

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
--

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 unit.

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;

- 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 types 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. ELIGIBLE 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.