

# Housing Search and Leasing

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# 1 Chapter Overview

This chapter explains the briefing process, Housing Choice Voucher (HCV) issuance, housing search, tenancy approval, and leasing processes. Housing search and leasing are critical activities in the administration of the HCV program. Until the family finds a unit that meets both their needs and program requirements, the family cannot benefit from the many opportunities offered by the HCV program. At the same time, the PHA cannot earn the administrative fee needed to operate the program until a unit is leased and placed under the Housing Assistance Payments (HAP) contract. When a family receives adequate information about program rules and PHA expectations and assistance during the housing search and leasing processes, both the family and PHA benefit. Families are likely to lease units more quickly and better understand program requirements, while the PHA increases its ability to meet SEMAP leasing requirements, improve its leasing success rate, and control costs.

The voucher is the family's authorization to search for housing. The family receives the voucher after the PHA selects the family from the waiting list, determines the family eligible for assistance, and conducts the program briefing. Upon issuance of a Housing Choice Voucher, the housing search process begins. Once the family finds a suitable unit, the PHA begins its process of approving or denying the assisted tenancy. If the tenancy is approved, leasing activities begin.

## 2 Briefings

### 2.1 Introduction

Prior to issuing a voucher to a family, a PHA must<sup>1</sup> give the family an oral briefing, as well as an information packet, outlining the HCV program requirements.

PHAs should use the oral briefing to communicate basic program requirements and any PHA-specific requirements. At a minimum, the PHA should give the family an overview of the contents of the briefing packet, so families are aware of the information contained in the packet and, therefore, are more likely to refer to the packet during the housing search and leasing process.

Although the briefing presentation and the contents of the information packet are discussed under separate subheadings below, they are very much related in practice. The information packet is typically distributed

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<sup>1</sup> 24 CFR § 982.301(a)

### Briefing Objectives

- Introduce the Housing Choice Voucher program and the benefits it offers to participating families;
- Provide step-by-step instructions on how and where (including how much time they have) to search for a unit;
- Explain how rent and subsidy are calculated;
- Inform families of their rights under the HCV program;
- Inform families of their responsibilities as HCV program participants;
- Clarify the role of owners in the HCV program; and
- Clarify the role of the PHA and its expectations of HCV program participants.

during the briefing session, and parts of the briefing involve explaining items contained in the information packet.

Important benefits can be gained by dedicating staff time and resources to this “front-end” process. Families who are not properly briefed often require more assistance from PHA staff in order to find a unit. This can place unnecessarily heavy demands on staff time and affect the agency’s ability to achieve its monthly leasing objectives and complete other important processing functions, such as monthly reexaminations. PHAs that are committed to conducting high-quality briefings often find that their ability to efficiently administer the program greatly increases.

Because of the importance of the briefing, PHAs in areas where a large number of applicants have limited English proficiency (LEP), i.e., the applicants do not speak English as their primary language, should consider conducting a special briefing in another language or languages, conducting a bilingual briefing, or arranging for an interpreter to be present at the briefing. Similarly, the written material that accompanies the briefing should be translated to the extent possible. PHAs can draw upon the bilingual skills of various community organizations or its own staff to assist in briefing families and translating documents. The PHA must take reasonable steps to ensure meaningful access to their programs and activities to persons with limited English proficiency (LEP). PHAs cannot require families to bring their own interpreters and cannot ask children to interpret for their parents. As an aid to recipients, HUD published Final Guidance to Federal Financial Assistance Recipients: Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (LEP Guidance) in the Federal Register on January 22, 2007 (72 FR 2732).

More information on LEP can be found at <http://www.hud.gov/offices/fheo/promotingfh/lep.cfm> and at <http://www.lep.gov>. (Also, see Chapter: Fair Housing Requirements).

## 2.2 Oral Briefing Topics

The oral briefing provides the PHA with a unique and important opportunity to set the tone for the relationship between the PHA and the participating family.

Most families invited to a briefing know little about the HCV program, so delivering the information in a simple, clear, and well-organized way helps the family understand the information and their rights and responsibilities. Families should be given an opportunity to ask questions and discuss the information presented. Many presenters find it helpful to use videos, slide presentations, charts, maps, and other visual and media aids to deliver the message.

The oral briefing must<sup>2</sup> provide information on the following subjects:

- How the Housing Choice Voucher program works;
- Family and owner responsibilities;
- Where the family can lease a unit, including renting a unit inside or outside the PHA’s jurisdiction; and

An explanation of how portability works. For families eligible to lease a unit outside the PHA jurisdiction under portability, the briefing must<sup>3</sup> also include an explanation of how portability works. PHAs cannot discourage the family from choosing to live anywhere in the PHA jurisdiction or outside the PHA’s jurisdiction under portability procedures. However, a PHA may deny portability: (1) if the PHA does not have sufficient funding

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<sup>2</sup> 24 CFR § 982.301(a)(1)

<sup>3</sup> 24 CFR § 982.301(a)(2)

for continued assistance; or (2) because of the family's action or failure to act in accordance with grounds for denial or termination of assistance.

Notwithstanding the above, as explained in PIH Notice 2016-09, when a request to move is due to a disability of a family member, even if a family might otherwise be restricted from moving (e.g., under a "one move per year" policy or because of insufficient funding), PHAs must consider requests for reasonable accommodations in accordance with regulations at 24 CFR 100.204, 24 CFR 8.33, and 28 CFR 35.130, including reasonable accommodations relating to moves, that may be necessary for a qualified individual with a disability to benefit from the program. In cases where the limitation on portability is a discretionary policy of the PHA, the PHA must grant the accommodation unless doing so would impose an undue financial and administrative burden. In cases where the limitation on portability is compelled by regulation, the PHA must first assess whether the requested accommodation would impose an undue financial and administrative burden. If the answer to this question is "no," the PHA must forward the request to HUD so the relevant regulatory provision can be waived by the Assistant Secretary. In cases where a PHA believes it has insufficient funding to allow a move, a PHA must nonetheless consider a request for a reasonable accommodation, but may, where the individual facts warrant, determine that allowing the move would pose an undue financial and administrative burden to the PHA. Such determination is subject to review by the local HUD office, as well as by the HUD Office of Fair Housing and Equal Opportunity in the event a complaint is filed alleging a failure to grant a reasonable accommodation.

In addition, PHAs are subject to Violence Against Women Act (VAWA) requirements which may require the PHA to permit portability in additional circumstances (for example, a family may receive a voucher and move in violation of the lease if the family has complied with all other obligations of the voucher program and has moved out of the assisted dwelling in order to protect the health or safety of an individual who is, or has been, the victim of domestic violence, dating violence, sexual assault, or stalking in accordance with 24 CFR § 982.353(b).

PHAs must<sup>4</sup> notify their local HUD field office before denying moves due to insufficient funding. (See the Moves and Portability chapter). Denial of requests to move under this regulation may cover both portability moves to a higher cost area as well as moves within the PHA's jurisdiction to higher cost units.

The briefing must<sup>5</sup> also explain the advantages of moving to an area that does not have a high concentration of low-income families.

## 2.3 Effective Communication Requirements

The PHA must<sup>6</sup> take appropriate steps to ensure effective communication through the use of appropriate auxiliary aids and services, such as interpreters, transcription services, Brailled materials, large print, and accessible electronic communications, in accordance with Section 504 and Americans with Disabilities Act (ADA) requirements. Section 504 of the Rehabilitation Act of 1973 (as amended) prohibits discrimination under any federally-assisted program solely on the basis of a disability. The ADA extends this nondiscrimination protection to all services, programs and, activities provided or made available by public entities and to the facilities, services, and accommodations of certain private entities, including PHAs. In addition, the Fair Housing Act makes it illegal for housing providers to refuse to make reasonable

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<sup>4</sup> 24 CFR § 982.354(e)(1)

<sup>5</sup> 24 CFR § 982.301(a)(3)

<sup>6</sup> 24 CFR § 8.6; 28 CFR §§ 35.160-164; 28 CFR §§ 36.303

accommodations, including taking steps that may be necessary to ensure effective communications with individuals with disabilities.

To assure that HCV applicants have an equal opportunity to participate in the program, PHAs must<sup>7</sup> ensure that notices of and communications during all the briefing session and meetings are provided in a manner that is effective for persons with hearing, visual, and other disabilities consistent with Section 504, and the ADA. This includes ensuring that training materials are in appropriate alternative formats as needed to ensure effective communication, e.g., Braille, audio, large type, sign language or other types of interpreters, accessible electronic communications, transcription services, and assistive listening devices, etc. Under the effective communication requirement, steps must be taken to ensure that communications are provided in the most integrated setting appropriate for the individual with a disability. It is also necessary to give primary consideration to the means of communication preferred by the individual with a disability. PHAs are not required to take any actions that would result in a fundamental alteration in the nature of the program or activity or in an undue financial and administrative burden. See the Fair Housing Requirements chapter.

## 2.4 Other Briefing Topics

Below are other topics PHAs are encouraged to consider discussing in the briefing:

- Tips on how to find a suitable unit and family considerations when deciding whether to lease a unit, including unit condition, reasonableness of rent, cost of tenant-paid utilities, whether the unit is energy-efficient, and location of unit;
- Tips on how to negotiate a lease;
- Housing Quality Standards (HQS), focusing on common reasons that units fail HQS during initial inspections;
- Discussion of significant aspects of applicable state and local laws, including fair housing laws;
- Information on housing opportunities within the PHA's jurisdiction, particularly in low-poverty areas;
- Information on the quality of neighborhoods, including the availability of job opportunities, quality of schools, access to public transport, and other community services;
- Information on the availability of local community resources for which families can apply to complement their housing assistance (This might include any services of financial assistance for security deposits and other moving costs. Effective use of these services and resources may help to prevent difficulties for the family during tenancy.);
- Explain that individuals with disabilities may make requests for reasonable accommodations and an explanation of what a reasonable accommodation is, with examples.
- Information on the PHA's efforts to assist individuals locating available accessible housing, including its current listing of available accessible units. For example, providing accessible transportation to individuals with disabilities to visit potential rental units.
- Explanation of security deposit requirements. Families should be informed of three points:
- The Cost of the Security Deposit Is Not Covered under the HCV Program. Owners may collect a security deposit but are not required to do so, and amounts collected may vary. Some owners may agree to allow the family to pay the security deposit in installments over the term of the lease. Depending upon the housing market and jurisdiction, some PHAs may be able to give families an indication of how much of a

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<sup>7</sup> 24 CFR § 8.6

security deposit they can expect to pay for various types of units. Providing this information to the family up-front can help the family better plan for this expense.

- The Purpose of the Security Deposit. When a participant moves out of the unit, the owner may use the security deposit and any interest accrued as reimbursement for any unpaid rent payable by the tenant, and damages to the unit or for other amounts the tenant owes under the lease. The owner must<sup>8</sup> give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting any charges, the owner must<sup>9</sup> promptly refund the full amount of the remaining balance to the tenant. If the security deposit is not sufficient to cover the amount the tenant owes under the lease, the owner may seek to collect the balance from the tenant. Rules governing security deposits are generally covered in state law.
- The PHA's Security Deposit Policy. If applicable, the PHA should explain its security deposit policy. PHAs may choose to develop policies that limit the security deposit to no more than an amount commonly charged in the private market or to no more than the owner charges to unassisted tenants. Other than this, the PHA cannot place any restrictions on the security deposit amount charged by owners.

## 2.5 Contents of Briefing Packet

### 2.5.1 Required Briefing Packet Materials

The briefing packet must<sup>10</sup> include the following documents and information:

- The term of the voucher, and the PHA's policies on any extensions or suspensions of the term. If the PHA allows extensions, the packet must<sup>11</sup> explain how the family can request an extension;
- A description of the method used to calculate the housing assistance payment for a family, including how the PHA determines the payment standard;
- An explanation of how the PHA determines the maximum allowable rent for an assisted unit;
- Where the family may lease a unit. For a family that qualifies to lease a unit outside the PHA jurisdiction under portability, the information must include an explanation of how portability works;
- The HUD-required tenancy addendum, which must be included in the lease;
- The form the family must use to request approval of tenancy, and an explanation of how to request such approval;
- A statement of the PHA policy on providing information about families to prospective owners;
- The PHA subsidy standards including when the PHA will consider making exceptions;
- The HUD brochure on how to select a unit;
- The HUD pamphlet on lead-based paint entitled Protect Your Family from Lead in Your Home;<sup>12</sup>
- Information on federal, state, and local equal opportunity laws and a copy of the housing discrimination complaint form (form HUD-903.1), including information on how to fill out the form/file a fair housing complaint;
- If the family includes a person with disabilities, include a current list of available accessible units known to the PHA;

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<sup>8</sup> 24 CFR § 982.313(d)

<sup>9</sup> 24 CFR § 982.313(d)

<sup>10</sup> 24 CFR § 982.301(b)

<sup>11</sup> 24 CFR § 982.301(b)(1)

<sup>12</sup> 24 CFR § 35.88

- Family obligations under the program, including any obligations of other special programs (VASH, Homeownership, Family Unification Program (FUP), Welfare to Work, etc.) if the family is participating in one of those programs; and
- The advantages of areas that do not have a high concentration of low-income families.

While the PHA will not be able to tell a family with certainty how much the family will have to pay in rent and utilities (because the family's share of the rent depends on the amount of rent the owner charges for the selected unit) giving the family a general understanding of how much that family can afford and the maximum they will be allowed to pay in rent and utilities saves time for both the family and the PHA. Having this information from the start helps families narrow their search to units in an affordable price range and minimizes PHA denials of families' requests of the assisted tenancy because the gross rent for the unit causes the family share of the rent to exceed the maximum family share at initial occupancy.

### 2.5.2 Supplemental Briefing Packet Materials

In addition to items required by the regulations, PHAs may wish to include supplemental materials to help explain the program to both participants and owners. Examples of supplemental materials for consideration include:

- A summary of the items included in the briefing packet (The amount of material in the information packet and its level of reading difficulty may make some families reluctant to use the packet as a resource. A concise written summary of the contents of each item included in the packet may make the packet more user-friendly and helpful to the family);
- Brochures to explain the HCV program to owners;
- Form HUD-52641, Housing Assistance Payments Contract for the HCV Program;
- Description of the PHA's security deposit policy, if the PHA has one.
- Information on service organizations and utility companies;
- Explanation of rent reasonableness;
- Requirements for notifying the PHA of any changes in income;
- List of units known to be available for rent;
- Explanation of any special programs or services offered by the PHA, such as the Family Self-Sufficiency program;
- Checklist of items to consider before signing a lease;
- Contact information for PHA staff, local social service agencies (welfare and health agencies, legal assistance groups, fair housing organizations, tenant organizations, child care services, transportation services, utility companies, etc.); and

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The list of units known to be available for rent is only useful if it is up-to-date. In smaller, less active rental markets, the PHA will be able to more easily maintain a rental list. In larger markets and areas with low vacancy rates, a list of owners who have indicated their interest in participating in the program may prove to be more useful since any identified vacant unit may be rented before its availability can be advertised to voucher holders. Such list(s) should be made available to all families and should include units outside areas of low-income or minority concentration. PHAs should emphasize that units included on the list(s) are not pre-approved and still need to go through the process of approval of the assisted tenancy.

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- A list of items that commonly fail HQS;
- The grounds on which the PHA may terminate assistance for a participant family because of family action or failure to act (see the Eligibility Determination and Denial of Assistance chapter and the Terminations chapter);
- Information on the PHA's reasonable accommodation policies and information on how disability-related expenses are treated in the rent calculation; and
- Notice of Occupancy Rights under the Violence Against Women Act (VAWA) and Certification Form. By including these documents as part of the briefing packet, PHAs will have met the requirement to provide these documents no later than the date that the HAP contract is executed.

## 3 Briefing Attendance, Length, Location, and Time

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### 3.1 Attendance

Some PHAs require that all of the adults in each household attend the briefing, while other PHAs require attendance only by the head of household. The benefit of requiring all adult household members to attend the briefing is that it is the best guarantee that everyone is informed about the program, particularly the family obligations and grounds for termination of assistance. Proponents of requiring all adult family members attend the briefing argue that the likelihood of misreporting income, fraud, and lease violations decreases when all adult members are successfully briefed. However, one major disadvantage of this approach is that it can create scheduling problems for both the PHA and the family. When an adult household member misses the briefing and it cannot be rescheduled promptly, costly delays in issuance and leasing can occur.

Weighing the pros and cons of both approaches, a PHA will want to determine a policy that best meets its needs. Note that the inability of all adult family members to attend the briefing cannot be considered grounds for denial of assistance. PHAs must also grant reasonable accommodation requests that may be necessary for persons with disabilities in accordance with Federal civil rights laws.

### 3.2 Group versus Individual Briefings

Families selected to participate in the HCV program may be briefed individually or in a group setting. There are advantages and disadvantages to both approaches. Should a group briefing be held, families should be presented with the opportunity to speak to an agency representative one-on-one so that sensitive questions may be asked and answered. See the following table which describes in detail the advantages and disadvantages of group and individual briefings.

Type of Briefing	Advantages	Disadvantages
Group Briefings	<ul style="list-style-type: none"> <li>· Allows the PHA to better control the workload distribution of its leasing staff so that the PHA can allocate sufficient time to other leasing activities.</li> <li>· Efficient method for briefing a large number of families as quickly as possible.</li> <li>· Increases likelihood that families receive a consistent message from the PHA</li> <li>· Families can learn from others with similar problems and questions and can share ideas and experiences</li> <li>· Typically more appropriate for large programs, programs with aggressive leasing schedules, and programs with a heavy workload and limited staff.</li> </ul>	<ul style="list-style-type: none"> <li>· Often does not encourage or allow sufficient time for questions to be raised by families and answered by PHA staff (if group sessions are held, the PHA should allow time for one-on-one meetings to address individual questions and concerns following the briefings).</li> <li>· Slows the leasing process as families wait to be briefed.</li> <li>· The larger the group, the less effective the briefing.</li> </ul>
Individual Briefings	<ul style="list-style-type: none"> <li>· Families can be briefed immediately after they are selected and determined eligible without having to wait for the next scheduled briefing.</li> <li>· Individual attention helps to clarify search process and program requirements, increasing likelihood that the family will be successful in leasing up.</li> <li>· More time can be spent explaining program benefits and encouraging families living in high-poverty census tracts to move to lower-property areas.</li> <li>· Affords more privacy and tailoring to meet family's needs.</li> <li>· Typically more appropriate for PHAs with limited leasing activities.</li> </ul>	<ul style="list-style-type: none"> <li>· May spread leasing staff too thin if they are conducting too many individual briefings, decreasing their ability to complete other important processing functions.</li> <li>· Increases likelihood of inconsistency in information if more than one person is conducting the individual briefings.</li> </ul>

### 3.3 Length, Location, and Time

The length of the briefing is an important consideration. On the one hand, the briefing covers a substantial amount of important information, including some topics that may be complex and confusing to a Housing Choice Voucher holder who has limited program knowledge. Because of this, enough time should be allocated for the briefing to ensure that all topics are adequately covered. On the other hand, if the briefing is too long, the voucher holder will lose interest. Most agencies limit the briefing to no more than one hour. Briefings are usually held during regular business hours at the PHA's central office, but they can be held anywhere at any time.

See the table below for considerations in determining the location and time of briefings.

#### Considerations for Determining Briefing Location and Time

- Is the PHA's central office easily accessible, or would it be more convenient for the client if the briefing was offered at another public site (e.g. local community center, church, or public housing site)?
- Are there families with special needs and persons with disabilities that may require the briefing to be scheduled at some other location, such as the applicant's home or another PHA office?
- Is the geographical area large enough so that it is more practical to hold briefings at various sites throughout the jurisdiction?
- Would working families find early morning, evening, or weekend briefings more convenient to attend?

## 4 Subsidy Standards

The PHA must<sup>13</sup> establish subsidy standards that determine the number of bedrooms needed for families of different sizes and composition. PHAs must<sup>14</sup> determine the appropriate family unit size (number of bedrooms for which the family qualifies under the PHA's occupancy standards) at the time the family is placed on the PHA's HCV waiting list, and also at the time of voucher issuance. Family unit size is entered on the voucher issued to the family.

The following requirements apply when determining the family unit size:

- The subsidy standards must<sup>15</sup> provide for the smallest number of bedrooms needed to house a family without overcrowding.
- The subsidy standards must<sup>16</sup> be consistent with space requirements under the housing quality standards (HQS).
- The subsidy standards must<sup>17</sup> be applied consistently for all families of like size and composition.
- A child who is temporarily away from the home because of placement in foster care is considered a member of the family in determining the family's unit size.
- A family that consists of a pregnant woman only, and no other persons, must<sup>18</sup> be treated as a two-person family in determining the family's unit size.
- Any live-in aide (approved by the PHA to reside in the unit to care for a family member who is disabled

<sup>13</sup> 24 CFR § 982.402(a)(1)

<sup>14</sup> 24 CFR § 982.402(a)(2)

<sup>15</sup> 24 CFR § 982.402(b)(1)

<sup>16</sup> 24 CFR § 982.402(b)(2)

<sup>17</sup> 24 CFR § 982.402(b)(3)

<sup>18</sup> 24 CFR § 982.402(b)(5)

or is at least 50 years of age) must<sup>19</sup> be counted in determining the family unit size. Although a live-in aide may have PHA-approved family members live with him or her in the assisted unit, no additional bedrooms may be provided for the family members of the live-in aide.<sup>20</sup> The PHA must<sup>21</sup> ensure that approval of the live-in aide's family will not violate HQS.

A subsidy standard of one bedroom for every two persons is acceptable and may be adopted as a cost-cutting measure.<sup>22</sup> Alternatively, a PHA's subsidy standards could call for separate or additional bedrooms based upon:

- The age, sex, or relationship of household members
- Disability-related or health needs, including reasonable accommodations
- Other personal circumstances

## 4.1 Changes in Family Composition

Families are not required to move from an assisted unit when there is a change in family composition that results in the number of bedrooms in the unit exceeding the number of bedrooms for which the family is eligible. Instead, the PHA would reduce the subsidy standard to conform with the PHA's policies and also reduce the payment standard accordingly at the family's next annual recertification after the change in family composition.

## 4.2 PIC Data Entry

PHAs are expected to ensure that data on the Family Report is correct when entered in IMS/PIC. Whenever there is a change in the subsidy standard and corresponding payment standard for which the family is eligible, lines 12a and 12j of the Family Report must be adjusted accordingly. All live-in aides and, if applicable, their family members, must be entered on the report and coded L (live-in aide) in section 3h.

## 4.3 Live-in-aides

Unless a live-in-aide resides with the family, the family unit size for any family consisting of a single person must<sup>23</sup> be either a zero or one-bedroom unit, as determined under the PHA's subsidy standards.

The definition of a live-in aide is recorded in 24 CFR § 5.403 which states that a live-in aide is a person who resides with one or more elderly persons, near-elderly persons or persons with disabilities and who is: (1) determined to be essential to the care and well-being of the persons; (2) is not obligated for the support of the persons; and (3) would not be living in the unit except to provide the necessary supportive services. It should be noted that the definition applies to a specific person (i.e., identified live-in aide). In accordance with this definition, a live-in aide is not a member of the assisted family and is not entitled to the HCV as the remaining member of the tenant family.

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<sup>19</sup> 24 CFR § 982.402(b)(6)

<sup>20</sup> PIH Notice 2014-25 Over Subsidization in the Housing Choice Voucher Program

<sup>21</sup> 24 CFR § 982.402(d)(1)

<sup>22</sup> PIH Notice 2011-28: Cost-Savings Measures in the Housing Choice Voucher (HCV) Program, pg. 5

<sup>23</sup> 24 CFR § 982.402(b)(7)

The PHA must<sup>24</sup> approve a live-in aide if needed as a reasonable accommodation in accordance with 24 CFR part 8 to make the program accessible to and usable by a family member with a disability. The PHA may disapprove a particular person as a live-in aide if s/he has: (1) committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program; (2) committed drug-related criminal activity or violent criminal activity; or (3) currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

PHAs may not approve an unidentified live-in aide, nor a larger unit than the family qualifies for under the PHA's subsidy standards for an unidentified live-in aide. Occasional, intermittent, multiple or rotating care givers typically do not reside in the unit and would not qualify as live-in aides. Therefore, an additional bedroom must<sup>25</sup> not be approved for a live-in aide under these circumstances.

A PHA may only approve one additional bedroom for a live-in aide. Although a live-in aide may have PHA-approved family member/s live with him/her in the assisted unit, no additional bedrooms will be provided for the family members of the live-in aide. The PHA must ensure that housing quality standards (HQS) will not be violated and that there will be no more than two people per bedroom or living/sleeping space in the unit in accordance with 24 CFR § 982.401(d)(2)(ii). If the approval of additional family members of a live-in aide would result in the violation of HQS, the additional family members of the live-in aide may not be approved.

#### 4.4 Medical Equipment

Although PHAs may approve an additional bedroom for medical equipment if the need is documented by a health care provider, the actual equipment in the extra bedroom should be verified by the PHA during the annual inspection of the unit. If the extra bedroom is not being used for the intended purpose, the PHA must<sup>26</sup> reduce the subsidy standard and corresponding payment standard at the family's next annual recertification.

#### 4.5 Reasonable Accommodations

A family may always request a reasonable accommodation to program rules, policies, practices, or services, including to the live-in aide policy, to permit program participation by individuals with disabilities. A family's composition or circumstances may warrant the provision of an additional bedroom to permit disability-related overnight care and allow the family equal use and enjoyment of the unit. Such limited exceptions to the established subsidy standards are permitted under 24 CFR § 982.402(b)(8). The PHA must consider requests for an exception to the established subsidy standards on a case-by-case basis and provide an exception, where necessary, as a reasonable accommodation. A reasonable accommodation request may only be denied if it would impose an undue financial and administrative burden on the housing provider or fundamentally alter the nature of the provider's operations. The PHA shall document the justification for all granted exceptions.

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<sup>24</sup> 24 CFR § 982.316

<sup>25</sup> PIH Notice 2014-25, Over Subsidization in the Housing Choice Voucher Program

<sup>26</sup> PIH Notice 2014-25, Over Subsidization in the Housing Choice Voucher Program

## 5 Voucher Issuance

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### 5.1 Introduction

The HCV form HUD-52646 is the family's authorization to search for housing. The HCV form can be issued to the family only after the PHA has determined the family is eligible to participate in the HCV program, and has conducted the program briefing. The Housing Choice Voucher specifies the unit size for which the family qualifies. This unit size is used to determine the amount of assistance the PHA will pay to the owner on behalf of the family. The HCV form includes both the date of voucher issuance and date of expiration. The HCV form contains a brief description of how the program works and explains the family obligations under the program.

The HCV form is evidence that the PHA has determined the family to be eligible for the program and plans to subsidize the family if the family selects a unit that can be approved under program requirements. However, the PHA is under no obligation to either the family or the owner to approve a tenancy and has no liability to any party by the issuance of the voucher. The Housing Choice Voucher does not give the family any right to participate in the PHA's HCV program. The family becomes a participant in the PHA's HCV program when the HAP contract between the PHA and the owner takes effect.

The PHA will want to issue enough HCVs to:

- Meet its leasing schedule if a new allocation is received;
- Utilize its units months available or annual budget authority;
- Replace expired vouchers; and
- Account for families who have left the program, thereby making vouchers available for use by new families (Turnover vouchers).

See the SEMAP chapter for SEMAP lease-up requirements and the Utilization chapter for more information on maximizing funding and voucher utilization.

Regardless of the number of outstanding vouchers, the PHA must<sup>27</sup> always issue an HCV if necessary to move an overcrowded participating family or a participating family living in unsafe housing where the owner refuses to make repairs.

Before issuing an HCV for admission to the program, the PHA must<sup>28</sup> re-verify income if the family's income has changed or any income verification is more than 60 days old. Verifications used to establish eligibility and level of benefits may be no more than 60 days old as of voucher issuance.

The family must<sup>29</sup> date and sign the HCV form. It is industry practice that the family signs two vouchers with the second being retained in the family's file.

### 5.2 Over Issuance

Over-issuing (that is, issuing more HCVs than could be supported under the PHA's ACC if all of the vouchers resulted in HAP contracts) can be a useful tool for improving and maintaining a high leasing rate. By

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<sup>27</sup> 24 CFR § 982.403(a)(1)

<sup>28</sup> 24 CFR § 982.201(e)

<sup>29</sup> Form HUD-52646, line 6

overissuing, a PHA can compensate for the number of issued vouchers that will not result in the execution of a HAP contract.

However, over-issuing requires the PHA to closely monitor and track voucher success rates. Only with good success rate data can a PHA judge the degree it can overissue without committing itself to more units than can be assisted using the PHA's available annual budget authority. PHAs are prohibited from using current year annual budget authority or HAP reserves (net restricted assets) to lease over allocated unit months leased.

In some cases, over-issuing may result in the PHA rescinding a voucher when more applicant families than anticipated successfully lease up under the program. The PHA should have a policy as to how these families will be treated. For example, the family may be retained in a verified pool of applicants and issued a voucher when funding is available, or the family may be returned to the top of the waiting list.

### 5.3 When to Issue

Although the PHA may issue the Housing Choice Voucher independently or in conjunction with the briefing session, industry practice is to issue the family the HCV at the conclusion of the briefing session. Doing so is an efficient approach which limits the number of times the family will need to return to the PHA office to complete paperwork.

## 6 Search Time, Extensions, and Voucher Expirations

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### 6.1 Initial Voucher Term

The initial term of a Housing Choice Voucher must<sup>30</sup> be at least 60 calendar days, and this term must be stated on the voucher. The family must<sup>31</sup> submit its request for tenancy approval and a copy of the proposed lease, including the HUD-prescribed tenancy addendum, within the specified period, unless the PHA grants an extension.<sup>32</sup>

While 60 days is the minimum initial term, the PHA may establish a longer term as necessary based on local housing market conditions. This longer term would reduce the number of requests for extensions in areas where families experience difficulty in locating an acceptable unit within 60 days. Although there is no "maximum term", the term may not be indefinite.

When establishing its policy on the initial term of the voucher, the PHA should consider the same factors as referenced below in Section 5.2 - Extensions of Search Time.

### 6.2 Extensions of Search Time

At its discretion, the PHA may grant extensions of search time and determine the length of an extension and the circumstances under which extensions will be granted. If the PHA grants an extension, the PHA must

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<sup>30</sup> 24 CFR § 982.303(a)

<sup>31</sup> 24 CFR § 982.303(a)

<sup>32</sup> 24 CFR § 982.302(c)

provide notice to the family.<sup>33</sup> There is no limit on the number of extensions that the PHA can approve. Discretionary policies related to extension of search time must<sup>34</sup> be described in the PHA's administrative plan, including a description of how the PHA determines whether to grant extensions, and how the PHA determines the length of any extension.

Upon a family's request, PHAs must<sup>35</sup> extend the HCV term if needed as a reasonable accommodation to make the program accessible to a family member who is a person with disabilities. The extension period must<sup>36</sup> be up to the term reasonably required for the purpose of making the program accessible to the family member with the disability.

When establishing PHA policy on the length of the extension, consider the following:

- How tight is the local housing market? A PHA located in a tight housing market may wish to automatically extend the voucher period whenever an extension is requested due to the likelihood that it will take voucher holders longer to locate approvable units. A PHA located in a housing market where the supply of affordable units exceeds the demand may choose not to grant extensions except in special circumstances.
- What is the approximate wait time for an applicant on the waiting list? If the wait is long and there are many potentially eligible applicants waiting for an HCV, PHAs may wish to grant extensions only to those voucher holders who have demonstrated that they have made a substantial effort to locate housing or to those with extenuating circumstances.
- When determining who should receive extensions, consider the following:
  - The family's level of effort to find a suitable unit during the initial term (Did the family contact owners and real estate companies, search newspaper listings, explore neighborhoods for "For Rent" signs, check with community organizations?)
  - Whether there is a reasonable possibility that the family may, with additional advice and assistance, find a suitable unit;
  - Level of support services requested by and provided to the family;
  - Extenuating circumstances that prevented the family from finding a unit, such as:
    - Serious illness in the family;
    - Death in the family;
    - Family emergency;
    - Obstacles due to employment;
  - Whether the family has already submitted requests for approval of the tenancy for units that were not approved by the PHA; and
  - Whether family size or other special requirements made finding a unit difficult. For example, family size or disability-related circumstances that may make it more difficult for a family to search or find acceptable housing.

The PHA should also consider whether they will grant more than one extension to a family. For example, a PHA may have policy that they will grant one 30-day extension upon written request but will only grant additional extensions as a reasonable accommodation or for other extenuating circumstances.

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<sup>33</sup> 24 CFR § 982.303(b)(1)

<sup>34</sup> 24 CFR § 982.303(b)(1)

<sup>35</sup> 24 CFR § 982.303(b)(2)

<sup>36</sup> 24 CFR § 982.303(b)(2)



The PHA may request a report or update from the family on its progress in leasing a unit during the initial or extended search term. Exhibit 1: Housing Search Progress Report, contains a sample of a housing search progress report.

It is good practice to clarify to families that the Housing Choice Voucher term expiration pertains to the deadline for submission of a request for tenancy approval, not to the date the unit will be available for occupancy. For example, if an HCV term expiration date is June 15, the request for tenancy approval could be dated as received no later than June 15, although the occupancy date may be August 1.

This may not be true if the PHA adopts a policy to suspend the HCV term (see Section 5.3 – Suspension of Search Time below).

### 6.3 Suspension of Search Time

At its discretion, a PHA may adopt a policy to suspend the Housing Choice Voucher term if the family has submitted a request for tenancy approval during the voucher term.

“Suspension” means stopping the clock on a family’s HCV term when a family submits the request for tenancy approval until the time the PHA approves or denies the request. The PHA may grant a suspension for any part of the period after the family submits a request for approval of the tenancy up to the time when the PHA approves or denies the request. In other words, the PHA may choose to allow for a suspension of the voucher term for the full period of time, or for only part of the period of time, from the time the family submits a request for tenancy approval up to the time the PHA approves or denies the request. Whatever period the PHA allows is added back to the term of the voucher (see example in the textbox). This suspension of time is also called “tolling”. Court decisions in some states have required that PHAs permit tolling.

The PHA’s policy on suspending housing search time is considered to be part of the PHA’s policy governing the voucher term and any extensions of the term. This policy must<sup>37</sup> be included in its administrative plan, including a description of how the PHA determines whether to grant suspensions, and how the PHA determines the length of any suspension.

Example: Voucher Term Expiration	
<b>Voucher Issued:</b>	May 1
<b>Family Submits Request for Tenancy Approval:</b>	May 15
<b>PHA Denies Unit:</b>	May 24
<b>Tolling Time:</b>	9 Days (May 16-May 24)
<b>New Voucher Expiration Date:</b>	July 8 (June 29 + 9 days)
This example is based on a PHA policy on suspending housing search time from the date the Request for Tenancy Approval is received to the date the PHA makes a decision as to whether to approve or deny the assisted tenancy.	

<sup>37</sup> 24 CFR § 982.54(d)(2)

## 6.4 Voucher Term Expiration

The PHA's policy on how to treat a family whose HCV term expires with or without an extension is considered to be part of the PHA's policy governing the voucher term and any extensions of the term. Such a policy must<sup>38</sup> be included in the PHA's administrative plan. The PHA may:

- Require that the family reapply when the PHA begins accepting applications; or
- Place the family on the waiting list with a new application date without requiring the family to reapply.
- The PHA may not determine the family to be ineligible for the program on the grounds that it was not able to lease up.

In addition, an extension may be requested as a reasonable accommodation for a person with disabilities even after the voucher term expires.

## 6.5 Fair Housing Requirement

If a family believes it has been discriminated against in its search for housing on the basis of race, color, religion, sex, national origin, familial status, or disability, the family may file a housing discrimination complaint with any HUD Field Office of Fair Housing and Equal Opportunity (FHEO). The family may also file such a complaint if the family believes it has been discriminated against by the PHA on any of those bases or on the basis of age. Each briefing packet must<sup>39</sup> include the housing discrimination complaint form, form HUD-903, and the PHA must<sup>40</sup> provide the family with information on how to fill out and file a housing discrimination complaint.

Both PHAs and owners are subject to the nondiscrimination requirements under the Violence Against Women Act (VAWA) 2013 and HUD's implementing VAWA regulations.<sup>41</sup> (See the VAWA Chapter). Owners cannot deny tenancy based on the fact that an applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking if the applicant otherwise qualifies for tenancy. 24 CFR 982.452(b)(1). Because complaints may raise claims that are covered by the Fair Housing Act, the PHA should advise the family that it may file a Fair Housing Act complaint if the family feels it has been discriminated against under the Fair Housing Act. The PHA should also inform FHEO when it learns of possible violations of the Act.

HUD's assisted and insured housing programs are open to all eligible individuals regardless of sexual orientation, gender identity or marital status ("Equal Access Rule"). Upon receipt of a complaint alleging a violation of the Equal Access Rule from an applicant or participant against an owner who has executed a HAP contract with a PHA, the PHA must<sup>42</sup> determine if a program violation occurred and implement appropriate corrective action(s). The PHA may seek assistance from its local HUD Field Office of Public Housing in order to make this determination. In addition, because complaints made under the Equal Access Rule may also raise claims that are covered by the Fair Housing Act, the PHA should advise the family that it may file a Fair Housing Act complaint if the family feels it has been discriminated against under the Fair Housing Act. The PHA should also inform FHEO when it learns of possible violations of the Act.

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<sup>38</sup> 24 CFR § 982.54(d)(2)

<sup>39</sup> 24 CFR § 982.301(b)(10)

<sup>40</sup> 24 CFR § 982.304

<sup>41</sup> 24 CFR part 5, Subpart L; 24 CFR 982.452(b)(1); PIH Notice 2017-08 Violence Against Women Reauthorization Act of 2013 Guidance

<sup>42</sup> Notice PIH 2014-20

## 7 Assisting Families During the Housing Search

One method for improving leasing success rates is to provide assistance to families during the housing search process. A PHA's goal is to keep the number of vouchers that are issued but never result in a HAP contract to a minimum. Periodic contact with voucher holders during the search process has proven to be an effective method to improve leasing success. Such contact allows the PHA to assess the family's progress in locating units and to resolve any issues and clarify program requirements before the expiration of the voucher term. The PHA can also use this communication with the participants to remind them of the expiration date of the voucher and to reinforce the importance of locating a unit and returning a request for tenancy approval or requesting an extension prior to the date of expiration.

Depending upon an agency's leasing status and the availability of funds and staff, other services that a PHA may wish to provide to families include:

- Briefings and information on neighborhoods and amenities in non-impacted areas of the PHA's jurisdiction;
- Transportation to visit units in non-impacted areas;
- Neighborhood tours;
- Counseling services/search assistance;
- Baby-sitting to enable parents to search for units;
- Listings of vacant rental units, particularly those in non-impacted areas; and
- Loans or financial assistance to pay for security deposits, utility deposits, and moving costs.

A simple method of providing assistance to families is to require families to turn in a housing search log (see Exhibit 1). PHA staff can then discuss with the family any obstacles the family is encountering, answer additional questions, and reinforce that paperwork is due prior to the voucher expiration date. PHA staff is also encouraged to allow families to email search logs or submit the logs online if the housing authority has that capability.

PHAs have an obligation to make their HCV program readily accessible to and usable by persons with disabilities. Engaging with applicants with disabilities in the housing search process will help PHAs identify and address specific obstacles to securing housing that meets applicants' disability-related needs and ensuring applicants with disabilities can access the HCV program. Applicants with disabilities cannot be excluded from participation in or denied the benefits of the HCV program which means a PHA must consider the availability of affordable accessible housing when evaluating its HCV program in its entirety. PHAs must provide a current listing of available accessible housing units known to the PHA when issuing a voucher to a family which includes an individual with disabilities and must otherwise assist the family in locating an available accessible unit. Actions a PHA may take in addition to approving individual reasonable accommodation requests include enhancing the list of known accessible HCV units by including additional information, such as bedroom size, amenities, proximity to transportation; encourage private landlords with known accessible units to participate in HCV programs, and adopting more flexible policies related to portability and extensions of search time.

## 8 Request for Tenancy Approval

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Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the family must<sup>43</sup> submit two documents to the PHA, no later than the expiration date stated on the Housing Choice Voucher:

- a request for tenancy approval, and
- an unexecuted copy of the lease, including the HUD-prescribed tenancy addendum.

The PHA has the discretion to specify the procedure for requesting tenancy approval, and the family must<sup>44</sup> submit the request for tenancy approval in the form and manner required by the PHA. While PHAs must<sup>45</sup> collect the information on the form HUD-52517, Request for Tenancy Approval, use of the actual form HUD-52517 is optional. Form HUD-52517 contains basic information about the rental unit selected by the family, including the unit address, number of bedrooms, structure type, year constructed, utilities included in the rent, and the requested beginning date of the lease. Owners must<sup>46</sup> certify that they are not the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has granted a request for reasonable accommodation for a person with disabilities who is a member of the household.<sup>47</sup> For units constructed prior to January 1, 1978, owners must<sup>48</sup> either: (1) certify that the unit, common areas, and exterior have been found to be free of lead-based paint by a certified inspector; or (2) attach a lead-based paint disclosure statement. Finally, owners of projects with more than four (4) units must<sup>49</sup> provide rent amounts for recently leased comparable units within the premises for purposes of the PHA's determining whether the requested rent is reasonable (See the Rent Reasonableness chapter).

The PHA has the discretion to permit a family to submit more than one request for tenancy approval at a time. When determining whether to allow submission of more than one request for tenancy approval at a time, PHAs may want to consider whether such a practice will be confusing to owners, and whether staff time allows for such a practice.

## 9 PHA Approval of the Tenancy

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Before approving the assisted tenancy and executing the HAP contract, the PHA must<sup>50</sup> ensure that the following program requirements have been met:

- The unit is eligible;
- The unit has been inspected by the PHA and meets HQS;
- The lease includes the tenancy addendum;
- The rent charged by owner is reasonable; and

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<sup>43</sup> 24 CFR § 982.302(c)

<sup>44</sup> 24 CFR § 982.302(d)

<sup>45</sup> Form HUD-52517

<sup>46</sup> Form HUD-52517

<sup>47</sup> Form HUD-52517, line 12b

<sup>48</sup> Form HUD-52517, line 12c

<sup>49</sup> Form HUD-52517, line 12a

<sup>50</sup> 24 CFR § 982.305(a)

- For families receiving HCV program assistance for the first time, and where the gross rent of the unit exceeds the applicable payment standard for the family, the PHA must<sup>51</sup> ensure that the family share does not exceed 40 percent of monthly-adjusted income. This cap is referred to as the maximum initial rent burden.

The following actions must be completed before the beginning of the lease term:

- The PHA must<sup>52</sup> inspect the unit and determine that the unit meets HQS. (See the Housing Quality Standards chapter.)
- The owner and the tenant must<sup>53</sup> have executed the lease, including the HUD-prescribed tenancy addendum and the lead-based paint disclosure information as required in 24 CFR § 35.92(b); and
- The PHA must approve leasing of the unit in accordance with program requirements.

## 9.1 Eligible Housing

The tenancy cannot be approved if the chosen unit is one of the following:

- Public or Indian housing unit;
- Unit receiving project-based assistance under section 8 of the 1937 Act (42 U.S.C. 1437f);
- Nursing homes, board and care homes, or facilities providing continual psychiatric, medical, or nursing services;
- College or other school dormitories; or
- Units on the grounds of penal, reformatory, medical, mental and similar public or private institutions.

A unit occupied by its owner or by a person with any interest in the unit. However, assistance may be provided to a family residing in a cooperative or to an owner of a manufactured home leasing a manufactured home space. In addition, assistance may be provided to a family residing in a unit occupied by its owner or by a person with any interest in the unit as a reasonable accommodation for a person with disabilities. PIH program regulations: 24 CFR 982.306(d) permits leasing a unit from a relative when needed as a reasonable accommodation; See also 24 CFR 982.615(b)(3) (prohibits use of a HCV in a dwelling owned by a person related by blood or marriage where the owner also occupies the dwelling, however, an individual with a disability has a right to request a reasonable accommodation and a determination whether to grant the request will be based on a case-by-case analysis of the facts).

Units owned or substantially controlled by the PHA administering the ACC for the Housing Choice Voucher may be leased under the HCV program only if the following conditions are satisfied:

- Unit is not ineligible housing, as described above; and
- PHA informs the family, both orally and in writing, that the family has the right to select any eligible unit available for lease, and the family selects the PHA-owned unit freely, without PHA pressure or steering.

The Housing Choice Voucher issued to the family will state the unit size (i.e., the number of bedrooms for which the family qualifies according to the PHA's subsidy standards). Regardless of the number of bedrooms stated on the Housing Choice Voucher issued to the family, the family may rent an otherwise acceptable unit

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<sup>51</sup> 24 CFR § 982.305(a)(5)

<sup>52</sup> 24 CFR § 982.305(b)

<sup>53</sup> 24 CFR § 982.305(b)(1)(ii)

that is smaller than the size indicated on the family's HCV, as long as the unit meets HQS space standards, i.e. no more than two persons per living/sleeping room. (See the Housing Quality Standards chapter.) Also, the PHA may grant an exception to its subsidy standards if the PHA determines that the exception is justified by the age, sex, health, disability, or relationship of family members or other personal circumstances.

## 9.2 Prohibition Against Other Housing Subsidy

A family may not receive the benefit of tenant-based assistance while receiving the benefit of any of the following forms of other housing subsidy, for the same unit or for a different unit:

- Public or Indian Housing assistance;
- Other Section 8 assistance (including other tenant-based assistance);
- Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);
- Section 101 rent supplements;
- Section 236 rental assistance payments;
- Tenant-based assistance under the HOME Program;
- Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);
- Any local or State rent subsidy;
- Section 202 supportive housing for the elderly;
- Section 811 supportive housing for persons with disabilities;
- Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or
- Any other duplicative federal, State or local housing subsidy, as determined by HUD.

For this purpose, "housing subsidy" does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

## 9.3 Unit Meets HQS

The PHA must<sup>54</sup> determine that the rental unit selected by the family is in decent, safe, and sanitary condition before approving the tenancy. This determination is made using HUD's HQS and/or equivalent state or local standards approved by HUD. The PHA must notify the family and owner of its determination as to whether the unit meets HQS.

For PHAs with 1,250 or fewer budgeted (available) Housing Choice Voucher units, the notice to the family and owner must<sup>55</sup> be made within 15 calendar days after the family and owner submit the request for tenancy approval. The 15-day clock is suspended during any period when the unit is not available for inspection.

For PHAs with more than 1,250 budgeted Housing Choice Voucher units, the notice to family and owner must<sup>56</sup> be made within a reasonable time after the family and owner submit the request for tenancy approval. However, to the extent practicable, such inspection and determination must be completed within 15 days

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<sup>54</sup> 24 CFR § 982.305(b)

<sup>55</sup> 24 CFR § 982.305(a)

<sup>56</sup> 24 CFR § 982.305(b)

after the family and owner submit the request. The 15-day clock is suspended during any period the unit is not available for inspection.<sup>57</sup> (See the Housing Quality Standards chapter.)

### 9.4 Rent Reasonableness

Prior to tenancy approval, the PHA must<sup>58</sup> make a rent reasonableness determination by comparing the rent being charged by the owner to rents for other comparable unassisted units. (See the Rent Reasonableness chapter.)

If the proposed rent is determined to be too high and does not meet the rent reasonableness limitation, the PHA may wish to engage in negotiations with the owner and attempt to reduce the contract rent or to include some or all of the utilities in the contract rent. It is often in the PHA’s interest to make its best effort to approve the tenancy and execute a lease and HAP contract. Starting over increases time and money spent on the leasing process and may increase frustration for all parties.

### 9.5 Maximum Initial Rent Burden

At initial occupancy of a unit (new admissions and unit transfers), if the gross rent of the unit exceeds the applicable payment standard for the family, the PHA must<sup>59</sup> ensure that the family share does not exceed 40 percent of the family’s monthly adjusted income. This cap is referred to as the maximum initial rent burden. If the total family share exceeds 40 percent of the family’s monthly adjusted income, the PHA cannot approve the tenancy. If the family requests the PHA’s assistance in negotiating the rent, the PHA must<sup>60</sup> assist the family. In cases where an owner may have to reduce the rent to owner by a small amount, the owner may prefer this rent reduction to having a unit that could remain vacant for any period of time.

Maximum Initial Rent Burden Example	
TTP	\$210
40% Adjusted Income	\$280
Gross Rent	\$1,050
Payment Standard	\$950
Amount Gross Rent exceeds Payment Standard (\$650-\$550)	\$100

<sup>57</sup> PIH Notice 2017-20 HOTMA HQS Implementation Guidance issued on October 27, 2017

<sup>58</sup> 24 CFR § 982.305(a)(4)

<sup>59</sup> 24 CFR § 982.305(a)(5)

<sup>60</sup> 24 CFR § 982.506

Family Share (\$210 + \$100)	\$310
Since \$310 exceeds 40 percent of adjusted monthly income (\$280), the PHA cannot approve the tenancy, and family cannot rent the unit.	

## 9.6 PHA Disapproval of Owner

Under certain circumstances, the PHA may disapprove a tenancy due to factors related to the owner. See the HAP Contracts chapter for an in-depth discussion of when HUD mandates the PHA not to approve the assisted tenancy due to the owner's history.

## 9.7 Tenant Screening

Tenant screening and selection are the responsibility of the owner. At or before tenancy approval by the PHA, the PHA must<sup>61</sup> inform the owner of this responsibility. Although tenant screening and selection remain the function of the owner, PHAs may opt to screen for family behavior or suitability for tenancy. The PHA must<sup>62</sup> conduct any such screening of applicants in accordance with policies stated in its administrative plan.

PHAs are required to give the owner the following information:

- Current and prior address of the prospective Housing Choice Voucher tenant, as recorded by the PHA; and
- Name and address, if known to the PHA, of the prospective HCV tenant's current and prior landlord.

The PHA may offer the owner other information in the PHA possession, about the family, including information about the tenancy history of family members, or about drug trafficking by family members. If the PHA adopts a policy of offering owners other information the PHA has about a family related to past tenancy and drug trafficking history, this policy must<sup>63</sup> be included in the PHA's administrative plan and in the information packet that the family receives at the briefing. The PHA must<sup>64</sup> provide the same types of information to all families and to all owners. In cases involving a victim of domestic violence, dating violence, sexual assault, or stalking, 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies.

The PHA may inform owners that they may consider a family's background with respect to such factors as:

- Payment of rent and utilities;
- Care of unit and premises;
- Respect for the rights of other residents to the peaceful enjoyment of their housing;
- Drug-related criminal activity or other criminal activity that threatens the health, safety, or property of others; and
- Compliance with other essential conditions of tenancy.

<sup>61</sup> 24 CFR § 982.307(a)(2)

<sup>62</sup> 24 CFR § 982.307(a)(1)

<sup>63</sup> 24 CFR § 982.307(b)

<sup>64</sup> 24 CFR § 982.307(b)(3)



## 10 Lease and Tenancy

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### 10.1 Notification to Owner and Family

After receiving the family's request for tenancy approval and determining whether assisted tenancy may be approved based on the requirements listed within this chapter, the PHA must<sup>65</sup> promptly notify the family and owner whether the assisted tenancy is approved. If the PHA approves the tenancy, the family and the owner enter into a lease, the PHA prepares the HAP contract, and the owner and the PHA execute the HAP contract (see the HAP Contracts chapter.) The PHA may also provide the owner and family with an opportunity to correct any HQS problem(s) prior to a specific date established by the PHA.

In addition, the PHA must provide the applicant for HCV assistance with the Notice of Occupancy Rights under VAWA and the Certification Form at the time the applicant is provided assistance or admission. For the HCV program, this term refers to the date that the HAP contract is executed, though the PHA may provide the notice earlier.

### 10.2 Lease

As the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner, the tenant must<sup>66</sup> have legal capacity to enter into a lease under state or local law.

The tenant and the owner must<sup>67</sup> enter and execute a written lease for the unit. The lease must<sup>68</sup> be in the standard form the owner uses in the locality or the premises for rental to unassisted tenants. The HAP contract prescribed by HUD contains the owner's certification that, if the owner uses a standard lease form for rental to unassisted tenants, that lease form is used for the assisted unit as well. If the owner does not use a standard form of lease to unassisted tenants, another form of lease may be used.

The lease must<sup>69</sup> include the following information:

- Names of the owner and tenant;
- Unit address;
- The unit rented (address, apartment number, and any other information needed to identify the contract unit);
- Term of the lease, including initial term and any provision for renewal;
- Amount of monthly rent to owner; and
- Specification of what utilities and appliances are to be supplied by the owner and what utilities and appliances are to be supplied by the family.

The HAP Contract must<sup>70</sup> include verbatim the HUD-prescribed tenancy addendum. The tenancy addendum (form HUD-52441-A) can also be found in Part C of the form HUD-52641-HAP Contract for the Housing Choice Voucher Program. The tenancy addendum sets forth the tenancy requirements for the program. The tenant

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<sup>65</sup> 24 CFR § 982.305(d)

<sup>66</sup> 24 CFR § 982.308(a)

<sup>67</sup> 24 CFR § 982.308(b)(1)

<sup>68</sup> 24 CFR § 982.308(b)(2)

<sup>69</sup> 24 CFR § 982.308(d)

<sup>70</sup> 24 CFR § 982.308(f)

has the right to enforce the tenancy addendum against the owner. The terms of the tenancy addendum prevail over any conflicting provisions of the lease.

The PHA may choose to review the lease to determine compliance with state and local law and may deny the request for tenancy if the PHA determines noncompliance. If the owner does not use a standard lease form, PHAs may encourage the owner to obtain a standard form from a local realtor or other reliable source. The use of a model lease provided by the PHA should be limited to those rare cases where the owner cannot locate an acceptable standard form. If a PHA-provided model lease is used, the model lease should not refer specifically to the PHA or the Housing Choice Voucher program.

Before preparing the HAP contract, the PHA should review the lease to ensure that the following information is consistent with the request for tenancy approval:

- Family composition;
- Unit address (address, apartment number, and any other information needed to identify the contract unit);
- Effective date of the lease;
- Initial term and renewal terms of the lease;
- Initial rent to owner; and
- Information regarding what utilities and appliances are to be supplied by the owner and what utilities and appliances are to be supplied the family.

The PHA may approve the tenancy and execute a HAP contract even if there is less than one year remaining from the beginning of the lease term to the end of the last expiring funding increment under the consolidated ACC.

It is important that the family and owner understand the terms of the lease, tenancy addendum, and HAP contract. Ideally, PHAs schedule a joint meeting with the family and owner to review these documents. In addition to reviewing the specific terms of the lease and contract, the PHA can use this meeting to clarify owner requirements for participating in the program, reinforce tenant requirements for participating in the program, clarify points of contact within the PHA, and answer any questions or respond to any comments or concerns.

### 10.3 Changes in Lease or Rent

If the tenant and the owner agree to any changes in the lease, the changes must<sup>71</sup> be in writing and the owner must<sup>72</sup> immediately give the PHA a copy of such changes. The lease, including any changes, must<sup>73</sup> be in accordance with the requirements of the above section.

In the following cases, tenant-based assistance shall not be continued unless the PHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner:

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

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<sup>71</sup> 24 CFR § 982.308(g)

<sup>72</sup> 24 CFR § 982.308(g)

<sup>73</sup> 24 CFR § 982.308(g)

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

The owner must<sup>74</sup> also notify the PHA of any changes in the amount of the rent to owner at least sixty days before any such changes go into effect, and any such changes shall be subject to rent reasonableness requirements.

## 10.4 Term of Assisted Tenancy

The initial lease term must be for at least one year, except that the PHA may approve a shorter term if the PHA determines that doing so would improve housing opportunities for the tenant and is the prevailing local market practice.<sup>75</sup> If the PHA will allow this exception, it needs to be stated in the PHA's policies.

During the initial lease term, the owner may not raise the rent to owner. The lease must<sup>76</sup> include any provisions for its renewal.

The HAP contract term runs concurrently with the lease term. If the lease terminates, the HAP contract terminates. Whenever the owner elects to execute a new lease, a new HAP contract is also required.

The term of the new lease or contract for a new unit may begin in the same month in which the participant moves out of his/her previous assisted unit. This is not considered a duplicative subsidy.

## 11 Chapter Glossary

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The following terms were used in this chapter:

**Administrative Fee** is a fee paid by HUD to the PHA for administration of the program.

**Administrative Plan** is a plan that describes PHA policies for administration of the tenant-based programs.

**Admission** is the point when the family becomes a participant in the program. The date used for this purpose is the effective date of the first HAP contract for a family (first day of initial lease term) in a tenant-based program.

**Applicant (Applicant Family)** is a family that has applied for admission to a program but is not yet a participant in the program.

**Family** is a person or group of persons, as determined by the PHA consistent with 24 C.F.R. 5.403, approved to reside in a unit with assistance under the program.

**Family Rent-to-Owner** in the voucher program, is the portion of rent to owner paid by the family.

**Family Share** is the portion of rent and utilities paid by the family.

**Gross Rent** is the sum of the rent to owner plus any utility allowance.

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<sup>74</sup> 24 CFR § 982.308(g)(4)

<sup>75</sup> 24 CFR § 982.309(a)

<sup>76</sup> 24 CFR § 982.308(d)(3)

**Housing Assistance Payment (HAP)** is the monthly assistance payment by a PHA, which includes: (1) A payment to the owner for rent to the owner under the family's lease; and (2) An additional payment to the family if the total assistance payment exceeds the rent to owner.

**HAP Contract** means housing assistance payments contract between the owner and the PHA.

**Housing Quality Standards (HQS)** refers to the HUD minimum quality standards for housing assisted under the tenant-based programs.

**Initial Rent-to-Owner** refers to the rent to owner at the beginning of the HAP contract term.

**Jurisdiction** is the area in which the PHA has authority under State and local law to administer the program.

**Lease** is a written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family.

In cooperative housing, a written agreement between a cooperative and a member of the cooperative. The agreement establishes the conditions for occupancy of the member's cooperative dwelling unit by the member's family with housing assistance payments to the cooperative under a HAP contract between the cooperative and the PHA. For purposes of this part 982, the cooperative is the Section 8 "owner" of the unit, and the cooperative member is the Section 8 "tenant."

**Owner** is any person or entity with the legal right to lease or sublease a unit to a participant.

**Participant (Participant Family)** is a family that has been admitted to the PHA program and is currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by the PHA for the family (first day of initial lease term).

**Payment Standard** is the maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).

**Portability** means renting a dwelling unit with Section 8 tenant-based assistance outside the jurisdiction of the initial PHA.

**Reasonable Rent** is a rent to owner that is not more than rent charged:

For comparable units in the private unassisted market; and

For comparable unassisted units in the premises.

**Rent-to-Owner** is the total monthly rent payable to the owner under the lease for the unit. Rent to owner covers payment for any housing services, maintenance and utilities that the owner is required to provide and pay for.

**Subsidy Standards** are standards established by a PHA to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions.

**Suspension (Tolling)** is stopping the clock on the term of a family's voucher, for such period as determined by the PHA, from the time when the family submits a request for PHA approval of the tenancy, until the time when the PHA approves or denies the request.

**Tenant** is the person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

**Voucher Holder** is a family holding a voucher with an unexpired term (search time).

**Voucher (Rental Voucher)** is a document issued by a PHA to a family selected for admission to the voucher program. This document describes the program and the procedures for PHA approval of a unit selected by the family. The voucher also states obligations of the family under the program.

**Waiting List Admission** is an admission from the PHA waiting list.