. A resident who requests transfer must attest in such application that the requested transfer is necessary to protect the health or safety of the resident or another member of the household who is or was the victim of domestic violence, dating violence, sexual assault or stalking and who reasonably believes that the resident or other household member will be imminently threatened by harm from further violence if the individual remains in the present dwelling unit.
- B. No right to transfer. HHA will make every effort to accommodate requests for transfer when suitable alternative vacant units are available and the circumstances warrant such action. However, except with respect to portability of HCV (Section 8) assistance as provided in paragraph IX. E. below the decision to grant or refuse to grant a transfer shall lie within the sole discretion of HHA, and this policy does not create any right on the part of any applicant to be granted a transfer.
- C. Portability. Notwithstanding the foregoing, a HCV (Section 8) assisted resident will not be denied portability to a unit located in another jurisdiction (notwithstanding the term of the resident's existing lease has not expired, or the family has not occupied the unit for 12 months) so long as the resident has complied with all other requirements of the HCV (Section 8) program and has moved from the unit in order to protect a health or safety of an individual member of the household who is or has been the victim of domestic violence dating violence, sexual assault or stalking and who reasonably believes that the resident or other household member will be imminently threatened by harm from further violence if the individual remains in the present dwelling unit.

X. Court Orders/Family Break-up

A. Court orders. It is HHA's policy to honor orders entered by courts of competent jurisdiction affecting individuals assisted by HHA and their property. This includes cooperating with law enforcement authorities to enforce civil protection orders issued for the protection of victims and addressing the distribution of personal property among household members in cases where a family breaks up.

B.Family break-up. Other HHA policies regarding family break-up are contained in HHA's Public Housing Admissions and Continuing Occupancy Plan (ACOP) and its HCV (Section 8) Administrative Plan.

XI.Relationships with Service Providers

It is the policy of HHA to cooperate with organizations and entities, both private and governmental that provides shelter and/or services to victims of domestic violence. If HHA staff becomes aware that an individual assisted by HHA is a victim of domestic violence, dating violence, sexual assault or stalking, HHA will refer the victim to such providers of shelter or services as appropriate. Notwithstanding the foregoing, this Policy does not create any legal obligation requiring HHA either to maintain a relationship with any particular provider of shelter or services to victims of domestic violence or to make a referral in any particular case. HHA's annual public housing agency plan shall describe providers of shelter or services to victims of domestic violence with which HHA has referral or other cooperative relationships.

XII.Notification

HHA shall provide written notification to applicants, residents, and HCV (Section 8) owners and managers, concerning the rights and obligations created under VAWA relating to confidentiality, denial of assistance and, termination of tenancy or assistance.

XIII.Relationship with Other Applicable Laws

Neither VAWA nor this Policy implementing it shall preempt or supersede any provision of Federal, State or local law that provides greater protection than that provided under VAWA for victims of domestic violence, dating violence, sexual assault or stalking.

XIV.Amendment

The Executive Director may amend this policy when it is reasonably necessary to effectuate the Policy's intent, purpose or interpretation. The proposed amendment along with the rationale for the amendment shall be submitted to the Executive Director for consideration. Where reasonably necessary, the Executive Director may approve the amendment. The amendment shall be effective and incorporated on the date that the Executive Director signs the amendment.

Chapter 13

OWNERS

INTRODUCTION

Owners play a central role in the HCV program by supplying decent, safe, and sanitary housing for participating families.

The term “owner” refers to any person or entity with the legal right to lease or sublease a unit to a participant in the HCV program [24 CFR 982.4(b)]. The term “owner” includes a principal or other interested party [24 CFR 982.453; 24 CFR 982.306(f)], such as a designated agent of the owner.

Owners have numerous responsibilities under the program, including screening and leasing to families, maintaining the dwelling unit, enforcing the lease, and complying with various contractual obligations. However, this chapter is not meant to be an overview of all aspects of owner participation in the HCV program.

The chapter is organized in two parts:

Part I: Owners in the HCV Program. This part discusses the role of an owner in the HHA’s HCV program and highlights key owner rights and responsibilities.

Part II: HAP Contracts. This part explains provisions of the HAP contract and the relationship between the HHA and the owner as expressed in the HAP contract.

For detailed information about HCV program responsibilities and processes, including HHA policies in key areas, owners will need to refer to several other chapters in this plan. Where appropriate, Chapter 13 will reference the other chapters.

PART I. OWNERS IN THE HCV PROGRAM

13-I.A. OWNER RECRUITMENT AND RETENTION [HCV GB, pp. 2-4 to 2-6]

Recruitment

HHA is responsible for ensuring that very low income families have access to all types and ranges of affordable housing in the HHA’s jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for the HHA to ensure that a sufficient number of owners, representing all types and ranges of affordable housing in the HHA’s jurisdiction, are willing to participate in the HCV program.

To accomplish this objective, HHA must identify and recruit new owners to participate in the program.

HHA Policy

The HHA will conduct owner outreach to ensure that owners are familiar with the program and its advantages. These outreach strategies will include:

- Distributing printed material about the program to property owners and managers
- Contacting property owners and managers by phone or in-person
- Participating in community based organizations comprised of private property and apartment owners and managers
- Developing working relationships with owners and real estate brokers associations

Outreach strategies will be monitored for effectiveness, and adapted accordingly.

Retention

In addition to recruiting owners to participate in the HCV program, the HHA must also provide the kind of customer service that will encourage participating owners to remain active in the program.

HHA Policy

All HHA activities that may affect an owner's ability to lease a unit will be processed as rapidly as possible, in order to minimize vacancy losses for owners.

The HHA will give special attention to helping new owners succeed through activities such as:

- Providing the owner with a designated HHA contact person.
- Coordinating inspection and leasing activities among the HHA, the owner, and the family.
- Initiating telephone contact with the owner to explain the inspection process, and providing an inspection booklet and other resource materials about HUD housing quality standards.
- Providing other written information about how the program operates, including answers to frequently asked questions.

Additional services may be undertaken on an as-needed basis, and as resources permit.

13-I.B. BASIC HCV PROGRAM REQUIREMENTS

HUD requires the HHA to aid families in their housing search by providing the family with a list of landlords or other parties known to the HHA who may be willing to lease a unit to the family, or to help the family find a unit. Although the HHA cannot maintain a list of owners that are pre-qualified to participate in the program, owners may indicate to the HHA their willingness to

lease a unit to an eligible HCV family, or to help the HCV family find a unit [24 CFR 982.301(b)(11)].

HHA Policy

Owners that wish to indicate their willingness to lease a unit to an eligible HCV family or to help the HCV family find a unit must notify the HHA. The HHA will maintain a listing of such owners and provide this listing to the HCV family as part of the informational briefing packet

When a family approaches an owner to apply for tenancy, the owner is responsible for screening the family and deciding whether to lease to the family, just as the owner would with any potential tenant. The HHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy. See chapters 3 and 9 for more detail on tenant family screening policies and process.

If the owner is willing, the family and the owner must jointly complete a Request for Tenancy Approval (RTA, Form HUD 52517), which constitutes the family's request for assistance in the specified unit, and which documents the owner's willingness to lease to the family and to follow the program's requirements. When submitted to the HHA, this document is the first step in the process of obtaining approval for the family to receive the financial assistance it will need in order to occupy the unit. Also submitted with the RTA is a copy of the owner's proposed dwelling lease, including the HUD-required Tenancy Addendum (Form HUD-52641-A). See Chapter 9 for more detail on request for tenancy approval policies and process.

HUD regulations stipulate that an assisted tenancy can be approved only under certain conditions.

The owner must be qualified to participate in the program [24 CFR 982.306]. Some owners are precluded from participating in the program, or from renting to a particular family, either because of their past history with this or another federal housing program, or because of certain conflicts of interest. Owner qualifications are discussed later in this chapter.

The selected unit must be of a type that is eligible for the program [24 CFR 982.305(a)]. Certain types of dwelling units cannot be assisted under the HCV program. Other types may be assisted under certain conditions. In addition, the owner must document legal ownership of the specified unit. See chapter 9 for more detail on unit eligibility policies and process.

The selected unit must meet HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD [24 CFR 982.305(a)]. The HHA will inspect the owner's dwelling unit at various stages of HCV program participation, to ensure that the unit continues to meet HQS requirements. See chapter 8 for a discussion of the HQS standards, as well as the process for HQS inspections at initial lease-up and throughout the family's tenancy.

The HHA must determine that the cost of the unit is reasonable [24 CFR 982.305(a)]. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See chapter 8 for a discussion of requirements and policies on rent reasonableness, rent comparability and the rent reasonableness determination process.

At initial lease-up of a unit, the HHA must determine that the share of rent to be paid by the family does not exceed 40 percent of the family's monthly-adjusted income [24 CFR 982.305(a)]. See chapter 6 for a discussion of the calculation of family income, family share of rent and HAP.

The dwelling lease must comply with all program requirements [24 CFR 982.308]. Owners are encouraged to use their standard leases when renting to an assisted family. However, the HCV program requires that the Tenancy Addendum, which helps standardize the tenancy requirements for all assisted families, be added word-for-word to that lease. See chapter 9 for a discussion of the dwelling lease and tenancy addendum, including lease terms and provisions.

The HHA and the owner enter into a formal contractual relationship by executing the Housing Assistance Payment (HAP) Contract (Form HUD-52641). The HAP contract format is prescribed by HUD. See chapter 9 for a discussion of the HAP contract execution process. Specific HAP contract provisions and responsibilities are discussed later in this chapter 13.

13-I.C. OWNER RESPONSIBILITIES [24 CFR 982.452]

The basic owner responsibilities in the HCV program are outlined in the regulations as follows:

- Performing all of the owner's obligations under the Housing Assistance Payments (HAP) contract and the lease
- Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit
- Maintaining the unit in accordance with the Housing Quality Standards (HQS), including performance of ordinary and extraordinary maintenance
- Complying with equal opportunity requirements
- Preparing and furnishing to the HHA information required under the HAP contract
- Collecting from the family any security deposit, the tenant's contribution to rent (that part of rent to owner not covered by the housing assistance payment from the HHA), and any charges for unit damage by the family.
- Enforcing tenant obligations under the dwelling lease
- Paying for utilities and services (unless paid by the family under the lease)
- Making modifications to a dwelling unit occupied or to be occupied by a disabled person [24 CFR 100.203]

13-I.D. OWNER QUALIFICATIONS

The HHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the HHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)].

Owners Barred from Participation [24 CFR 982.306(a) and (b)]

The HHA must not approve the assisted tenancy if the HHA has been informed that the owner has been debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24. HUD may direct the HHA not to approve a tenancy request if a court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements, or if such an action is pending.

Leasing to Relatives [24 CFR 982.306(d), HCV GB p. 11-2]

The HHA must not approve an RTA if the owner (including a principal or other interested party) is the parent, child, grandparent, grandchild, sister, or brother of any member of the family. The HHA may make an exception as a reasonable accommodation for a family member with a disability. The owner is required to certify that no such relationship exists. This restriction applies at the time that the family receives assistance under the HCV program for occupancy of a particular unit. Current contracts on behalf of owners and families that are related may continue, but any new leases or contracts for these families may not be approved.

Conflict of Interest [24 CFR 982.161; HCV GB p. 8-19]

The HHA must not approve a tenancy in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:

- Any present or former member or officer of the HHA (except a participant commissioner)
- Any employee of the HHA, or any contractor, subcontractor or agent of the HHA, who formulates policy or who influences decisions with respect to the programs
- Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs
- Any member of the Congress of the United States

HUD may waive the conflict of interest requirements, except for members of Congress, for good cause. The HHA must submit a waiver request to the appropriate HUD Field Office for determination.

Any waiver request submitted by the HHA must include [HCV Guidebook pp.11-2 and 11-3]:

- Complete statement of the facts of the case;

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- Analysis of the specific conflict of interest provision of the HAP contract and justification as to why the provision should be waived;
 - Analysis of and statement of consistency with state and local laws. The local HUD office, the HHA, or both parties may conduct this analysis. Where appropriate, an opinion by the state's attorney general should be obtained;
 - Opinion by the local HUD office as to whether there would be an appearance of impropriety if the waiver were granted;
 - Statement regarding alternative existing housing available for lease under the HCV program or other assisted housing if the waiver is denied;
 - If the case involves a hardship for a particular family, statement of the circumstances and discussion of possible alternatives;
 - If the case involves a public official or member of the governing body, explanation of his/her duties under state or local law, including reference to any responsibilities involving the HCV program;
 - If the case involves employment of a family member by the HHA or assistance under the HCV program for an eligible HHA employee, explanation of the responsibilities and duties of the position, including any related to the HCV program;
 - If the case involves an investment on the part of a member, officer, or employee of the HHA, description of the nature of the investment, including disclosure/divestiture plans.

Where the HHA has requested a conflict of interest waiver, the HHA may not execute the HAP contract until HUD has made a decision on the waiver request.

HHA Policy

In considering whether to request a conflict of interest waiver from HUD, the HHA will consider factors the reasons for waiving the requirement; consistency with state and local laws; the existence of alternative housing available to families; the individual circumstances of a particular family; the specific duties of individuals whose positions present a possible conflict of interest; the nature of any financial investment in the property and plans for disclosure/divestiture; and the possible appearance of impropriety.

Owner Actions That May Result in Disapproval of a Tenancy Request [24 CFR 982.306(c)]

HUD regulations permit the HHA, at the HHA's discretion, to refuse to approve a request for tenancy if the owner has committed any of a number of different actions.

If the HHA disapproves a request for tenancy because an owner is not qualified, it may not terminate the HAP contract for any assisted families that are already living in the owner's properties unless the owner has violated the HAP contract for those units [HCV GB p. 11-4].

HHA Policy

The HHA will refuse to approve a request for tenancy if the HHA becomes aware that any of the following are true:

The owner has violated obligations under a HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f);

The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;

The owner has engaged in any drug-related criminal activity or any violent criminal activity;

The owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program;

The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that: (i) Threatens the right to peaceful enjoyment of the premises by other residents; (ii) Threatens the health or safety of other residents, of employees of the HHA, or of owner employees or other persons engaged in management of the housing; (iii) Threatens the health or safety of, or the right to peaceful enjoyment of their residences, by persons residing in the immediate vicinity of the premises; or (iv) Is drug-related criminal activity or violent criminal activity;

The owner has a history or practice of renting units that fail to meet state or local housing codes; or

The owner has not paid state or local real estate taxes, fines, or assessment.

In considering whether to disapprove owners for any of the discretionary reasons listed above, the HHA will consider any mitigating factors. Such factors may include, but are not limited to, the seriousness of the violation in relation to program requirements, the impact on the ability of families to lease units under the program, health and safety of participating families, among others. Upon consideration of such circumstances, the HHA may, on a case-by-case basis, choose to approve an owner.

Legal Ownership of Unit

The following represents HHA policy on legal ownership of a dwelling unit to be assisted under the HCV program.

HHA Policy

The HHA will only enter into a contractual relationship with the legal owner of a qualified unit. No tenancy will be approved without acceptable documentation of legal ownership (e.g., deed of trust, proof of taxes for most recent year).

13-I.E. NON-DISCRIMINATION [HAP Contract – Form HUD-52641]

The owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability, in connection with any actions or responsibilities under the HCV program and the HAP contract with the HHA.

The owner must cooperate with the HHA and with HUD in conducting any equal opportunity compliance reviews and complaint investigations in connection with the HCV program and the HAP contract with the HHA.

See Chapter 2 for a more thorough discussion of Fair Housing and Equal Opportunity requirements in the HCV program.

PART II. HAP CONTRACTS**13-II.A. OVERVIEW**

The HAP contract represents a written agreement between the HHA and the owner of the dwelling unit occupied by a HCV assisted family. The contract spells out the owner's responsibilities under the program, as well as the HHA's obligations. Under the HAP contract, the HHA agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit.

The HAP contract is used for all HCV program tenancies except for assistance under the Section 8 homeownership program, and assistance to families that own a manufactured home and lease the space. See chapter 18 for a discussion of any special housing types included in the HHA's HCV program.

If the HHA has given approval for the family of the assisted tenancy, the owner and the HHA execute the HAP contract. See chapter 9 for a discussion of the leasing process, including provisions for execution of the HAP contract.

13-II.B. HAP CONTRACT CONTENTS

The HAP contract format is required by HUD, specifically Housing Assistance Payment (HAP) Contract, Form HUD-52641.

The HAP contract contains three parts.

Part A of the contract includes basic **contract information** about the name of the tenant family, address of the contract unit, names of all household members, first and last dates of initial lease term, amount of initial monthly rent to owner, amount of initial housing assistance payment, utilities and appliances to be supplied by owner and tenant, signatures of HHA and owner [HCV Guidebook, pp 11-10 and 11-11].

In general, the HAP contract cannot be modified. However, HHA does have the discretion to add language to Part A of the HAP contract which prohibits the owner from collecting a security deposit in excess of private market practices or in excess of amounts charged to unassisted tenants. HHA policy on the amount of security deposit an owner may collect is found in chapter 9.

In addition, HHA does have the discretion to add language to Part A of the HAP contract that defines when the housing assistance payment by the HHA is deemed received by the owner (e.g., upon mailing by the HHA or actual receipt by the owner).

HHA Policy

The HHA has not adopted a policy that defines when the housing assistance payment by the HHA is deemed received by the owner. Therefore, no modifications to the HAP contract will be necessary.

Part B is the body of the contract. It describes in detail program requirements affecting the owner and owner roles and responsibilities under the HCV program. Most of the requirements contained in Part B of the HAP contract are outlined elsewhere in this plan. Topics addressed in Part B include:

- Lease of Contract Unit
- Maintenance, Utilities, and Other Services
- Term of HAP Contract
- Provision and Payment of Utilities and Appliances
- Rent to Owner: Reasonable Rent
- HHA Payment to Owner
- Prohibition of Discrimination
- Owner's Breach of HAP Contract
- HHA and HUD Access to Premises and Owner's Records
- Exclusion of Third Party Rights
- Conflict of Interest
- Assignment of the HAP Contract
- Written Notices
- Entire Agreement Interpretation

Part C of the contract includes the Tenancy Addendum (Form HUD-52641-A). The addendum sets forth the tenancy requirements for the program and the composition of the household, as approved by the HHA. The owner must sign the HUD Tenancy Addendum with the prospective tenant, and the tenant has the right to enforce the Tenancy Addendum against the owner. The terms of the Tenancy Addendum prevail over any other provisions of the lease.

13-II.C. HAP CONTRACT PAYMENTS

General

During the term of the HAP contract, and subject to the provisions of the HAP contract, the HHA must make monthly HAP payments to the owner on behalf of the family, at the beginning of each month. If a lease term begins after the first of the month, the HAP payment for the first month is prorated for a partial month.

The amount of the HAP payment is determined according to the policies described in Chapter 6, and is subject to change during the term of the HAP contract. The HHA must notify the owner and the family in writing of any changes in the HAP payment.

HAP payments can be made only during the lease term, and only while the family is residing in the unit.

The monthly HAP payment by the HHA is credited toward the monthly rent to owner under the family's lease. The total of the rent paid by the tenant, plus the HHA HAP payment, should be equal to the rent specified in the lease (the rent to owner).

The family is not responsible for payment of the HAP payment, and the HHA is not responsible for payment of the family share of rent.

The family's share of the rent cannot be more than the difference between the total rent to the owner and the HAP payment. The owner may not demand or accept any rent payment from the tenant in excess of this maximum [24 CFR 982.451(b)(4)]. The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)]. See chapter 9 for a discussion of separate, non-lease agreements for services, appliances and other items that are not included in the lease.

If the owner receives any excess HAP from the HHA, the excess amount must be returned immediately. If the HHA determines that the owner is not entitled to all or a portion of the HAP, the HHA may deduct the amount of overpayment from any amounts due to the owner, including amounts due under any other Section 8 HCV contract. See Chapter 16 for additional detail on owner reimbursement of HAP overpayments.

Owner Certification of Compliance

Unless the owner complies with all provisions of the HAP contract, the owner is not entitled to receive housing assistance payments under the HAP contract [HAP Contract – Form HUD-52641].

By endorsing the monthly check from the HHA, the owner certifies to compliance with the terms of the HAP contract. This includes certification that the owner is maintaining the unit and premises in accordance with HQS; that the contract unit is leased to the tenant family and, to the best of the owner's knowledge, the family resides in the unit as the family's only residence; the rent to owner does not exceed rents charged by the owner for comparable unassisted units on the premises; and that the owner does not receive (other than rent to owner) any additional payments or other consideration for rent of the contract unit during the HAP term.

Late HAP Payments [24 CFR 982.451(a)(5)]

The HHA is responsible for making HAP payments promptly when due to the owner, in accordance with the terms of the HAP contract. After the first two calendar months of the HAP contract term, the HAP contract provides for penalties if the HHA fails to make the HAP payment on time.

Penalties for late HAP payments can only be imposed if 1) the penalties are in accordance with generally accepted local rental market practices and law governing penalties for late payment by tenants; 2) it is the owner's normal business practice to charge late payment penalties for both assisted and unassisted families; and 3) the owner charges the assisted family for late payment of the family's share of the rent.

The HHA is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond the HHA's control. In addition, late payment penalties are not required if the HHA intentionally delays or denies payment as a remedy to an owner breach of the HAP contract [HCV Guidebook p. 11-7].

Termination of HAP Payments [24 CFR 982.311(b)]

The HHA must continue making housing assistance payments to the owner in accordance with the HAP contract as long as the tenant continues to occupy the unit and the HAP contract is not violated.

HAP payments terminate when the HAP contract terminates or when the tenancy is terminated in accordance with the terms of the lease.

If the owner has initiated eviction proceedings against the family and the family continues to reside in the unit, the HHA must continue to make housing assistance payments to the owner until the owner has obtained a court judgment or other process allowing the owner to evict the tenant.

HHA Policy

The owner must inform the HHA when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.

The owner must inform the HHA when the owner has obtained a court judgment or other process allowing the owner to evict the tenant, and provide the HHA with a copy of such judgment or determination.

After the owner has obtained a court judgment or other process allowing the owner to evict the tenant, the HHA will continue to make HAP payments to the owner until the family actually moves from the unit or until the family is physically evicted from the unit, whichever is earlier. The owner must inform the HHA of the date when the family actually moves from the unit or the family is physically evicted from the unit.

13-II.D. BREACH OF HAP CONTRACT [24 CFR 982.453]

Any of the following actions by the owner constitutes a breach of the HAP contract:

- If the owner violates any obligations under the HAP contract including failure to maintain the unit in accordance with HQS
- If the owner has violated any obligation under any other HAP contract under Section 8
- If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program
- For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulations for the applicable program; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan
- If the owner has engaged in drug-related criminal activity
- If the owner has committed any violent criminal activity

If the HHA determines that a breach of the HAP contract has occurred, it may exercise any of its rights and remedies under the HAP contract.

The HHA rights and remedies against the owner under the HAP contract include recovery of any HAP overpayment, suspension of housing assistance payments, abatement or reduction of the housing assistance payment, termination of the payment or termination the HAP contract. The HHA may also obtain additional relief by judicial order or action.

The HHA must notify the owner of its determination and provide in writing the reasons for the determination. The notice may require the owner to take corrective action by an established deadline. The HHA must provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

HHA Policy

Before the HHA invokes a remedy against an owner, the HHA will evaluate all information and documents available to determine if the contract has been breached.

If relevant, the HHA will conduct an audit of the owner's records pertaining to the tenancy or unit.

If it is determined that the owner has breached the contract, the HHA will consider all of the relevant factors including the seriousness of the breach, the effect on the family, the owner's record of compliance and the number and seriousness of any prior HAP contract violations.

13-II.E. HAP CONTRACT TERM AND TERMINATIONS

The term of the HAP contract runs concurrently with the term of the dwelling lease [24 CFR 982.451(a)(2)], beginning on the first day of the initial term of the lease and terminating on the last day of the term of the lease, including any lease term extensions.

The HAP contract and the housing assistance payments made under the HAP contract terminate if [HCV Guidebook pp.11-4 and 11-5, pg. 15-3]:

- The owner or the family terminates the lease;
- The lease expires;
- The HHA terminates the HAP contract;
- The HHA terminates assistance for the family;
- The family moves from the assisted unit. In this situation, the owner is entitled to keep the housing assistance payment for the month when the family moves out of the unit.
- 180 calendar days have elapsed since the HHA made the last housing assistance payment to the owner;
- The family is absent from the unit for longer than the maximum period permitted by the HHA;
- The Annual Contributions Contract (ACC) between the HHA and HUD expires
- The HHA elects to terminate the HAP

contract. HHA Policy

The HHA may elect to terminate the HAP contract in each of the following situations:

Available program funding is not sufficient to support continued assistance for families in the program [24 CFR 982.454];

The unit does not meet HQS size requirements due to change in family composition [24 CFR 982.403] – see chapter 8;

The unit does not meet HQS [24 CFR 982.404] – see chapter 8;

The family breaks up [HUD Form 52641] – see chapter 3;

The owner breaches the HAP contract [24 CFR 982.453(b)] – see Section 13-II.D.

If the HHA terminates the HAP contract, the HHA must give the owner and the family written notice. The notice must specify the reasons for the termination and the effective date of the termination. Once a HAP contract is terminated, no further HAP payments may be made under that contract [HCV Guidebook pg.15-4].

HHA Policy

In all cases, the HAP contract terminates at the end of the calendar month that follows the calendar month in which the HHA gives written notice to the owner. The owner is not

entitled to any housing assistance payment after this period, and must return to the HHA any housing assistance payment received after this period.

If the family moves from the assisted unit into a new unit, even if the new unit is in the same building or complex as the assisted unit, the HAP contract for the assisted unit terminates. A new HAP contract would be required [HCV GB, p. 11-17].

When the family moves from an assisted unit into a new unit, the term of the HAP contract for the new unit may begin in the same month in which the family moves out of its old unit. This is not considered a duplicative subsidy [HCV GB, p. 8-22].

HHA Policy

The HHA may elect to cross subsidize an assisted unit for no more than 14 days if funding is available.

13-II.F. CHANGE IN OWNERSHIP / ASSIGNMENT OF THE HAP CONTRACT [HUD-52641]

The HAP contract cannot be assigned to a new owner without the prior written consent of the HHA.

An owner under a HAP contract must notify the HHA in writing prior to a change in the legal ownership of the unit. The owner must supply all information as requested by the HHA.

Prior to approval of assignment to a new owner, the new owner must agree to be bound by and comply with the HAP contract. The agreement between the new owner and the former owner must be in writing and in a form that the HHA finds acceptable. The new owner must provide the HHA with a copy of the executed agreement.

HHA Policy

Assignment of the HAP contract will be approved only if the new owner is qualified to become an owner under the HCV program according to the policies in Section 13-I.D. of this chapter.

Within 20 business days of receiving the owner's request, the HHA will inform the current owner in writing whether the assignment may take place.

The new owner must provide a written certification to the HHA that includes:

A copy of the escrow statement or other document showing the transfer of title and recorded deed;

A copy of the owner's IRS Form W-9, Request for Taxpayer Identification Number and Certification, or the social security number of the new owner;

The effective date of the HAP contract assignment;

A written agreement to comply with the terms of the HAP contract; and

Confirmation that the new owner is not a prohibited relative.

If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, the HHA will terminate the HAP contract with the old owner.

If the new owner wants to offer the family a new lease, and the family elects to stay with continued assistance, the HHA will process the leasing in accordance with the policies in chapter 9.

Chapter 14

PROGRAM INTEGRITY

INTRODUCTION

The HHA is committed to ensuring that subsidy funds made available to the HHA are spent in accordance with HUD requirements.

This chapter covers HUD and HHA policies designed to prevent, detect, investigate and resolve instances of program abuse or fraud. It also describes the actions that will be taken in the case of unintentional errors and omissions.

Part I: Preventing, Detecting, and Investigating Errors and Program Abuse. This part presents HHA policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures the HHA must and may take when errors or program abuses are found.

PART I: PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE

14-I.A. PREVENTING ERRORS AND PROGRAM ABUSE

HHA Policy

The HHA anticipates that the vast majority of families, owners, and HHA employees intend to and will comply with program requirements and make reasonable efforts to avoid errors.

To ensure the HHA's HCV program is administered effectively and according to the highest ethical and legal standards, the HHA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

The HHA will discuss program compliance and integrity issues during the voucher briefing sessions described in Chapter 5.

The HHA will provide each applicant and participant with the publication *Things You Should Know (HUD-1140-OIG)* that explains the types of actions a family must avoid and the penalties for program abuse.

The HHA will place a warning statement about the penalties for fraud (as described in the False Statement Act, U.S.C. 1001 and 1010) on key HHA forms and form letters that request information from a family or owner.

HHA staff will be required to review and explain the contents of all HUD- and HHA-required forms prior to requesting family member signatures.

The HHA will require first-time owners (or their agents) to participate in a briefing session on HAP contract requirements.

The HHA will provide each HHA employee with the necessary training on program rules and the organization's standards of conduct and ethics.

For purposes of this chapter the term *error* refers to an unintentional error or omission. *Program abuse or fraud* refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

14-I.B. DETECTING ERRORS AND PROGRAM ABUSE

In addition to taking steps to prevent errors and program abuse, the HHA will use a variety of activities to detect errors and program abuse.

Quality Control and Analysis of Data

Under the Section 8 Management Assessment Program (SEMAP), HUD requires the HHA to review a random sample of tenant records annually to determine if the records conform to program requirements and to conduct quality control inspections of a sample of units to ensure HQS compliance [24 CFR, Part 985]. (See Chapter 16 for additional information about SEMAP requirements).

HHA Policy

In addition to the SEMAP quality control requirements, the HHA will employ a variety of methods to detect errors and program abuse.

The HHA routinely will use available sources of enterprise income verification to compare with family-provided information.

At each annual reexamination, current information provided by the family will be compared to information provided at the last annual reexamination to identify inconsistencies and incomplete information.

The HHA will compare family-reported income and expenditures to detect possible unreported income.

Independent Audits and HUD Monitoring

OMB Circular A-133 requires all HHAs that expend \$500,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of HHA activities and notifies the HHA of errors and potential cases of program abuse.

HHA Policy

The HHA will use the results reported in any IPA or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of the HHA's error detection and abuse prevention efforts.

Individual Reporting of Possible Errors and Program Abuse**HHA Policy**

The HHA will encourage staff, program participants, and the public to report possible program abuse.

14-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE**When the HHA Will Investigate****HHA Policy**

The HHA will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. In order for the HHA to investigate, the allegation must contain at least one independently-verifiable item of information, such as the name of an employer or the name of an unauthorized household member.

The HHA will investigate inconsistent information related to the family that is identified through file reviews and the verification process.

Consent to Release of Information [24 CFR 982.516]

The HHA may investigate possible instances of error or abuse using all available HHA and public records. If necessary, the HHA will require HCV families to give consent to the release of additional information.

Credit History

The Helena Housing Authority may review a program participant's credit history in the case of possible program abuse. The information obtained will only be used to determine if a program participant is receiving additional monetary resources to pay for debts incurred on a monthly basis (credit cards, automobile payments, mortgage payments etc.).

If a credit report is obtained it will be at the project expense. No expense shall be passed on to the family. Information shall be requested on the form provided by the area credit bureau.

Information on the credit report regarding specific names of the creditors (Northwestern Energy, City of Helena, department store names, banks, etc...) are not to be revealed because of an agreement between the HHA and the Trans Union LLC, Fair Isaac Corporation, and Tenant PI, LLC which prohibits such disclosures. The family will be advised that the information supplied by the Credit Bureau revealed that their record shows excessive monthly financial obligations which monthly monetary amount that was reported to the HHA. If applicants chose to receive a copy of their credit history, they must do so through the Credit Bureau.

Analysis and Findings

HHA Policy

The HHA will base its evaluation on a preponderance of the evidence collected during its investigation.

Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence that as a whole shows that the fact sought to be proved is more probable than not. Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence

For each investigation the HHA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed the HHA, and (3) what corrective measures or penalties will be assessed.

Consideration of Remedies

All errors and instances of program abuse must be corrected prospectively. Whether the HHA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

HHA Policy

In the case of family-caused errors or program abuse, the HHA will take into consideration (1) the seriousness of the offense and the extent of participation or culpability of individual family members, (2) any special circumstances surrounding the case, (3) any mitigating circumstances related to the disability of a family member, (4) the effects of a particular remedy on family members who were not involved in the offense.

In the case of owner-caused errors or program abuse, the HHA will take into consideration (1) the seriousness of the offense, (2) the length of time since the violation has occurred, and (3) the effects of a particular remedy on family members who were not involved in the offense.

Notice and Appeals

HHA Policy

The HHA will inform the relevant party in writing of its findings and remedies within 10 business days of the conclusion of the investigation. The notice will include (1) a description of the error or program abuse, (2) the basis on which the HHA determined the error or program abuses, (3) the remedies to be employed, and (4) the family's right to appeal the results through the informal review or hearing process, if applicable (see Chapter 15).

PART II: CORRECTIVE MEASURES AND PENALTIES

14-II.A. SUBSIDY UNDER- OR OVERPAYMENTS

A subsidy under- or overpayment includes (1) an incorrect housing assistance payment to the owner, (2) an incorrect family share established for the family, and (3) an incorrect utility reimbursement to a family.

Corrections

Whether the incorrect subsidy determination is an overpayment or underpayment of subsidy, the HHA must promptly correct the HAP, family share, and any utility reimbursement prospectively.

HHA Policy

Increases in the family share will be implemented only after the family has received 30 days notice.

Any decreases in family share will become effective the first of the month following the discovery of the error.

Reimbursement

Whether the family or owner is required to reimburse the HHA or the HHA is required to make retroactive subsidy payments to the owner or family depends upon which party is responsible for the incorrect subsidy payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

14-II.B. FAMILY-CAUSED ERRORS AND PROGRAM ABUSE

Family obligations and general administrative requirements for participating in the program are discussed throughout this plan. This section deals specifically with errors and program abuse by family members.

An incorrect subsidy determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows the HHA to use incorrect information provided by a third party.

Family Reimbursement to HHA [HCV GB pp. 22-12 to 22-13]HHA Policy**Family Error/Late Reporting**

* Participants who owe money to HHA due to the family's failure to report increases in income will be required to repay all monies owed **by the first business day of the following month.**

Program Fraud

* Participants who owe money to HHA due to program fraud will be required to repay all monies owed by the first business day of the following month.

* Families with unreported income will only be offered to re-pay monies in full one time. Future violations of failing to report income will result in termination of their Housing Choice Voucher.

If the family fails to make full payment by the date due the HHA will terminate the family's assistance in accordance with the policies in Chapter 12.

HHA Reimbursement to Family [HCV GB p. 22-12]HHA Policy

The HHA will not reimburse the family for any underpayment of assistance when the underpayment clearly is caused by the family.

Prohibited Actions

An applicant or participant in the HCV program must not knowingly:

- Make a false statement to the HHA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.552(c)(iv)].

HHA Policy

Any of the following will be considered evidence of family program abuse:

Payment to the owner in excess of amounts authorized by the HHA for rent, security deposit, and additional services

Offering bribes or illegal gratuities to the HHA Board of Commissioners, employees, contractors, or other HHA representatives

Offering payments or other incentives to the owner or a third party as an inducement for the third party to make false or misleading statements to the HHA on the family's behalf

Use of a false name or the use of falsified, forged, or altered documents

Intentional misreporting of family information or circumstances (e.g. income, family composition)

Omitted facts that were obviously known by a family member (e.g., not reporting employment income)

Admission of program abuse by an adult family member

The HHA may determine other actions to be program abuse based upon a preponderance of the evidence, as defined earlier in this chapter.

Penalties for Program Abuse

In the case of program abuse caused by a family the HHA may, at its discretion, impose any of the following remedies.

- The HHA may require the family to repay excess subsidy amounts paid by the HHA, as described earlier in this section.
- The HHA may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit. See policies in Chapter 3 (for applicants) and Chapter 12 (for participants).
- The HHA may deny or terminate the family's assistance following the policies set forth in Chapter 3 and Chapter 12 respectively.
- The HHA may refer the family for state or federal criminal prosecution as described in section 14-II.E.

14-II.C. OWNER-CAUSED ERROR OR PROGRAM ABUSE

Owner requirements that are part of the regular process of offering, leasing, and maintaining a unit (e.g., HQS compliance, fair housing) are addressed in the appropriate chapters of this plan. This section focuses on errors and program abuse by owners.

An incorrect subsidy determination caused by an owner generally would be the result of an incorrect owner statement about the characteristics of the assisted unit (e.g., the number of bedrooms, which utilities are paid by the family). It also includes accepting duplicate housing assistance payments for the same unit in the same month, or after a family no longer resides in the unit.

Owner Reimbursement to the HHA

In all cases of overpayment of subsidy caused by the owner, the owner must repay to the HHA any excess subsidy received. The HHA may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, the HHA may allow the owner to pay in installments over a period of time [HCV GB p. 22-13].

HHA Policy

In cases where the owner has received excess subsidy, the HHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

Prohibited Owner Actions

An owner participating in the HCV program must not:

- Make any false statement to the HHA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.453(a)(3)] including:

HHA Policy

Any of the following will be considered evidence of owner program abuse:

Charging the family rent above or below the amount specified by the HHA

Charging a security deposit other than that specified in the family's lease

Charging the family for services that are provided to unassisted tenants at no extra charge

Knowingly accepting housing assistance payments for any month(s) after the family has vacated the unit

Knowingly accepting incorrect or excess housing assistance payments

Offering bribes or illegal gratuities to the HHA Board of Commissioners, employees, contractors, or other HHA representatives

Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to the HHA

Residing in the unit with an assisted family

Remedies and Penalties

When the HHA determines that the owner has committed program abuse, the HHA may take any of the following actions:

- Require the owner to repay excess housing assistance payments, as discussed earlier in this section and in accordance with the policies in Chapter 16.
- Terminate the HAP contract (See Chapter 13).
- Bar the owner from future participation in any HHA programs.
- Refer the case to state or federal officials for criminal prosecution as described in section 14-II.E.

14-II.D. HHA-CAUSED ERRORS OR PROGRAM ABUSE

The responsibilities and expectations of HHA staff with respect to normal program administration are discussed throughout this plan. This section specifically addresses actions of a HHA staff member that are considered errors or program abuse related to the HCV program. Additional standards of conduct may be provided in the HHA personnel policy.

HHA-caused incorrect subsidy determinations include (1) failing to correctly apply HCV rules regarding family composition, income, assets, and expenses, (2) assigning the incorrect voucher size to a family, and (3) errors in calculation.

Repayment to the HHA

Neither a family nor an owner is required to repay an overpayment of subsidy if the error or program abuse is caused by HHA staff [HCV GB. 22-12].

HHA Reimbursement to Family or Owner

The HHA must reimburse a family for any underpayment of subsidy, regardless of whether the underpayment was the result of staff-caused error or staff or owner program abuse. Funds for this reimbursement must come from the HHA's administrative fee reserves [HCV GB p. 22-12].

Prohibited Activities

HHA Policy

Any of the following will be considered evidence of program abuse by HHA staff:

Failing to comply with any HCV program requirements for personal gain

Failing to comply with any HCV program requirements as a result of a conflict of interest relationship with any applicant, participant, or owner

Seeking or accepting anything of material value from applicants, participating families, vendors, owners, contractors, or other persons who provide services or materials to the HHA

Disclosing confidential or proprietary information to outside parties

Gaining profit as a result of insider knowledge of HHA activities, policies, or practices

Misappropriating or misusing HCV funds

Destroying, concealing, removing, or inappropriately using any records related to the HCV program

Committing any other corrupt or criminal act in connection with any federal housing program

14-II.E. CRIMINAL PROSECUTIONHHA Policy

When the HHA determines that program abuse by an owner, family, or HHA staff member has occurred and the amount of overpaid subsidy meets or exceeds \$5,000, the HHA will refer the matter to the appropriate entity for prosecution. When the amount of overpaid assistance meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).

Other criminal violations related to the HCV program will be referred to the appropriate local, state, or federal entity.

14-II.F. FRAUD AND PROGRAM ABUSE RECOVERIES

The HHA may retain a portion of program fraud losses that the HHA recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163].

The HHA must be the principal party initiating or sustaining the action to recover amounts due from tenants that are due as a result of fraud and abuse. 24 CFR 792.202 permits the HHA to retain the greater of:

- 50 percent of the amount it actually collects from a judgment, litigation (including settlement of a lawsuit) or an administrative repayment agreement, or
- Reasonable and necessary costs that the HHA incurs related to the collection including costs of investigation, legal fees, and agency collection fees.

The family must be afforded the opportunity for an informal hearing in accordance with requirements in 24 CFR 982.555.

If HUD incurs costs on behalf of the HHA related to the collection, these costs must be deducted from the amount retained by the HHA.

Chapter 15

INFORMAL REVIEWS AND HEARINGS

INTRODUCTION

Families seeking admission to or already participating in the housing choice voucher program have the right to receive an informal review or hearing in most circumstances in which the HHA makes a decision affecting their eligibility or amount of assistance. The purpose of an informal review or hearing is to resolve applicant or participant with the HHA without legal action and to correct HHA errors that might have occurred in the decision-making process.

With the exception of decisions related to restrictions on non-citizens, an informal review is for program applicants and an informal hearing is for program participants. Decisions related to restrictions on assistance to non-citizens always require an informal hearing regardless of whether the family is an applicant or a participant.

15-I.A. NOTICE OF RIGHTS

Certain HHA action or decisions require an offer of informal review or hearing. Following these actions or decisions, the HHA must give an applicant or participant prompt written notice of the family's right to ask for an informal review or an informal hearing to determine whether the HHA's decision is in accordance with the law, HUD regulations, and HHA policies. The notice must contain the following information:

- ❖ A brief statement of reasons for the decision;
- ❖ A statement that if the family does not agree with the decision, the family may request an informal review or informational hearing; and
- ❖ The deadline for the family to submit the request.

Upon receiving the family's request the HHA must proceed with the informal review or informal hearing in a reasonably expeditious manner.

15-I.B. CIRCUMSTANCES WHICH REQUIRE THE OFFER OF AN INFORMAL REVIEW OR HEARING

HHA is not required to conduct an informal review or informal hearing to reconsider every HHA action or decision.

An informal review is not required for decisions concerning:

- ❖ Determination of unit size under the HHA's subsidy standards;
- ❖ Determination that a unit does not meet or comply with housing quality standards;

- ❖ Denial of a request to extend or suspend a voucher term;
- ❖ General policy issues or class grievances;
- ❖ Discretionary administrative determination by the HHA; and
- ❖ A HHA refusal to grant approval of the tenancy.

In all other circumstances, the HHA must give a program applicant an opportunity for an informal review of a decision when the applicant requests it.

An informal hearing is not required for the following:

- ❖ Determination that a unit does not comply with housing quality standards;
- ❖ Refusal to extend or suspend a voucher term;
- ❖ Discretionary administrative determinations by the HHA;
- ❖ General policy issues or class grievances;
- ❖ How the HHA established its utility allowance schedule;
- ❖ HHA refusal to approve a unit or tenancy;
- ❖ Determination that a unit does not meet housing quality standards due to family size or change in composition; and
- ❖ A determination to exercise or not to exercise any rights or remedy against the owner.

PHA decisions regarding the following determinations require that a program participant be given an opportunity for an informal hearing;

- ❖ Determination of the family's annual or adjusted income;
- ❖ Calculation of total tenant payment;
- ❖ Determination of appropriate utility allowance from the HHA's utility schedule;
- ❖ Termination of assistance;
- ❖ Determination of unit size for participants under the HHA's subsidy standards;
and

- ❖ Denial of a hardship exemption to the minimum rent requirement;

Hearings to Consider a Determination of Ineligible Immigration Status

Whenever the PHA makes a determination of ineligible immigration status, the PHA must offer an applicant or participant family the opportunity to request an informal hearing. If a family claims to be an eligible immigrant and the INS SAVE system and manual search do not verify the claim, the HHA notifies the applicant or participant within 10 days of their right to appeal to the INS within 30 days or to request an informal hearing with the HHA either in lieu of or subsequent to the INS appeal.

The HHA must keep all denial or termination of assistance documents related to immigration status for a minimum of five years. These include any applications for initial or continued assistance.

With good cause, HHAs may extend the period to request an informal hearing related to immigration status.

15.I.C. TIMING OF INFORMAL HEARINGS

In cases where the HHA decides to terminate or reduce a family's assistance, the HHA must send a notice which explains the reason for the decision and provides the family the opportunity to request an informal hearing prior to the HHA terminating or reducing assistance.

The HHA may implement the following changes prior to an informal hearing:

- ❖ Changes in total tenant payment or family share;
- ❖ Denial of a new voucher for a family that wants to move; or
- ❖ Unit size determinations for a family that wants to move.

15.I.D. INFORMAL REVIEW OR HEARING PROCESS

The HHA's administrative plan must clearly state the procedures for conducting informal reviews for applicants and informal hearings for participants. In addition, the HHA briefing packet, provided to all voucher holders, must include a description of the procedures for requesting informal reviews and informal hearings.

Informal Review Process

HHA Policy

A request for an informal review must be received in writing by the close of the business day, no later than 10 working days from the date of the HHA's notification of denial of

assistance. The informal review will be scheduled within 20 working days from the date the request is received.

The informal review may not be conducted by the person who made or approved the decision under review, nor a subordinate of such person.

Any person or persons designated by the HHA may conduct an informal review, other than the person or a subordinate of that person who made or approved the decision under review.

The review may be conducted by:

- ❖ A staff person who is at the Executive Director level or above
- ❖ A manager who the Executive Director appoints
- ❖ A commissioner
- ❖ An individual from outside the HHA

The program applicant must be given an opportunity to present written or oral objections to the HHA decision.

The review may be conducted by mail/or telephone if acceptable to both parties. A notice of the review findings will be provided in writing to the applicant within 20 working days after the review. It shall include the decision of the review officer, and an explanation of the reasons of the decision.

All requests for a review, supporting documentation, and a copy of the final decision will be retained in the family's file

Informal Hearing Process

An informal hearing is conducted by a hearing officer or officers appointed as described in the HHA administrative plan. The hearing officer may be any person or persons designated by the HHA, with the exception of the person or a subordinate of the person who made or approved the decision under review. The person who conducts the hearing may regulate the conduct of the hearing according to the procedures described in the HHA administrative plan.

Before the hearing the family must be given the opportunity to examine any PHA documents directly relevant to the hearing. The family must be allowed to copy any such documents at the family's expense. If the family requests a relevant document and the PHA does not make it available, the PHA may not rely on the document at the hearing.

Similarly, the HHA administrative plan may require that the HHA be given the opportunity to examine, at the HHA offices, any family documents that are directly relevant to the hearing. The HHA must be allowed to copy these relevant documents at

its expense. If the family does not make such documents available after receiving the HHA's request, the family may not rely on the documents of the hearing.

HHA Policy

After a hearing date is agreed to, the family may request to reschedule only upon showing "good cause," which is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.

If a family does not appear at a scheduled hearing and has not rescheduled the hearing in advance, the family must contact the HHA within 48 hours, excluding weekends and holidays. The HHA will reschedule the hearing only if the family can show good cause for the failure to appear.

Families have the right to:

- ❖ Present written or oral objections to the HHA's determination.
- ❖ Examine the documents in the file which are the basis of the HHA's action, and all documents submitted to the Hearing Officer;
- ❖ Copy and relevant documents at their expense;
- ❖ Present any information or witnesses pertinent to the issue of the hearing;
- ❖ Request that HHA staff be available or present at the hearing to answer questions pertinent to the case; and
- ❖ Be represented by legal counsel, advocate, or other designated representative at their own expense.

If the family requests copies of documents relevant to the hearing, the HHA will make the copies for the family and assess a charge of \$.08 per copy. In no case will the family be allowed to remove the file from the HHA's office.

In addition to other rights, the HHA has a right to:

- ❖ Present evidence and any information pertinent to the issue of the hearing;
- ❖ Be notified if the family intends to be represented by legal counsel, advocate, or another party;
- ❖ Have its attorney present; and
- ❖ Have staff persons and other witnesses familiar with the case present.

The informal hearing shall be conducted by the Hearing Officer appointed by the HHA who is neither the person who made or approved the decision, nor a subordinate of the person. The HHA appoints hearing officers who:

- ❖ Are HHA Commissioners/Are HHA Management

The hearing shall concern only the issues for which the family has received the opportunity for hearing. Evidence presented at the hearing may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

No documents may be presented which have not been provided to the other party before the hearing if requested by the other party. "Documents" includes records and regulations.

The family must request an audio recording of the hearing, if desired, 2 days prior to the hearing date.

The Hearing Officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision.

If the family misses an appointment or deadline ordered by the Hearing Officer, the action of the HHA shall take effect and another will not be granted.

The Hearing Officer will determine whether the action, inaction or decision of the HHA is legal in accordance with HUD regulations and this Administrative Plan based up on the evidence and testimony provided at the hearing. Factual determinations related to the individual circumstances of the family will be based on a preponderance of the evidence presented at the hearing.

A notice of the hearing findings shall be provided in writing to the HHA and the family within 20 working days and shall include:

- ❖ A clear summary of the decision and reasons for the decision;
- ❖ If the decision involves money owed, the amount owed and documentation of the calculation of monies owed;
- ❖ Which exceed the authority of the person conducting the hearing.

The HHA shall send a letter to the participant if it determines the HHA is not bound by the Hearing Officer's determination within 20 working days. The letter shall include the HHA's reasons for the decision.

All requests for a hearing, supporting documentation, and a copy of the final decision will be retained in the family's file.

Chapter 16

HOME OWNERSHIP OPTION [24CFR 982.625]

General Description and Information

This option will provide eligible families the opportunity of purchasing and owning a home using HCV assistance.

A family assisted under this program must be a qualified existing HCV participant who has been receiving HHA HCV assistance for a minimum of one year.

HHA Homeownership vouchers will limit the number of vouchers to be used for Homeownership during each fiscal year:

HHA Policy:

HHA will limit the Homeownership option to two Families in each fiscal year.

A live-in aide, if needed as a reasonable accommodation for persons with disabilities, must be approved by HHA pursuant to 24CFR 982.316.

HHA will require a minimum homeowner down payment of at least 3% of the purchase price and closing costs of the home. A minimum of 1% of the purchase price must come from the family's own resources. This down payment requirement may include the cost of appraisals and earnest money, but may not include the cost of the independent home inspection required elsewhere in this policy.

Financing of a home purchase under this option must comply with secondary mortgage market underwriting requirements; or, comply with generally accepted private underwriting standards.

Following are initial requirements that must be satisfied by the family before the homeownership option can begin:

16-I.A. Initial Requirements for Families

Before beginning homeownership assistance, HHA must determine that the family:

1. Meets the Eligibility Requirements set forth in this policy; and
2. The unit meets the Eligibility Requirements set forth in this policy.
3. In selecting participant families for the limited slots in the homeownership program, HHA will develop a first come-first served list of those families who have successfully completed the homeownership counseling program, and draw from this list in order to enroll families in the program.

16-I.B. Eligibility Requirements for the Family

1. Must be a qualified existing participant who has been receiving HCV assistance from HHA for a minimum of one year OR must be a continually assisted HCV applicant with a working family preference who meets the definition of a non-disabled family OR a continually assisted HCV applicant who meets the definition of a disabled family .
2. Participants porting in who are interested in the homeownership option must have completed at least one year in good standing in another PHA jurisdiction.
3. Must have complied with all HHA HCV requirements for a minimum of one year prior to applying for the homeownership option.
4. Will be ineligible if any money is owed to HHA or any other housing authority.
5. Must have completed an approved Homeownership Counseling and Budgeting class.
 - a. The class must be a HUD-approved program or a program that is consistent with the counseling provided under a HUD program.
 - b. Families may be required to participate in ongoing homeownership or financial counseling programs at the discretion of HHA under the following guidelines:
 1. If the family is late with two (2) or more payments during a calendar year.
6. Be a first-time homeowner, defined as:
 - a. A family of which no member owned any “present ownership interest” in a residence of any family member during the three years before commencement of homeownership assistance for the family. “First-time homeowner” includes a single parent or displaced homemaker who, while married, owned a home with his or her spouse, or resided in a home owned by his or her spouse.
 - b. A cooperative member, defined as a family of which one or more members owns membership shares in a cooperative.
 - c. A family of which a family member is a person with disabilities, and use of the homeownership option is needed as a reasonable accommodation so that the program is readily accessible to and useable by such a person.
7. Meet minimum income requirements, demonstrating that annual gross income as determined by HHA in accordance with 24CFR5.609 of the adult family members who will own the home when assistance begins is not less than the Federal minimum hourly wage multiplied by 2,000 hours annually. "However, in the case of a disabled family, the minimum annual income is the Federal Supplemental Security Income (SSI) benefit for an individual living alone (or paying his or her share of food and housing costs) multiplied by twelve."
 - a. Except in the case of an elderly or disable family (as defined by HUD) HHA shall not count any welfare assistance in determining annual income.
 - i. Welfare assistance is defined as welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments.
 - ii. The disregard of welfare assistance income only affects the determination of minimum annual income used to determine if a family initially qualifies for commencement of homeowner

assistance.

8. Meet the following Employment requirements:

- a. The family must demonstrate that one or more adult family members who will own the home at the beginning of the assistance program:
 - i. Is currently employed on a full-time basis (not less than an average of 30 hours per week); AND
 - ii. Has been continuously employed for one year prior to the beginning of their assistance with the homeownership program.
 - b. HHA will make final determinations as to whether and to what extent an employment interruption is permissible. HHA will use the following guidelines:
 - i. The timeliness of rent payments during the previous 12 months
 - ii. Breaks in employment for any reason are acceptable if they have been proven to not cause interruptions of rent obligations during the previous 12 month period.
 - c. Employment requirements do not apply to elderly or disabled applicants. HHA will also grant an employment exception if a family other than an elderly or disabled family that includes a person with disabilities is deemed by HHA to require the exception as a reasonable accommodation for the person(s) with a disability.
9. Must show that they have not defaulted on a mortgage securing debt to purchase a home under the homeownership option.
 10. No family member may have a present ownership interest in a residence at the commencement of homeownership assistance except for cooperative members who acquired cooperative membership shares prior to the beginning of assistance.

16-I.C. Eligibility Criteria for the Home

HHA will determine that the unit to be purchased meets all of the following requirements:

1. The unit cannot be:
 - a. A public housing unit or Indian housing unit
 - b. A unit receiving project-based assistance under the 1937 Act
 - c. In a nursing home, board and care home, or facility providing continual psychiatric, medical or nursing services
 - d. College or other school dormitory
 - e. On the grounds of penal, reformatory, medical, mental, or similar public or private institution
 - f. A mobile or manufactured home unless the home and the lot will be in the ownership of the family and the home is on a permanent foundation.
2. The unit must be within the HHA jurisdiction or ported to a jurisdiction that is administering a homeownership HCV program.
3. The unit must be under construction or already existing at the time HHA determined the family was eligible.
4. The unit must be either a one-unit property or a single dwelling unit in a cooperative or condominium
5. The unit must pass a HHA HQS inspection

6. The unit must also be inspected by an independent inspector selected by and paid by the family. Cost of this inspection may not be included as part of the down payment requirement noted above.
 - a. The independent inspector must be a certified member of the American Society of Home Inspectors (ASHI), and must inspect to ASHI standards.
 - b. The inspector must provide a copy of the inspection report to both the family and HHA. Homeownership assistance may not begin until HHA has received the report.

16.I.D. Application Process

To apply for a homeownership voucher, the family:

1. Must complete an application, which will be reviewed by the HHA Housing Manager. All information must be third-party verifiable.
2. Will be notified in writing of final eligibility.
3. Disagreements with the final determination are subject to the informal hearing process noted elsewhere in the Administrative Plan.

16.I.E. Home Search

982.629 Homeownership option: Additional PHA requirements for family search and purchase.

(a) The PHA may establish the maximum time for a family to locate a home, and to purchase the home.

(b) The PHA may require periodic family reports on the family's progress in finding and purchasing a home.

(c) If the family is unable to purchase a home within the maximum time established by the PHA, the PHA may issue the family a voucher to lease a unit or place the family's name on the waiting list for a voucher.

HHA Policy

Applicants shall update their progress on locating a home to the HHA every 90 days from acceptance into the program. Failure to locate a home for purchase under the homeownership option within 180 days, HHA will issue the family a voucher to lease a unit.

Rental assistance under the HCV program will continue to be provided during this search period.

16.I.F. Sales Agreement

1. Prior to execution of the sales agreement, the financing terms must be provided to HHA for approval. The sales agreement must:
 - a. Provide for the HQS and independent inspection and must state that the purchaser is not obligated to purchase unless the inspections are satisfactory to HHA.

- b. The HQS and independent inspector shall not be related to the buyer or have any financial or otherwise conflict of interest and shall have proper education and experience necessary to conduct an inspection.
- c. Provide that the purchaser is not obligated to pay for any necessary repairs without HHA approval.
- d. Must provide that the purchaser is not obligated to purchase if the mortgage financing terms are not approved by HHA.
- e. Must contain a seller certification that the seller is not debarred, suspended, or subject to a limited denial of participation under 24CFR Part 24.

16-I.G. Lending and Financing Process

The proposed financing terms must be submitted to and approved by HHA prior to close of escrow. HHA shall determine the affordability of the family's proposed financing. In making this determination, HHA may take into account other family expenses, including but not limited to child care, medical expenses that are not reimbursed, education and training expenses, etc. Certain typed of financing, including but not limited to, balloon mortgage payments, unless convertible to a variable fixed rate mortgage, are prohibited and will not be approved by HHA. Seller-financing shall be considered by HHA on a case-by-case basis. If a mortgage is not FHA-insured, HHA will require the lender to comply with generally accepted underwriting standards consistent with those of HUD/FHA, Ginnie Mae, Fannie Mae, Freddie Mac, Federal Home Loan Bank or other private lending institutions.

1. Families may enter into lease-purchase agreements while receiving HCV rental assistance. All requirements of the HCV program apply to lease-purchase agreements, except that families are permitted to pay an extra amount out-of-pocket to the owner for purchase related expenses. Any such "homeownership premium," defined as an increment of value attributable to the value of the lease-purchase right or agreement, is excluded from HHA's rent reasonableness determination and subsidy calculation, and must be absorbed by the family. When a lease-purchase participant family is ready to exercise their option, they must notify HHA and apply for the homeownership option. If determined eligible for homeownership assistance, the family may be admitted to the homeownership program and must meet all of the requirements of the homeownership policies.
2. If the seller of the property is related to the buyer, defined as parent, child, grandparent, grandchild, sister or brother of any member of the family, and the seller wishes to carry the contract for sale, the sales price may not be more than the value set by an independent appraisal.
3. Families may use special financing programs from non-profit, government and private sources.
4. HHA will file the necessary documentation to require loan officers to inform HHA of any late payments and missed payments as soon as they occur. Lenders are also required to inform HHA of any changes in servicing institutions or purchase of the loan by another institution.

16-I.H. Documents Required for Review and Approval of Home Purchase

Prior to final approval of using a voucher for mortgage assistance, families must submit copies of the following documents to HHA:

1. Copy of signed Buy-Sell agreement
2. Copy of good faith estimate from first mortgage lender
3. Copy of HUD universal mortgage loan application from first mortgage lender
4. Copy of independent inspectors report
5. Verification that any deficiencies found in the home during the inspection have been noted and arrangements negotiated to correct the deficiencies.
6. Copy of first three pages of appraisal
7. Copy of disclosure statement

Prior to closing, families and lenders must submit to HHA copies of the following:

1. Settlement statement
2. Copy of Title Report
3. Written verification that deficiencies in the home have been corrected.
4. Signed HQS inspection from HHA showing that the home meets HQS.

16-I.I. Compliance with Family Obligations

A family must agree, in writing, to comply with all family obligations under the Section 8 HCV program and HHA homeownership policies. These obligations include:

1. Attending ongoing homeownership counseling if required by HHA
2. Complying with the mortgage terms
3. Not selling or transferring the home to anyone other than a member of the assisted family who resides in the home while receiving homeownership assistance
4. Not refinancing or adding debt secured by the home without prior approval by HHA
5. Not obtaining a present ownership interest in another residence while receiving homeownership assistance
6. Supplying all required information to HHA, including but not limited to annual verification of household income, notice of change in homeownership expenses, notice of move-out, and notice of mortgage default

16-I.J. Amount of Assistance

The amount of the monthly assistance payment on behalf of the family will be the lower of:

1. The payment standard minus the total tenant payment; or
2. The family's monthly homeownership expenses minus the total tenant payment

The payment standard is the fixed amount HHA annually establishes as the "fair market" rent for a unit of a particular size located within HHA jurisdiction. In the homeownership program, the initial payment standard will be the lower of (1) the payment standard for which the family is eligible based on family size; or (2) the payment standard which is applicable to the size of the home the family decides to purchase. The payment standard for subsequent years will be based on the higher of (1) the payment standard in effect at

commencement of the homeownership assistance; or (2) the payment standard in effect at the most recent regular reexamination of the family's size and income.

HHA will use the same payment standard schedule, payment standard amounts and subsidy standards for the homeownership option as for the HCV program. HHA will use the same utility allowance schedule for the homeownership option as for the HCV program.

16-I.K. Determining Homeownership Expenses

Homeownership expenses will include:

1. Principle and interest on initial mortgage debt, any refinancing of such debt, and any mortgage insurance premium incurred to finance purchase of the home
2. Real estate property taxes and public assessments on the home
3. Home insurance
4. HHA utility allowance
5. HHA monthly allowance for maintenance will be \$25.00; major repairs and replacements will be \$25.00
6. Principal and interest on mortgage debt incurred to finance costs of major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to make the home accessible for that person, if HHA determines the allowance of such costs is needed as a reasonable accommodation.

16-I.L. Payments

Homeownership assistance payments will be made directly to the family unless otherwise required by the lender. The HHA will negotiate with both the family and lender to determine the best manner in which to make the HCV payment; i.e. either directly to the lender or the family.

16-I.M. Portability and Moves

A family determined eligible for homeownership assistance by HHA may purchase a home outside the HHA jurisdiction if the receiving PHA is administering a homeownership program and is accepting new families.

HHA prohibits more than one move by the family in a one year period, and HHA will not commence continued homeownership assistance for occupancy of the new unit so long as any family member owns any title or other interest in the prior home.

HHA may deny permission to move to a new unit if it determines that it does not have sufficient funding to provide continued assistance, or if the family is terminated or denied assistance as described below.

16-I.N. Maximum Term of Assistance

Federal regulations provide that the use of vouchers for homeownership assistance has a time limit for families in which the owner(s) are not determined to be elderly or disabled. For a mortgage of 20 years or more, the limit of assistance is 15 years. For all other

mortgages the limit of assistance is 10 years. These time limits also apply to families that sell their homes and transfer the support to a second home purchase. A family may receive a total of 10 or 15 years of assistance including all of the homes the family purchases using voucher assistance.

16-I.O. Denial or Termination of Assistance

1. A family's homeownership assistance may be terminated if the family fails to comply with its obligations under the Section 8 HCV Family Obligations policy, or additional obligations under the Homeownership programs, or if the family defaults on the mortgage.
2. The family must comply with the terms of the mortgage incurred to purchase and/or refinance the home.
3. The family must notify HHA within 10 days of missing a mortgage payment.
4. The family must attend foreclosure counseling within 30 days of missing a mortgage payment.
5. The family must provide HHA with written notice of:
 - a. any sale or transfer of any interest in the home
 - b. any plan to move out of the home prior to the move
 - c. any notice of mortgage default received by the family
 - d. Except where noted, the family may not convey or transfer the home to any entity or person other than a member of the assisted family while receiving homeownership assistance.
6. Homeownership assistance will only be provided while the family resides in the home. If the family moves out of the home, HHA will not continue homeownership assistance commencing with the month after the family moves out.
7. The composition of the assisted family must comply with Section 8 HCV policy, and the family must promptly notify HHA of any change in family composition.
8. The family must not sublease or let the unit.
9. The family must not assign or transfer the unit.
10. The members of the family must not commit fraud, bribery or any other corrupt or criminal act in connection with the program.
11. The members of the family may not engage in drug-related criminal activity or violent criminal activity as per HHA HCV policies.
12. The family must notify HHA before moving out of the home.
13. An assisted family, or members of the family, may not receive tenant-based assistance while receiving another housing subsidy, for the same unit or for a different unit, under any duplicative federal, state or local housing assistance program.
14. During the time the family receives homeownership assistance, no family member may have any ownership interest in any other residential property.
15. The homeownership option does not require annual HQS inspections. However, HHA will offer to inspect the home on a periodic basis with the intent of referring the family to programs that may be able to assist them with the cost of repairs and maintenance of the home.

16. Before commencement of homeownership assistance, the family must sign a statement of family obligations agreeing to comply with all family obligations.
17. HHA must terminate assistance for any family receiving homeownership assistance that is dispossessed from the home pursuant to a judgment or order foreclosing on any mortgage (whether FHA-insured or non-FHA) securing debt incurred to purchase a home, or any refinancing of such debt. HHA, at its discretion, may permit the family to move to a new unit with continued HCV rental assistance. However, such permission will be denied if:
 - a. The family defaulted on an FHA-insured mortgage; and
 - b. The family fails to demonstrate that it has conveyed title to the home as required by HUD, to HUD or HUD's designee, and moved from the home within the period established or approved by HUD.

Chapter 17

FAMILY SELF SUFFICIENCY

Overview and Purpose

The Helena Housing Authority's (HHA) Family Self Sufficiency (FSS) goal is to serve a total of 10 initial local Section 8 clients. HHA will evaluate the number of participants and based upon yearly funding HHA will add or subtract the total number of participants in the program. This will be done in June of every year so that HHA can have the total number of participants determined for the beginning of the fiscal year in July.

The program is designed to serve the economic self-sufficiency needs of HHA clients through collaborative community agency efforts and active HHA partnerships with regard to the supportive services these agencies provide.

The goal of HHA FSS program is to maintain 90% program participation of the enrolled clients at any given time.

This plan identifies programs that meet these needs and the process that enables qualified families who participate in FSS to receive necessary supportive services.

HHA Policy

At this time Helena Housing Authority does not offer a family self sufficiency program, due to funding.

FAMILY DEMOGRAPHICS

The HHA HCV voucher program income statistics reflect that 41% of our voucher holders are on Social Security, SSI and SSDI. 3% receive TANF, 24% report that they are earning wages, and we currently have .03% reporting zero income.

Of the 322 vouchers filled as of February 21, 2016, two hundred and thirty -seven (73.6%) families listed a female head of household. One hundred forty seven (45%) are single households and one hundred seventy five (54%) are family voucher holders.

PART I. ESTIMATE OF PARTICIPANTS

17.I.A. GIBLE FAMILIES FROM OTHER SELF-SUFFICIENCY PROGRAMS

Four of the ten slots are expected to be clients that enter into the program at a zero earned income level. Tenants that are receiving TANF, or any other welfare program except for the homeownership program are eligible to apply for this program.

17.I.B. SELECTION

FSS families will be selected from the pool of current, active and interested clients participating in the local HHA HCV/Section 8 Voucher program as follows:

1. An FSS interest Statement form must be completed and submitted in order for HHA clients to be considered for FSS participation. Interest Statements will be date stamped as received.
2. As long as there are empty slots, selections will be made on a first come, first serve basis. The FSS selection is accomplished when the Interest Statement is submitted, and a one-hour FSS intake appointment with Individual Training and Service Plan (ITSP) completed.
3. In the event that all of the FSS slots are filled, a waiting list will be formed based on the date stamped FSS Interest Statement. Clients will be contacted based on the earliest Interest date.
4. Waiting list contact will be handled by telephone and in writing. It is the obligation of the client to maintain current address and telephone information with HHA. If clients choose not to enter the program at the time of the next available slot, their name will be removed from the list and they will have to reapply. HHA will attempt to contact the client twice before removing their name from the list.

At no time, will FSS selection be based on race, color, religion, age, sex, disability, familial status or national origin. Participation may be denied in situations:

- ✓ Where a family participated in the past, but failed to comply with the program;
- ✓ Where needed family services do not exist in the community;
- ✓ Where any debt is owed to a PHA by the family and has not been paid by the time their name is at the top of the list.
- ✓ Where discernible evidence of lack of motivation exists.

17.I.C. INCENTIVES TO ENCOURAGE

Currently, HHA offers the following incentives to encourage participation in the FSS Program:

- ✓ Case Management support
- ✓ Information on employment and skill training, education, and home ownership programs.
- ✓ Referral to support services such as childcare, transportation, family counseling, medical/mental health services, financial counseling, and personal growth classes.
- ✓ Information regarding escrow account management.
- ✓ Homeownership information and referral.
- ✓ Budgeting Workshops referrals.

17.I.D. OUTREACH EFFORTS

Helena Housing Authority provides initial FSS program information in the form of brochures to prospective participants at the voucher lease-up and formal referrals of interested clients are made to the FSS Coordinator following this session. If clients choose not to enter the program at this point, Housing Choice Voucher Specialists make FSS referrals at annual recertification appointments.

Helena Housing Authority assures that both minority and non-minority groups are informed about the Family Self Sufficiency program. Section 8 voucher clients are informed equally from application orientation through lease up and re-certification processes of the Family Self Sufficiency program.

PART II. FSS SERVICES

The Helena Housing Authority Family Self Sufficiency Program uses an Assessment Tool. It assesses knowledge, skills and abilities in the three areas of education, employment and finances.

Once there application has been submitted, an intake meeting is scheduled. Discussion about current family financial situations, any immediate plans for employment, education or personal goals takes place at the initial meeting and assessment. With the FSS intake form itself, potential clients are assured of the confidentiality of information they will be sharing. The intake is divided into different assessment areas. The importance of completing each area is stressed, so as to assist families to identify possible needs and steps needed to achieve long term goals. Using their own income information, the FSS Coordinator calculates some possible future scenarios. The Coordinator calculated the Total Tenant Payment (TTP) and together they determine if the FFS Program would fit family needs and goals by comparing to future wages they would like to generate. They can no easily see how large or small an escrow may grow based on a comparison of current and future income information.

If the family determines that they cannot theoretically earn enough in the next five years, based on their current circumstances, to build an escrow they may choose not to enter the program. They are reminded that is their circumstances should change and their income decreases; they can choose to enter the program at another time. For example, if they are going to return to school and there will be a drop in income it will be a benefit to come to the FSS program sometime during their educational time period. There are two benefits of waiting. First, it fits nicely with education contract goals; secondly, they enter the FSS with a lower TTP which benefits them in the bigger picture of building escrow as part of a five year plan.

Typically, the progression of an FSS participant through the program of services would be:

1. Referral or self-referral

2. FSS Information Session
3. Initial FSS Program Meeting and Assessment OR decision to defer program entry.
4. Interim (6 month) meetings
5. Mandatory 12 Month reviews
6. Program completion or termination (voluntary or program initiated)

17.II.A. CASE MANAGEMENT PROCESS

All FSS families are required to participate in a mandatory annual review of contract goals. Changes in family circumstances are discussed and goals amended or changed, as needed. As part of both the annual and interim reviews the FSS Coordinator documents progress and steps taken toward goal completion. This information is recorded directly on the ITSP. Accordingly, if participants have not followed through on an initial short term goal by the original timeline, the reasons are assessed and together the participant and Coordinator determine whether an amendment is necessary or what specific activities would help to achieve the goal. The participant leaves each appointment with an updated ITSP, with progress and completed steps documented.

In addition, it is expected that FSS participants will keep an interim appointment every six months to discuss any successful goal completions, as well as barriers that may necessitate goal amendment. The FSS Coordinator assists families in identifying appropriate community resources and makes specific referrals to assist in goal completion, as needed. In the event the family has more intensive case management needs (especially at the onset of the FSS contract), there may be an Interim Review every three months. There may also be specific issues requiring follow-up, including agency referrals or occupancy/lease compliance discussions. Case Management level of participation is determined largely by the individual FSS participant and what needs they express. Whenever other Case Management is minimal so as not to duplicate services, although contact between the two agencies is consistent. Contracts that have goals that overlap are looked at a whole to insure best continuity of services for the participant.

17.II.B. ESCROW ACCOUNT

The HHA annually provides the FSS family an accounting of the escrow balance, including accrued interest. This information is provided by the HHA FSS Coordinator to the FSS participant families in the form of a letter.

17.II.C. INTERIM ESCROW DISBURSEMENT

The FSS family may request interim disbursement of a portion of the escrow account during the contract period. The disbursement must be for contract-related expenses and only if the family has successfully progressed toward meeting contract goals. The requested disbursement must be consistent with the goals noted in the ITSP. Interim disbursements must be associated the unexpected costs related to housing, training or employments goals that are referenced in the FSS contract.

It is expected that all potential options be explored and documented before an interim escrow disbursement request can be submitted. Examples of allowable interim disbursements:

- ✓ School tuition or other school costs
- ✓ Job training expenses
- ✓ Business start-up expenses
- ✓ Vehicle and major vehicle repair costs
- ✓ Emergency medical/dental/optical expenses
- ✓ Moving expenses
- ✓ New employment costs, including tools, professional wardrobe, uniforms, etc.

HHA will grant interim disbursements only when all of the following are in order:

- ✓ Specific written request with all documentation attached
- ✓ Documented confirmation of consistent progress toward contract goals
- ✓ HHA FSS Coordinator approval

17.II.D FINAL ESCROW DISBURSEMENT

The FSS family head of household must be employed; employment that will eventually ensure that the family will remain independent of welfare assistance. The FSS coordinator and the family will determine if the employment meets this criteria. A final disbursement to the FSS family of the total and/or remaining escrow funds will occur when:

1. The contract of participation has been completed, whether or not the contract term has expired; or
2. 30% of the family's monthly adjusted income equals or exceeds the existing housing FMR for the Voucher size or for the unit for which the family qualifies in public housing, based on the HHA occupancy standard, whether or not the five year contract is up.

Before making the final escrow disbursement, HHA will document that the family is not, and has not been for the prior 12 months, receiving TANF assistance. HHA will not restrict a family's use of FSS escrow account funds withdrawn as the result either of the above two occurrences.

PART III. REVISIONS AND TERMINATION OF CONTRACT AND SERVICES

17-III.A. ITSP REVISIONS

Throughout the five years FSS Participation Contract, the FSS Coordinator will continue to monitor and meet every six months with the client on goal progress and completion. The FSS participant will have ample opportunity to refine and amend goals in this process. The Coordinator will continue to offer referral to resources throughout the

community to assist with goal achievement as the contract timeframe progresses and to assist with revision of the contract as needed.

The contract may be modified at any time by mutual agreement of the FSS Coordinator and family in the following areas:

- ✓ Individual Training and Services Plans
- ✓ The contract term (portability and extension)
- ✓ Designation of the FSS head of family

As the biannual reviews progress, the FSS Coordinator will assess goal achievement progress in the connection with family circumstance. If there is little evidence of effort toward goal achievement, the Coordinator will consider reasons for the family not being able to fulfill their obligations under the contract. In situations where the contract history shows minimal effort to comply with the contract goals, the Coordinator may:

- ✓ Withhold interim escrow disbursements, or
- ✓ Determine to terminate the contract for cause

When termination is being considered, as a good faith measure, the participant is provided with an opportunity to sign a conditional agreement whereby specific action will be taken and/or goals met and documented by specific dates. This agreement will be treated as a contract amendment, with failure to keep to the agreement resulting in termination from the FSS Program.

In a situation where the FSS Coordinator determines that FSS Program termination is the only recourse, the adverse action must be in writing and provide for Administrative Review and Grievance Hearing rights.

If the head of the FSS family does not seek and maintain employment or never becomes employed during the contract's five year term, the family has not met its FSS obligations. In cases where there is more than one ITSP (spouse or other adult household member) in the Contract of Participation, only the Head of Household noncompliance is considered when making a determination to terminate the contract for cause.

The contract provides that the family must comply with the assisted lease. Therefore, noncompliance with the public housing lease, or the lease with the owner in Section 8, is grounds for termination of the FSS Contract of Participation. In Section 8, if the violation of the lease is "serious or repeated." The HHA may also terminate the program assistance.

FSS Program goals cannot be modified or changed in the last 18 months of the Contract of Participation unless extenuating circumstances apply as explained below.

17-III.B. CONTRACT EXTENSIONS

As the contract period progresses, the FSS Coordinator monitors advancement toward agreed upon goals. The initial contract term is five years. The contract may be extended, in writing, and at the family's request, for up to two additional years for good cause where there has been demonstrated effort to make progress toward goal achievement.

“Good Cause” is defined as any documented extenuating circumstance beyond the reasonable control of the family. Good cause circumstances may include any valid verified medical emergency, ongoing medical issues, major family/household composition changes, unexpected housing displacement, unexpected job termination or adverse change.

17-III.C. GRIEVANCE/HEARING PROCEDURES

A family receiving any written adverse action, including termination from participation in the FSS Program, may request an informal hearing or present a grievance in accordance with the Section 8 Administrative Plan and the Public Housing Admissions and Continuing Occupancy Plan.

If the FSS participant is not in agreement with the client services manager recommendations, he/she may file a written grievance within ten days.

If a FSS family voluntarily terminates their participation in the FSS Program, they no longer have any right to access escrow account funds and they may not request a hearing regarding the matter.

17-III.D. ASSURANCE OF NON-INTERFERENCE WITH RIGHTS OF NON-PARTICIPATING

The Helena Housing Authority assures that a family's election not to participate in the HHA FSS Program will not affect the family's admission to the Section 8 or Public Housing programs at any time, or to the family's right to occupancy in accordance with the lease.