

# Housing Assistance Payments (HAP) Contracts

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## 1 Chapter Overview

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The Housing Assistance Payment (HAP) contract is the contractual agreement between the PHA and the owner of a unit occupied by a Housing Choice Voucher (HCV) program participant. Under the HAP contract, the Public Housing Agency (PHA) agrees to make housing assistance payments to the owner on behalf of a specific family leasing a specific unit. The HAP contract must<sup>1</sup> be in the form prescribed by the U.S. Department of Housing and Urban Development (HUD), which is form HUD-52641. The monthly HAP amount to the owner is determined by the PHA in accordance with HUD requirements for a tenancy under the voucher program.

Prior to PHA approval of the assisted tenancy and the execution of a HAP contract, the PHA must<sup>2</sup> ensure that the following program requirements have been met:

- Owner is eligible;
- Unit is eligible;
- Unit has been inspected by the PHA and meets HQS;
- Lease includes the tenancy addendum;
- The rent charged by the owner is reasonable; and
- At the time a family initially receives tenant-based assistance for occupancy of a dwelling unit, and where the gross rent of the unit exceeds the applicable payment standard for the family, the family share does not exceed 40% of the family's monthly adjusted income.<sup>3</sup>

Upon approval of the assisted tenancy, the owner and the PHA can execute the HAP contract. The PHA cannot pay any housing assistance payment to the owner until the HAP contract has been executed. During the term of the HAP contract, the PHA must<sup>4</sup> make monthly housing assistance payments to the owner on behalf of the family at the beginning of each month.

The initial amount of the housing assistance payment by the PHA to the owner is reflected on the HAP contract at the time of HAP contract execution. The amount of the monthly housing assistance payment may change during the term of the HAP contract based on changes to the family's income, household composition, or other changes affecting the housing assistance payment amounts.

## 2 Owner Approvals

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Prior to executing a HAP contract and processing housing assistance payments, the PHA must<sup>5</sup> determine that the owner of the assisted unit is eligible to participate in the Housing Choice Voucher

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<sup>1</sup> 24 CFR § 982.451(a)(1)

<sup>2</sup> 24 CFR § 982.305(a)

<sup>3</sup> 24 CFR § 982.306(a)

<sup>4</sup> 24 CFR § 982.451(b)

<sup>5</sup> 24 CFR § 982.306(a)

program. An “owner” in the HCV program is any person or entity with the legal right to lease or sublease a unit to a participant. In this context, the term “owner” also includes a principal or other interested party.

## 2.1 Debarment and Other Causes for Disapproval

The PHA must<sup>6</sup> not approve an owner’s participation in the program if:

- The PHA is informed (by HUD or otherwise) that the owner is debarred, suspended, or subject to a limited denial of participation under 24 C.F.R. part 24;
- HUD informs the PHA that the federal government has instituted an administrative or judicial action against the owner for a violation of the Fair Housing Act or other federal equal opportunity requirements, including, but not limited to, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, or the Americans with Disabilities Act, and such action is pending;
- HUD informs the PHA that a court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements, including, but not limited to, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, or the Americans with Disabilities Act

## 2.2 Discretionary Owner Disapproval Policies

A PHA may<sup>7</sup> adopt a policy disapproving owners for any of the specific reasons listed below:

- The owner has violated obligations under one or more HAP contracts under the Housing Choice Voucher program or the Section 8 project-based program;
- The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- The owner has participated in any drug-related criminal activity or violent criminal activity;
- The owner has or has had a practice of non-compliance with HQS in HCV program units or with applicable housing standards for units leased under any federal housing program;
- The owner has a history or practice of refusing to evict HCV program or other federally assisted housing tenants for activity by the tenant, household member, a guest, or another person under the control of any member of the household that:
  - Threatens the right to peaceful enjoyment of the premises by other residents or of persons residing in the immediate vicinity of the premises;
  - Threatens the health or safety of residents, persons residing in the immediate vicinity of the premises, PHA employees, or owner employees engaged in managing the housing;
  - Engages in drug-related criminal activity or violent criminal activity; and
- The owner has a history or practice of renting units that fail to meet state or local housing

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<sup>6</sup> 24 CFR § 982.306

<sup>7</sup> 24 CFR § 982.306(c)

- codes; or
- The owner has not paid state or local real estate taxes, fines, or assessments.

PHAs must<sup>8</sup> clearly state in its administrative plan any owner actions which will result in the PHA disapproving the owner from participation in the HCV program.

## 2.3 Renting to Relatives

A PHA must<sup>9</sup> not execute a HAP contract when the owner of the unit is a relative of the family to be assisted, unless approving such a tenancy would provide reasonable accommodation for a family member with disabilities. Prohibited owner-family relationships include parent, child, grandparent, grandchild, sister, or brother of any member of the assisted family. Contracts that were executed on or prior to June 16, 1998, on behalf of related owners and families that remain in place may continue.

## 2.4 Conflicts of Interest

PHAs must<sup>10</sup> not approve HAP contracts in which a “covered individual” has any direct or indirect interest in the HAP contract or in any benefits or payments under the contract while that person is a covered individual or for one year thereafter. This includes the interest of an immediate family member of a covered individual. “Immediate family member” means the spouse, parent (including stepparent), child (including stepchild), grandparent, grandchild, sister or brother (including stepsister or stepbrother) of any covered individual.

A “covered individual” is defined as a person or entity who is a member of any of the following classes:

- Present or former member or officer of the PHA, except a participant commissioner;
- Employee of the PHA or any contractor, subcontractor, or agent of the PHA who formulates policy or influences program decisions;
- Public official, member of a governing body, or state or local legislator who exercises functions or responsibilities related to the program; or
- Member of the U.S. Congress.

The owner certifies that no person or entity has or will have a prohibited interest at execution of the HAP contract or at any time during the term of the HAP contract. If a prohibited interest occurs, the owner is required to fully disclose this interest to the PHA and to HUD.

When the PHA encounters such a situation, the PHA needs to consider whether a waiver request is

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<sup>8</sup> 24 CFR § 982.306 (c)

<sup>9</sup> 24 CFR § 982.306(d)

<sup>10</sup> 24 CFR § 982.161 (a)

appropriate before approving the HAP contract. If the PHA decides to submit a request to waive the conflict of interest regulation,<sup>11</sup> the PHA must<sup>12</sup> submit the waiver request demonstrating the good cause to waive the regulation to the HUD field office, which in turn, submits the waiver to HUD Headquarters for consideration. HUD Headquarters may waive the conflict of interest prohibition for good cause.

### 3 Term of HAP Contract

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The term of the HAP contract begins on the first day of the lease term and ends on the last day of the lease term, including any extensions of the lease term.

The HAP contract and the housing assistance payments made under the HAP contract terminate automatically in each of the following situations:

- The owner or the tenant terminate the lease;
- The PHA terminates the HAP contract;
- The PHA terminates assistance for the family;
- Upon the death of a single member household, including single member households with a live-in aide;
- If the family is absent from the unit for longer than 180 calendar days or the maximum period permitted by the PHA in its administrative plan. The owner must<sup>13</sup> reimburse the PHA for any housing assistance payment for the period after the termination; pr
- When 180 calendar days have elapsed since the PHA made the last housing assistance payment to the owner.

Housing assistance payments terminate when the lease is terminated by the owner in accordance with the lease. However, if the owner has commenced the process to evict the tenant, and if the family continues to reside in the unit, the PHA must continue to make housing assistance payments to the owner in accordance with the HAP contract until the owner has obtained a court judgment or other process allowing the owner to evict the tenant. The PHA may continue such payments until the family moves or is evicted from the unit. See 24 CFR § 982.311(b)

If the family moves from the unit, the owner is entitled to keep the housing assistance payment for the month in which the family moves out of the unit. The term of a new HAP contract for a new unit may begin in the same month in which the participant moves out of the previously assisted unit. This is not considered a duplicative subsidy.

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<sup>11</sup> 24 CFR § 982.161

<sup>12</sup> 24 CFR § 982.161(c)

<sup>13</sup> 24 CFR § 982.312(b)

The PHA has the discretion to terminate the HAP contract in each of the following situations:

- If the PHA determines that available program funding is not sufficient to support continued assistance for families in the program;
- If the PHA determines that the contract unit does not meet Housing Quality Standards (HQS) size requirements due to a change in family composition;
- If the assisted family breaks up and the PHA's policies as stated in its administrative plan determine that a family member that is leaving the unit is entitled to retain the voucher;
- The unit does not meet HQS; and/or
- The owner breaches the HAP contract.

The PHA must address the above situations in its administrative plan<sup>14</sup> to define when the PHA will terminate the HAP contract.

## 4 Payment to Owner

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The PHA must make housing assistance payments to the owner in accordance with the terms of the HAP contract, and the owner must<sup>15</sup> comply with the provisions of the HAP contract in order to receive such payments. The HAP contract specifies that payments are to be made monthly, at the beginning of each month. Housing assistance payments must<sup>16</sup> be made only during the lease term and while the family is residing in the unit. When a lease term begins after the first of the month, the housing assistance payment for the first month is pro-rated for a partial month.

The PHA determines the amount of housing assistance payment to the owner in accordance with HUD regulations and other requirements. The amount of housing assistance payment is subject to change during the term of the HAP contract. The PHA must<sup>17</sup> notify both the owner and tenant of any changes in the housing assistance payment in writing.

The monthly housing assistance payment by the PHA is credited toward the monthly rent to owner under the family's lease. The total of the rent paid by the tenant plus the PHA housing assistance payment may not be more than the rent to owner. The owner must<sup>18</sup> immediately return any excess HAP payment to the PHA.

The part of the rent to owner that the tenant pays may not be more than the difference between the rent to owner and the housing assistance payment. The owner may not demand or accept any rent payment from the tenant in excess of this maximum and must<sup>19</sup> immediately return any excess rent

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<sup>14</sup> 24 CFR § 982.54

<sup>15</sup> 24 CFR § 982.451(a)(1)

<sup>16</sup> 24 CFR § 982.311(a)

<sup>17</sup> 24 CFR § 982.308(g)

<sup>18</sup> 24 CFR § 982.451(b)(3)

<sup>19</sup> 24 CFR § 982.451(b)(4)(ii)

payment to the tenant. The family is not responsible for payment of the portion of rent to owner covered by the housing assistance payment. Likewise, the PHA is not responsible for any portion of the family share, including family rent to owner. Payment of the family share is the responsibility of the family.

#### 4.1 Distribution of Housing Assistance Payment

Generally, the PHA pays the entire housing assistance payment directly to the owner. In some instances, however, the housing assistance payment may exceed the amount of rent to owner. This can happen when the family must<sup>20</sup> pay some or all of its utilities. This excess amount is called a utility reimbursement. The PHA may pay the amount of the housing assistance payment that exceeds the rent to owner either to the family or directly to the utility supplier.

#### 4.2 “Zero HAP:” When the Family Pays the Full Contract Rent to the Landlord

Housing assistance payments stop when the family can afford to pay the full rent to owner and any utilities for which the family is responsible. Specifically, the PHA does not make housing assistance payments when the following occurs:

- Thirty percent of the family’s monthly adjusted income equals or exceeds the applicable payment standard or
- The family share equals or exceeds the gross rent (rent to owner plus utility allowance).

This is commonly known as “zero HAP.” As the HAP contract remains in effect for 180 calendar days after the PHA makes the last housing assistance payment, stopping the housing assistance payment in these situations does not affect the family’s rights under the lease. If the family’s income, size, composition, or other circumstances change during the remaining term of the HAP contract, housing assistance payments may be resumed.

#### 4.3 Penalties for Late Payment of HAP

The PHA must<sup>21</sup> pay the housing assistance payment promptly to the owner. The HAP contract provides for penalties against the PHA for late payments after the first two calendar months of the HAP contract term. For the penalties to take effect, all of the following circumstances must<sup>22</sup> apply:

- Penalties imposed are in accordance with generally accepted local rental market practices and law governing penalties for late payment of rent by a tenant;
- It is the owner’s normal business practice to charge such penalties for assisted and unassisted tenants; and

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<sup>20</sup> 24 CFR § 982.514(b)

<sup>21</sup> 24 CFR § 982.451(b)(5)(i)

<sup>22</sup> 24 CFR § 982.451(b)(5)(ii)(A)

- The owner also normally charges such penalties against the tenant for late payment of family rent to owner.

The PHA may add HAP contract provisions that define when the housing assistance payment by the PHA is deemed received by the owner. For example, receipt of payment may be defined as “upon mailing by the PHA” or “upon actual receipt by the owner.”<sup>23</sup> The PHA may only use administrative fee income or the administrative fee reserves for the program to pay a late payment penalty. The PHA may not use other program receipts for this purpose.

The PHA does not have to pay any late payment penalty if HUD determines that the late payment was due to factors beyond the PHA’s control<sup>24</sup>. Nor does the PHA have to pay a late payment penalty if the payment was intentionally delayed, abated, denied due to an owner breach of the HAP contract.

## 5 Contents of Housing Assistance Payments Contract (HAP Contract) Form HUD 52641

Form HUD-52641 is the HAP contract for the HCV program. HUD requires<sup>25</sup> PHAs to use this form. The HAP contract contains three parts:

- Part A, Contract Information;
- Part B, Body of Contract; and
- Part C, Tenancy Addendum.

Although the HAP contract must<sup>26</sup> be word-for-word in the form prescribed by HUD, PHAs have the discretion to add the following to Part A of the HAP contract:

- Language prohibiting the owner to collect a security deposit in excess of private market practices or in excess of amounts charged to unassisted tenants; and
- Language that defines when the housing assistance payment by the PHA is deemed received by the owner (e.g., upon mailing by the PHA or actual receipt by the owner).

The HAP contract cannot otherwise be modified. In addition to regular HCV program tenancies, the HAP contract must<sup>27</sup> also be used for the following “special housing types”:

- Single room occupancy (SRO) housing;
- Congregate housing;

<sup>23</sup> 24 CFR § 982.451(b)(5)(ii)(A)(3)(b)

<sup>24</sup> 24 CFR § 982.451(b)(5)(ii)(A)(3)(b)

<sup>25</sup> 24 CFR § 982.451(a)(1)

<sup>26</sup> Form HUD-52641, Page 1, *Use of this form*

<sup>27</sup> Form HUD-52641, Page 1, *Use for special housing types*



- Group homes;
- Shared housing; and
- Manufactured home rentals where the tenant is not the owner of the manufactured home and the space rent is included in the rent to owner.

When used for one of these special housing types, the PHA is required to specify in Part A of the HAP contract: “This HAP contract is used for the following special housing type under HUD regulations for the Section 8 voucher program: (Specify Name of Special Housing type).”

The HAP contract is *not* used for the following special housing types:

- Manufactured home space rental by a family that owns the manufactured home and leases only the space;
- Cooperative housing; and
- Section 8 homeownership program.

## 5.1 Part A: Contract Information

To prepare the HAP contract, the PHA must<sup>28</sup> fill in all of the contract information requested in Part A of the HAP contract. The HAP contract applies only to the household and contract unit specified in Part A. Form HUD-52641 contains section by section instructions for completing Part A. Part A contains the following information:

1. Full name of tenant;
2. Address of contract unit, including apartment number;
3. Names of household members;
4. First date and last date of initial lease term;
5. Amount of initial monthly rent to owner;
6. Amount of initial housing assistance payment;
7. Identification of utilities to be paid for by owner and tenant, and identification of appliances to be supplied by owner and tenant;
8. Signatures of the PHA representative and owner.

## 5.2 Part B: Body of Contract

Part B is the body of the HAP contract. Part B describes in detail program requirements affecting the owner and owner roles and responsibilities under the HCV program.

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<sup>28</sup> Form HUD-52641, Page 2

Part B of HAP Contract: Body of Contract Contents by Section Number	
1. Purpose	9. Prohibition of Discrimination
2. Lease of Contract Unit	10. Owner's Breach of HAP Contract
3. Maintenance, Utilities, and Other Services	11. PHA and HUD Access to Premises and Owner's Records
4. Term of HAP Contract	12. Exclusion of Third Party Rights
5. Provision and Payment of Utilities and Appliances	13. Conflict of Interest
6. Rent to Owner: Reasonable Rent	14. Assignment of the HAP Contract
7. PHA Payment to Owner	15. Written Notices
8. Owner Certification	16. Entire Agreement: Interpretation

1. Purpose. This is a HAP contract between the PHA, which is entered to provide assistance for the family under the HCV program, and the owner of the unit rented by the assisted family. The HAP contract only applies to the family and unit specified in Part A of the contract. The family will reside in the unit with assistance under the Section 8 voucher program. During the HAP contract, the PHA will pay housing assistance payments to the owner to assist the tenant to lease the unit.
2. Lease of Contract Unit. The HAP contract states the following: 1) the owner has leased the contract unit to an HCV program family; 2) the PHA has approved the lease; and 3) the lease includes word-for-word all provisions of the tenancy addendum (Part C of the HAP contract).

The HAP contract also states that it is the owner's responsibility to screen for family behavior or suitability for tenancy, and the PHA is not responsible for such screening. The HAP contract also clarifies that the PHA is not liable or responsible to the owner or other persons for the family's behavior or conduct in tenancy.

The HAP contract also contains the owner's certification that: 1) the owner and the tenant have entered into a lease for the contract unit which contains all provisions of the tenancy addendum; 2) the lease is in a standard form as used by the owner and is generally used for unassisted tenants in the premises; and 3) the lease is consistent with state and local law.

3. Maintenance, Utilities, and Other Services. The owner must<sup>29</sup> provide all housing services agreed to in the lease. The owner must<sup>30</sup> maintain the unit and premises in accordance with HQS and supply all utilities needed to comply with HQS. If the owner fails to do this, the PHA may take action against the owner, including recovering overpayments, suspending housing assistance payments, abating or reducing housing assistance payments, and terminating housing assistance payments and the HAP contract. In the case of an HQS breach, these actions can be

<sup>29</sup> Form HUD-52641, Page 4, Part B Section 3. a.

<sup>30</sup> Form HUD-52641, Page 4, Part B Section 3. b

taken only if the owner, and not the family, is responsible for the breach.

The PHA must<sup>31</sup> not make any housing assistance payments to the owner if the unit is in violation of HQS unless the owner corrects the deficiencies within the required timeframe and the PHA verifies that the corrections have been properly made. The PHA may inspect the unit and premises at any time the PHA determines necessary to ensure that the unit meets HQS. The PHA must<sup>32</sup> notify the owner of any HQS deficiencies uncovered.

4. Term of HAP Contract. The term of the HAP contract begins on the first day of the initial term of the lease, and terminates on the last day of the term of the lease (including the initial lease term and any extensions).

The HAP contract also states when the HAP contract will automatically terminate, and when the PHA may in its discretion terminate the HAP contract.

5. Provision and Payment for Utilities and Appliances. The lease and the HAP contract must<sup>33</sup> specify what utilities and appliances are to be provided or paid by the owner or the tenant. The language contained in the lease and the HAP contract regarding payment for utilities and appliances must<sup>34</sup> be consistent.
6. Rent to Owner: Reasonable Rent. During the HAP contract term, the rent to owner must<sup>35</sup> never exceed the reasonable rent for the contract unit as determined by the PHA. The PHA determines the reasonable rent in accordance with HUD requirements and may re-determine reasonable rent at any time. During the HAP contract term, the rent to owner may not exceed the rent charged by the owner for comparable unassisted units on the premises. The owner must give the PHA any reasonable rental information requested by the PHA.
7. PHA Payment to Owner. Unless the owner has complied with provisions of the HAP contract, the owner does not have a right to receive housing assistance payment under the HAP contract. The amount of the monthly housing assistance payment shall be determined by the PHA in accordance with HUD requirements and is subject to change.

Housing assistance payments shall only be paid to the owner while the family is residing in the contract unit during the term of the HAP contract. The PHA shall not pay a housing assistance payment to the owner for any month after the month when the family moves out.

For deceased single member households or a household where the remaining household

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<sup>31</sup> Form HUD-52641, Page 4, Part B Section 3 d

<sup>32</sup> Form HUD-52641, Page 4, Part B Section 3 f

<sup>33</sup> Form HUD-52641, Page 5, Part B Section 5 a and b

<sup>34</sup> Form HUD-52641, Page 5, Part B Section 5 c.

<sup>35</sup> Form HUD-52641, Page 5, Part B Section 6 a

member is a live-in aide, the owner may keep the HAP for the month in which the death occurred. No payments may be made for subsequent months.

If the PHA determines that the owner is not entitled to the housing assistance payment or any part of it, the PHA, in addition to other remedies, may deduct the amount of the overpayment from any amounts due the owner (including amounts due under any other HAP contract).

8. Owner Certification. The HAP contract contains the owner’s certification that during the term of the HAP contract:

- The owner maintains the unit and premises in accordance with HQS;
- The unit is leased to the tenant;
- The lease includes the HUD tenancy addendum, is in accordance with the HAP contract and program requirements, and has been provided to the PHA;
- Rent to owner does not exceed rents charged by the owner for comparable unassisted units in the premises;
- Other than the rent to owner, the owner will not receive any payments or other consideration from any source for rental of the unit during the contract term from the family, PHA, or HUD;
- The family does not own or have any interest in the unit;
- To the owner’s knowledge, the family resides in the contract unit, and the unit is its only residence;
- The owner is not a relative of any family member unless the PHA has approved the tenancy as a reasonable accommodation for a family member who is a person with disabilities.

9. Prohibition of Discrimination. The HAP contract specifies that the owner must<sup>36</sup> not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability in connection with the HAP contract. Eligibility for HUD’s programs must be made without regard to actual or perceived sexual orientation, gender identity, or marital status. In addition, the owner must<sup>37</sup> cooperate with the PHA and HUD in conducting equal opportunity compliance reviews and complaint investigations in connection with the HAP contract.<sup>38</sup>

10. Owner’s Breach of HAP Contract. Any of the following actions by the owner, principal, or other interested party is a breach of the HAP contract:

- Violation of any obligation under the HAP contract, including the requirement to maintain unit in accordance with HQS;

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<sup>36</sup> Form HUD-52641, Page 6, Part B Section 9 a

<sup>37</sup> Form HUD-52641, Page 6, Part B Section 9 b

<sup>38</sup> Equal opportunity compliance reviews refer to compliance reviews under federal civil rights authorities, including, but not limited to, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, Title II of the Americans with Disabilities Act, and the Age Discrimination Act.

- Violation of any obligation under any other Section 8 housing assistance payment contract;
- Fraud, bribery, or any other corrupt or criminal act in connection with the any federal housing program;
- For projects with HUD-insured mortgages or HUD loans, failure to comply with the applicable program regulations, the mortgage or mortgage note, or the regulatory agreement or fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan; or
- If the owner has engaged in any drug-related criminal activity or violent criminal activity.

If the PHA determines that a breach or noncompliance of the contract has occurred, the PHA may exercise any of its rights and remedies under the HAP contract. The PHA must<sup>39</sup> notify the owner of its determination and provide in writing the reasons for the determination. The notice may require the owner to take a corrective action by an established deadline. The PHA may recover any overpayment, suspend housing assistance payments, abate or reduce the housing assistance payment, terminate the payment or terminate the HAP contract. The PHA may also obtain additional relief by judicial order or action, including specific performance, other injunctive relief, or order for damages. The PHA must<sup>40</sup> provide the owner with written notice of any termination or reduction in housing assistance payments or the termination of the HAP contract.

**11. PHA and HUD Access to Premises and Owner Records.** The owner agrees to provide the PHA and HUD with any pertinent information related to the HAP contract. The HAP contract states that the PHA, HUD, and the Comptroller General of the United States have full and free access to the contract unit and the premises and to all accounts and other records of the owner that are relevant to the HAP contract. The owner must<sup>41</sup> grant access to computerized or electronic records and to any computers, equipment or facilities containing such records. The owner must<sup>42</sup> assist the PHA in obtaining records.

**12. Exclusion of Third Party Rights.** The HAP contract states that the family is not a party to or third party beneficiary of Part B of the HAP contract. The family, therefore, cannot enforce any provision of Part B and cannot take action against the owner or the PHA under Part B. However, the family may enforce and take action against the owner under Part C, Tenancy Addendum, of the HAP contract.

The PHA is not responsible for or liable to any person injured as a result of the owner's action or failure to act in connection with managing the unit or premises or implementing the HAP contract. The owner is not the agent of the PHA, and the HAP contract does not create or affect any

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<sup>39</sup> Form HUD-52641, Page 6, Part B Section 10b

<sup>40</sup> Form HUD-52641, Page 6, Part B Section 10c

<sup>41</sup> Form HUD-52641, Page 6, Part B Section 11c

<sup>42</sup> Form HUD-52641, Page 6, Part B Section 11c

relationship between the PHA and the lender to the owner or any suppliers, employees, contractors or subcontractors used by the owner in connection with managing the unit or premises or implementing the HAP.

13. Conflict of Interest. The HAP contract contains conflict of interest provisions that may prohibit some owners from participation in the program. The owner certifies and is responsible for assuring that there are no conflicts of interest related to the HAP contract or in any benefits or payments under the contract.

14. Assignment of the HAP Contract. The owner may not assign the HAP contract to a new owner without the prior written consent of the PHA. The owner must<sup>43</sup> provide to the PHA any pertinent information requested by the PHA. Any new owner is subject to the same owner approval criteria as was the original owner.

The new owner must agree to be bound by and comply with the HAP Contract. The agreement must<sup>44</sup> be in a written form acceptable to the PHA. The new owner must<sup>45</sup> give the PHA a copy of the executed agreement.

15. Written Notices. Any notice by the PHA or the owner in connection with the HAP contract must<sup>46</sup> be in writing.

16. Entire Agreement: Interpretation. The HAP contract contains the entire agreement between the owner and the PHA. The HAP contract must<sup>47</sup> be interpreted and implemented in accordance with HUD requirements and regulations at 24 C.F.R. §982.

### 5.3 Part C: Tenancy Addendum

The tenancy addendum sets forth the tenancy requirements for the program and the composition of the household, as approved by the PHA. As the assisted lease includes the tenancy addendum, portions of the language from Part B of the HAP Contract are restated in Part C of the HAP Contract: Tenancy Addendum. In addition, language exists to protect the tenant's rights of tenancy under the program and to state allowable owner actions under the program.

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<sup>43</sup> Form HUD-52641, Page 7, Part B Section 14b

<sup>44</sup> Form HUD-52641, Page 7, Part B Section 14g

<sup>45</sup> Form HUD-52641, Page 7, Part B Section 14g

<sup>46</sup> Form HUD-52641, Page 7, Part B Section 16

<sup>47</sup> Form HUD-52641, Page 8, Part B Section 17

Part C of HAP Contract: Tenancy Addendum Contents by Section Number	
1. Section 8 Voucher Program	10. PHA Termination of Assistance
2. Lease	11. Family Move Out
3. Use of Contract Unit	12. Security Deposit
4. Rent to Owner	13. Prohibition of Discrimination
5. Family Payment to Owner	14. Conflict with Other Provisions of Lease
6. Other Fees and Charges	15. Changes in Lease or Rent
7. Maintenance, Utilities, and Other Services	16. Notices
8. Termination of Tenancy by Owner	17. Definitions
9. Lease: Relation to HAP Contract	

1. Section 8 Voucher Program. The tenancy addendum states that the owner is leasing the contract unit to the tenant for occupancy with assistance for a tenancy under the HCV program. The owner has entered into a HAP contract with the PHA under which the PHA will make housing assistance payments to the owner to assist the tenant in leasing the unit from the owner.

2. Lease. The owner has provided the PHA with a copy of the lease and certifies that the terms of the lease are in accordance with the HAP contract and that the lease includes the tenancy addendum.

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.

3. Use of Contract Unit. During the lease term, the family will reside in the contract unit with assistance under the voucher program. The household composition must<sup>48</sup> be approved by the PHA; therefore, the family must promptly inform the PHA of the birth, adoption or court-awarded custody of a child. Other persons may not be added without prior written approval of both the owner and the PHA.

The unit must<sup>49</sup> be the family's only residence. Household members may engage in legal profit-making activities incidental to use of the unit as a residence. The tenant may not sublease, let, or transfer the unit, or assign the lease.

4. Rent to Owner. The initial rent to owner may not exceed the amount approved by the PHA. Changes in rent to owner are determined by the lease provisions, but the owner may not raise the rent during the initial lease term.

<sup>48</sup> Form HUD-52641, Page 9, Part C Section 3b

<sup>49</sup> Form HUD-52641, Page 9, Part C Section 3d



During the term of the lease, the rent to owner may not exceed the amount determined as reasonable by the PHA. The rent may also not exceed rent charged by the owner for comparable unassisted units in the premises.

5. Family Payment to Owner. The family is responsible for paying the portion of the rent to owner that is not covered by the PHA housing assistance payment. The housing assistance payment amount is determined by the PHA in accordance with program requirements and shall be credited against the monthly rent to owner for the contract unit.

The family is not responsible for paying the portion of rent to owner covered by the PHA housing assistance payment under the HAP contract. PHA failure to pay the housing assistance payment to the owner is not a violation of the lease and the owner may not terminate tenancy for nonpayment of the PHA housing assistance payment.

The owner may not charge or accept from any source any payment for rent of the unit in addition to the rent to owner. Rent to owner includes all housing services, maintenance, utilities and appliances to be provided for and paid by the owner in accordance with the lease.

The owner must<sup>50</sup> immediately return any excess rent payment made by the tenant to the tenant.

6. Other Fees and Charges. Rent to owner does not include costs of meals, supportive services, or furniture which may be provided by the owner. The owner may not require the tenant to pay such charges. Nonpayment of such charges is not grounds for termination of tenancy.

The owner may not charge the tenant extra amounts for items customarily included in rent to owner in the locality or provided at no additional cost to unsubsidized tenants in the premises.

7. Maintenance, Utilities, and Other Services. The owner must<sup>51</sup> maintain the unit and premises in accordance with HQS. Maintenance and replacement must<sup>52</sup> be in accordance with the owner's standard practice for the building. The owner must provide all housing services as stated in the lease and must<sup>53</sup> provide all utilities needed to comply with HQS.

The owner is not responsible for a breach of HQS caused by the tenant's failure to pay for utilities required to be paid for by the tenant, or by the tenant's failure to provide and maintain appliances required to be provided by the tenant. The owner is also not responsible for a breach of HQS because of damages beyond normal wear and tear caused by any household member or guest.

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<sup>50</sup> Form HUD-52641, Page 9, Part C Section 5f

<sup>51</sup> Form HUD-52641, Page 9, Part C Section 7a(1)

<sup>52</sup> Form HUD-52641, Page 9, Part C Section 7a(2)

<sup>53</sup> Form HUD-52641, Page 9, Part C Section 7b



8. Termination of Tenancy by Owner. The owner may only terminate the tenancy in accordance with the lease and HUD requirements. The following details the right of the owner to terminate tenancy: 1) during any term of the lease; 2) during the initial lease term; and 3) after the initial lease term.
- a. During any term of the lease, the owner may only terminate the tenancy because of serious and repeated lease violations, violations of federal, state, or local law that impose obligations on the tenant in connection with occupancy or use of the unit and its premises, criminal activity or alcohol abuse (see below) or other good cause (defined below).

In the case of criminal activity, the owner may terminate tenancy during the term of the lease if any member of the household, a guest, or another person under the resident's control commits criminal activity that threatens the health, safety of, or the right to peaceful enjoyment of the premises by other residents, or of their residences by persons residing in the immediate vicinity of the premises. The owner may terminate tenancy during any term of the lease if any member of the household, a guest, or another person under the resident's control commits any violent or drug related criminal activity on or near the premises.

The owner's ability to terminate tenancy for criminal activity extends to those households which contain a household member fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual is fleeing (or, if fleeing from the State of New Jersey, is a high misdemeanor). It also extends to those households which contain a household member who is violating a condition of probation or parole under Federal or state law. If the owner determines the household member has committed the criminal activity, the owner may terminate the tenancy regardless of whether the household member has been arrested or convicted for the activity.

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

- b. During the initial lease term, the owner may terminate tenancy for 'other good cause.' During the initial lease term, other good cause must<sup>54</sup> be something the family did or something the family failed to do. During the initial lease term or any extension, other good cause may include disturbing neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises.
- c. After the initial lease term, other good cause may also include the tenant's failure to

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<sup>54</sup> Form HUD-52641, Page 10, Part C Section 8d(1)

accept the owner’s offer of a new or revised lease, the owner’s desire to use the unit for personal or family use or for a purpose other than use as a residential rental unit, or another business or economic reason to terminate tenancy, including sale of property, unit renovation, or the owner’s desire to increase the rent.

‘Good cause’ examples as included in the Tenancy Addendum do not preempt any state or local laws to the contrary.

In the case of an owner who is an immediate successor in interest as a result of a foreclosure during the term of the lease, requiring the tenant to vacate the property prior to sale does not constitute other good cause. However, the owner may terminate tenancy on the effective date of transfer if the owner will occupy the unit as a primary residence and has provided the tenant with a notice to vacate at least 90 days before the effective date of such notice. Any state or local law providing for longer time periods or additional tenant protections are not affected by this requirement.

9. Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking The tenancy addendum adds language which protects an incident(s) of actual or threatened domestic violence, dating violence, sexual assault, or stalking from being construed as serious or repeated violations of the lease or other “good cause’ for termination of the assistance, tenancy, or occupancy rights of such a victim. Criminal activity directly relating to abuse, engaged in by a member of a tenant’s household or any guest or other person under the tenant’s control, shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant’s family is the victim or threatened victim of domestic violence, dating violence, sexual assault, or stalking.

Subject to any lease termination requirements or procedures prescribed by federal, state, or local law, if any member of the tenant’s household engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking, the landlord may “bifurcate” the lease, or remove that household member from the Lease, without regard to whether that household member is a signatory to the lease, in order to evict, remove, or terminate the occupancy rights of that household member without evicting, removing, or otherwise penalizing the victim of the criminal activity who is also a tenant or lawful occupant. A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking may request an emergency transfer in accordance with the PHA’s emergency transfer plan. The tenancy addendum details additional VAWA protections.

10. Eviction By Court Action. The owner may only evict the tenant by a court action.

11. Owner Notice of Grounds. At or before the beginning of the court action to evict, the owner must<sup>55</sup>

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<sup>55</sup> Form HUD-52641, Page 12, Part C Section 11

give the tenant a notice specifying the grounds for termination of tenancy. This notice may be included in or combined with the owner eviction notice. At the same time the owner notifies the tenant, the owner must give the PHA a copy of any owner eviction notice. Eviction notice means a notice to vacate, or a complaint or other initial pleading used to begin an eviction action under state or local law.

12. Lease: Relation to HAP Contract. If the HAP contract terminates, the lease automatically terminates.

13. PHA Termination of Assistance. The PHA may terminate program assistance for the family in accordance with HUD requirements. If the PHA terminates program assistance for the family, the lease automatically terminates.

14. Family Move Out. The tenant must<sup>56</sup> notify the PHA and the owner before moving out of the unit.

15. Security Deposit. The owner may collect a security deposit from the tenant, subject to state and local law. Any PHA restriction in place prohibiting the owner from collecting a security deposit in excess of private market practice, or in excess of amounts charged by the owner to unrestricted tenants must<sup>57</sup> be specified in the HAP contract.

When a family moves out of the contract unit, the owner, subject to state and local law, may use the security deposit plus any interest earned on the deposit as reimbursement for any unpaid rent, damages to the unit, or other amounts the tenant owes under the lease. The owner must<sup>58</sup> give the tenant a list of all items charged against the security deposit, including the amount for each item. The owner must<sup>59</sup> promptly refund the full amount of any unused balance to the tenant. If the security deposit is not sufficient to cover amounts owed by the tenant under the lease, the owner may collect the balance from the tenant.

16. Prohibition of Discrimination. The owner must<sup>60</sup> not discriminate against any person because of race, color, religion, sex, national origin, age, familial status or disability in connection with the lease. Eligibility for HUD's programs must be made without regard to actual or perceived sexual orientation, gender identity, or marital status.

17. Conflict with Other Provisions of Lease. The terms of the tenancy addendum are prescribed by HUD in accordance with federal law and regulation as a condition for federal assistance to the tenant and the tenant's family under the HCV program. In case of any conflict between the tenancy addendum and any lease provisions or other agreement between the owner and the

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<sup>56</sup> Form HUD-52641, Page 12, Part C Section 14

<sup>57</sup> Form HUD-52641, Page 11, Part C Section 15

<sup>58</sup> Form HUD-52641, Page 12, Part C Section 15

<sup>59</sup> Form HUD-52641, Page 12, Part C Section 15

<sup>60</sup> Form HUD-52641, Page 12, Part C Section 16

tenant, the requirements of the HUD-required tenancy addendum prevail.

**18. Changes in Lease or Rent.** The tenant and the owner may not make any changes to the tenancy addendum. If the tenant and owner agree to any other changes in the lease, those changes must<sup>61</sup> be in writing and the owner must immediately give a copy of the changes to the PHA.

In the following cases, tenant based assistance will be discontinued unless the PHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner:

- If there are changes in lease requirements governing tenant or owner responsibilities for utilities or appliances;
- If there are changes in lease provisions governing the term of the lease;
- If the family moves to a new unit, even if in the same building or complex.

PHA approval of the tenancy and execution of a new HAP contract are not required for agreed changes in the lease, other than as specified above.

The owner is required to notify the PHA of any changes in the rent to owner amount at least 60 days before any such rent change goes into effect. The amount of the rent to owner may not exceed the reasonable rent for the unit as most recently determined or re-determined by the PHA.

**19. Notices.** All notices under the lease between the tenant and the owner must<sup>62</sup> be in writing.

## 6 HAP Contract Execution

When the process for requesting tenancy approval is completed, the PHA notifies the owner and the family of the approval or disapproval of the tenancy.

If the PHA determines that all applicable program requirements have been met and approves the tenancy, the PHA prepares the HAP contract. The PHA compares information in Part A to the lease, ensuring that the tenant name, unit address, household composition, term of the lease, and initial rent to owner are correct. The PHA computes the family rent to owner, utility reimbursement (if any), and the housing assistance payment, entering the amount of the housing assistance payment on the HAP contract.

The family and owner execute the lease. The owner and the PHA then execute the HAP contract. The effective date of the HAP contract is the same as the effective date of the lease. For families that are leasing in place, the family and owner must execute a new lease to meet the requirement that the effective date of the HAP contract is the same date as the effective date of the lease.

<sup>61</sup> Form HUD-52641, Page 13, Part C Section 18

<sup>62</sup> Form HUD-52641, Page 13, Part C Section 19

The PHA should not execute the HAP contract until the contract has been executed by the owner or owner’s representative. Both the PHA and the owner must<sup>63</sup> execute the HAP contract no later than 60 calendar days from (*i.e.* after)the beginning of the lease term. Any HAP contract executed after the 60-day period is void, and the PHA cannot make any housing assistance payments to the owner. The PHA must<sup>64</sup> not make any housing assistance payments to the owner until the HAP contract has been executed.

It is considered a best practice to execute the HAP contract prior to or as close to the beginning of the lease term as possible. It is a good business practice to assign responsibility to designated staff to ensure that the PHA executes HAP contracts in a timely fashion and to monitor compliance with the 60-day execution deadline.

If the HAP contract is executed after the beginning of the lease term, the initial housing assistance payment would include the retroactive amount due to the owner from the effective date of the lease and HAP contract.

It is important that both the family and the owner fully understand the requirements contained in the HAP contract and tenancy addendum, particularly those requirements related to their rights and responsibilities under the HCV program. Some PHAs choose to meet with the owner and family together to review the HAP contract, tenancy addendum, and owner and family obligations under the program. Other PHAs use the family briefing to explain these requirements to the family and invite new owners to an orientation to discuss their roles and responsibilities. In conducting such meetings and briefings, PHAs must ensure effective communication with individuals with disabilities and ensure meaningful program access for persons with Limited English Proficiency (LEP).

It is equally important that PHA staff fully understands the provisions of the HAP contract, since the HAP contract is the binding agreement that governs the relationship between the PHA and the owner. Staff should be able to clearly and consistently explain HAP contract provisions to its owners, families, and community groups.

## 7 Changes Requiring New HAP Contract

The PHA must<sup>65</sup> approve a new tenancy and execute a new HAP contract in the following cases:

- If the owner or family request a new lease;
- If there are any changes in the lease requirements governing tenant or owner responsibilities for utilities or appliances;
- If there are changes in lease provisions governing the term of lease; and

<sup>63</sup> 24 CFR § 982.305(c)(1)

<sup>64</sup> 24 CFR § 982.305(c)(2)

<sup>65</sup> 24 CFR § 982.308(g)

- If the family moves to a new unit, even if the new unit is in the same building or complex.

Approving a new tenancy requires the PHA to take all original steps as discussed in this chapter.

Changes in the lease other than those identified above do not necessitate the execution of a new HAP contract. The owner must<sup>66</sup> notify the PHA, however, of any proposed changes in the amount of rent to owner at least 60 calendar days before the changes go into effect. Any such changes would be subject to rent reasonableness requirements.

## 8 Owner Responsibilities

The term “Owner” refers to any person or entity with the legal right to lease or sublease a unit to a participant. Owner responsibilities are defined in the HAP contract, lease, and HUD regulations. The owner is responsible for the following<sup>67</sup>:

- 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; The fact that an applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, is not an appropriate basis for denial of tenancy if the applicant otherwise qualifies for tenancy.
- Maintaining the unit in accordance with HQS, including performing ordinary and extraordinary maintenance;
- Complying with equal opportunity requirements;
- Preparing and furnishing to the PHA information required under the HAP contract;
- Collecting from the family any security deposit, the family rent to owner, and any charges for unit damage by the family;
- Enforcing tenant obligations under the lease; and
- Paying for utilities and services, unless paid for by the family under the lease.

## 9 Change in Ownership

Owners wishing to change ownership must<sup>68</sup> supply all information as requested by the PHA, and the existing owner must obtain written consent from the PHA prior to assigning a HAP contract to a new owner. The requirements related to owner approvals also apply to changes in ownership.

The new owner must<sup>69</sup> agree to be bound by and comply with the HAP contract. In addition, the

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<sup>66</sup> 24 CFR § 982.308(g)(4)

<sup>67</sup> 24 CFR § 982.452

<sup>68</sup> Form HUD-52641, Page 7, Part B Section 14

<sup>69</sup> Form HUD-52641, Page 7, Part B Section 14

agreement that the new owner will comply with the HAP contract must be in a form acceptable to the PHA. If the new owner fails to provide the PHA with an acceptable written agreement that the new owner will comply with the HAP contract, the HAP contract terminates with the effective date of the ownership change.

An industry best practice is to request a copy of the sales document, or other proof of transfer of ownership. If the assisted tenancy continues, the PHA will require that the new owner submit to the PHA a copy of the owner's W-9 Form for tax purposes.

## 10 Documentation

The PHA must<sup>70</sup> request from the owner a copy of the owner's IRS Form W-9, Request for Taxpayer Identification Number and Certification, for IRS reporting purposes. This request usually occurs at the time of execution of the HAP contract, although some PHAs request that the owner submit this form with the request for tenancy approval. IRS Form W-9 asks for the owner's name, the business name and address, and the taxpayer identification number. Once an owner has provided the IRS Form W-9, Request for Taxpayer Identification Number and Certification, the form is not required should the owner enter into another HAP contract on behalf of a different tenant and property with the PHA.

Although not required by HUD, many PHAs also require proof of ownership. Some PHAs may have access to local tax assessor records and require staff to review these records to verify ownership. Other PHAs require the owner to provide an original or other document that verifies the owner. Additionally, most PHAs do require a copy of an executed property management agreement when another entity is acting on behalf of the legal property owner.

## 11 Document Distribution and Record-Keeping Requirements

The family receives an original of the lease and copy of the tenancy addendum. The owner receives an original of the lease and HAP contract, including the tenancy addendum. The PHA maintains a copy of the lease, tenancy addendum, and an original of the HAP contract.

During the term of the assisted tenancy and for at least three years thereafter, the PHA must<sup>71</sup> keep on file a copy of the HAP contract, including the tenancy addendum, and the lease.

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<sup>70</sup> 24 CFR § 982.158(a)

<sup>71</sup> 24 CFR § 982.158(e)

## 12 Internal Revenue Service (IRS) Reporting Requirements (IRS Form-1099)

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The PHA uses the information obtained from the Form W-9 to report to the IRS the amount of income it has paid to owners (in the form of housing assistance payments). The PHA uses the IRS Form 1099 for this purpose.

## 13 Chapter Glossary

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The following terms are used in this Chapter:

**Contract unit** is the housing unit rented by the tenant with assistance under the program.

**Family** means the persons who may reside in the unit with assistance under the program as defined in the PHA's Administrative Plan and consistent with 24 CFR 5.403

**HAP contract** is the housing assistance payments contract between the PHA and the owner. The PHA pays housing assistance payments to the owner in accordance with the HAP contract.

**Household** refers to the persons who may reside in the contract unit. The household consists of the family and any PHA-approved live-in aide. (A live-in aide is a person who resides in the unit to provide necessary supportive services for a member of the family who is elderly, near-elderly, or a person with disabilities.)

**Housing quality standards (HQS)** are the HUD minimum quality standards for housing assisted under the Section 8 tenant-based programs.

**Lease** is the written agreement between the owner and the tenant for the lease of the contract unit to the tenant. The lease includes the tenancy addendum prescribed by HUD.

**Premises** mean the building or complex, in which the contract unit is located, including common areas and grounds.

**Rent to owner** is the total monthly rent payable to the owner for the contract unit. The rent to owner is the sum of the portion of rent payable by the tenant plus the PHA housing assistance payment to the owner.