**INTRODUCTION**

Owners have numerous responsibilities under the program, including screening and leasing to families, maintaining the dwelling unit, enforcing the lease, and complying with various contractual obligations.

The chapter is organized in two parts:

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

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

**PART I: OWNERS IN THE HCV PROGRAM**

**13-I.A. OWNER RECRUITMENT AND RETENTION [HCV GB, pp. 2-4 to 2-6; HCV Landlord Strategy Guidebook for PHAs]**

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

**Education and Outreach**

**☑ Decision Point: How will the PHA conduct owner outreach, particularly to owners of unit in areas outside of poverty or minority concentration?**

Things to Consider

* The model plan language offers several actions that the PHA will take to identify and recruit owners, especially those outside areas of minority or poverty concentration.
* If your PHA uses specific outreach strategies that are not listed, the model plan should be edited accordingly.
* PHAs within metropolitan FMR areas should select Option 2. This option requires the PHA to identify areas within its jurisdiction which it has identified as areas of poverty or minority concentration. This information must be included in the administrative plan in order to receive full points on Indicator 7, Expanding Housing Opportunities, under SEMAP [24 CFR 985.3(g)].
* HUD published the first chapter of the HCV Landlord Strategy Guidebook for PHAs entitled “Education and Outreach” in April 2020. The guidebook provides detailed information on how PHAs may coordinate outreach, including detailed information on planning events, conducting landlord orientations, establishing landlord advisory boards, conducting landlord outreach events in conjunction with other community partners, tenant education for potential and current voucher holders, marketing, and information sharing strategies.
* *Option 1:* *Use the model plan language shown below. No changes to the model plan are needed.*

The PHA will conduct owner outreach to ensure that owners are familiar with the program and its advantages. The PHA will actively recruit property owners with property located outside areas of poverty and minority concentration. These outreach strategies will include:

Distributing printed material about the program to property owners and managers

Contacting property owners and managers by phone or in-person

Holding owner recruitment/information meetings at least once a year

Participating in community-based organizations comprised of private property and apartment owners and managers

Developing working relationships with owners, apartment associations, industry investor groups, and real estate brokers associations

To the extent practical, partnering with and attending events hosted by other area agencies to deliver information about the HCV program

Outreach strategies will be monitored for effectiveness and adapted accordingly.

🞎 *Option 2: If your PHA is within a metropolitan FMR area, delete model plan language and substitute language as shown below.*

The PHA will conduct owner outreach to ensure that owners are familiar with the program and its advantages. The PHA will actively recruit property owners with property located outside areas of poverty and minority concentration. These outreach strategies will include:

Distributing printed material about the program to property owners and managers

Contacting property owners and managers by phone or in-person

Holding owner recruitment/information meetings at least once a year

Participating in community-based organizations comprised of private property and apartment owners and managers

Developing working relationships with owners, apartment associations, industry investor groups, and real estate brokers associations

To the extent practical, partnering with and attending events hosted by other area agencies to deliver information about the HCV program

Outreach strategies will be monitored for effectiveness and adapted accordingly.

The following areas have been identified as areas of poverty and minority concentration within the PHA’s jurisdiction:

**[List areas by neighborhoods/census tracts]**

🞎 *Option 3: Use another PHA-established policy. Edit the model plan language or delete it and insert the PHA’s policy.*

**Retention**

**☑ Decision Point: What services will the PHA provide to help retain owners?**

Things to Consider

* The model plan language offers several actions that the PHA will take to provide good customer service to participating owners.
* Your PHA may wish to not use any or all of these statements or actions.
* Your PHA may also wish to add other actions, such as:
* Publishing either a paper or electronic owner newsletter designed to clarify HUD and PHA policies and procedures. Both electronic and print newsletters require a higher level of resource investment than other information sharing strategies, but are also an effective way to communicate large amounts of information to owners;
* Conducting periodic owner surveys to determine how customer service for owners can be improved. Under these circumstances, you will need to edit or delete the model language and insert your own; or
* Maintaining an owner advisory board that meets biannually to provide feedback on landlord issues in the HCV program.
* The PHA may also wish to utilize website or portals, social media posts, emails, or texts to disseminate information to owners, particularly if it is time sensitive.
* The PHA should consider maintaining a landlord email list.

🞎 *Option 1:* *Use the model plan language shown below. No changes to the model plan are needed.*

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

The PHA will provide owners with a handbook that explains the program, including HUD and PHA policies and procedures, in easy-to-understand language.

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

Providing the owner with a designated PHA contact person.

Coordinating inspection and leasing activities between the PHA, the owner, and the family.

Initiating telephone contact with the owner to explain the inspection process, and providing an inspection booklet and other resource materials about HUD housing quality standards.

Providing other written information about how the program operates through a landlord handbook, including answers to frequently asked questions.

Contacting owners via emails or texts to disseminate information.

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

🞎 *Option 2: Use another PHA-established policy. Edit the model plan language or delete it and insert the PHA’s policy.*

**13-I.B. BASIC HCV PROGRAM REQUIREMENTS**

This section of Chapter 13 is a summary of the basic HCV program requirements, of which owners must be aware. These requirements are all discussed in greater detail elsewhere in the administrative plan.

**☑ Decision Point: How will the PHA gather information from owners willing to lease a unit to an eligible HCV family, and make this available to families?**

Things to Consider

* HUD requires the PHA to aid families in their housing search by providing the family with a list of landlords or other parties known to the PHA who may be willing to lease a unit to the family, or to help the family find a unit. The PHA cannot *pre-qualify* owners to participate in the program. However, owners may indicate to the PHA their willingness to lease a unit to an eligible HCV family, or to help the HCV family find a unit. The only policy decision in this section is how the PHA will gather this owner information and make it available to families.

🞎 *Option 1:* *Use the model plan language shown below. No changes to the model plan are needed.*

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

🞎 *Option 2: Use another PHA-established policy. Edit the model plan language or delete it and insert the PHA’s policy.*

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

This section of Chapter 13 is a summary of the owner’s responsibilities as outlined in the regulations. **No policy decisions are required.**

**13-I.D. OWNER QUALIFICATIONS**

The PHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the PHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. This section outlines those criteria in some detail.

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

The PHA must not approve the assisted tenancy if the PHA has been informed that the owner has been debarred, suspended, or subject to a limited denial of participation. **No policy decisions are required.** However,PHA procedures will be necessary to secure this information and inform the owner of the results, as well as informing the owner of any HUD directives not to approve a tenancy.

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

The PHA must not approve a tenancy if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family. The PHA may make an exception to this prohibition as a reasonable accommodation for a family member with a disability. **No policy decisions are required.**

**Conflict of Interest [24 CFR 982.161; HCV GB p. 8-19; Form HUD-52641, Section 13]**

The PHA must not approve a tenancy in which certain classes of persons have any interest, direct or indirect, during tenure or for one year thereafter. The plan lists these classes of persons and notes that the HUD Field Office may waive the conflict of interest requirements for good cause.

**☑ Decision Point: How will the PHA manage requests to HUD for waiver of the conflict of interest provisions when a prospective owner has such a conflict?**

Things to Consider

* When the PHA encounters such a situation, the PHA will need to consider whether a waiver request is appropriate. A number of issues can and should be considered by the PHA. In addition, the PHA must ensure that its conflict of interest policies on when to deny and when to request a waiver are applied consistently, fairly and uniformly.

🞎 *Option 1:* *Use the model plan language shown below. No changes to the model plan are needed.*

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

🞎 *Option 2: Use another PHA-established policy. Edit the model plan language or delete it and insert the PHA’s policy.*

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

The regulations permit the PHA to disapprove a request for tenancy for various actions and inactions of the owner.

**☑ Decision Point: Under what circumstances will the PHA disapprove owners from participating in the HCV program, due to owner actions, and will the PHA allow the consideration of any mitigating factors?**

Things to Consider

* The model plan lists all of the regulatory reasons for disapproval as options that the PHA may use its authority to if it chooses. The model plan also indicates that the PHA will consider whether there are mitigating factors that would argue against disapproval in a specific situation.
* The model plan clarifies that a PHA will disapprove an owner if “the PHA becomes aware” that an owner has engaged in any of these actions. This statement is meant to clarify that the PHA is not responsible to research and verify whether or not the circumstances have occurred, but rather that the PHA will take action when the circumstances are known.
* Your PHA may not wish to use any or all of these reasons as a basis for disapproving owners. Under these circumstances, you will need to edit or delete the model language.

🞎 *Option 1:* *Use the model plan language shown below. No changes to the model plan are needed.*

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

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

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

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

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

The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that:

1. Threatens the right to peaceful enjoyment of the premises by other residents;
2. Threatens the health or safety of other residents, of employees of the PHA, or of owner employees or other persons engaged in management of the housing;
3. Threatens the health or safety of, or the right to peaceful enjoyment of their residences, by persons residing in the immediate vicinity of the premises; or
4. Is drug-related criminal activity or violent criminal activity;

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

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

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

🞎 *Option 2: Use another PHA-established policy. Edit the model plan language or delete it and insert the PHA’s policy.*

**Legal Ownership of Unit**

HUD does not require proof of ownership of an assisted unit as a condition of unit approval in the HCV program.

**☑ Decision Point: Will the PHA require proof of legal ownership from the alleged owner of the unit, prior to entering into a contractual relationship with the individual?**

Things to Consider

* The model plan language does require acceptable documentation of legal ownership before the PHA will enter into a contractual relationship with the individual alleging to be the owner of the unit. Such a policy may impose an additional administrative burden on the PHA and may be met with some resistance by owners. However, requiring proof of ownership is consistent with program integrity objectives and demonstrates due diligence on the part of the PHA.
* If your PHA elects not to require such proof, you will need to delete or edit the model language accordingly.

🞎 *Option 1:* *Use the model plan language shown below. No changes to the model plan are needed.*

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

🞎 *Option 2: Use another PHA-established policy. Edit the model plan language or delete it and insert the PHA’s policy.*

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

This section reiterates the general principle (also found in the HAP contract) that an owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability, in connection with any actions or responsibilities under the HCV program and the HAP contract with the PHA.

Chapter 2 includes greater detail on Fair Housing and Equal Opportunity requirements in the HCV program. **No policy decisions required.**

**PART II: HAP CONTRACTS**

**13-II.A. OVERVIEW**

This section is a brief overview and summary of the HAP contract, discussed in part II. **No policy decisions are required.**

**13-II.B. HAP CONTRACT CONTENTS**

This section is a brief discussion of the three key parts to the HAP contract.

In general, the HAP contract cannot be modified. However, there are two exceptions. The first exception (collecting security deposits) is discussed in Chapter 9. The second exception is discussed below.

**☑ Decision Point: How will the PHA define when the housing assistance payment by the PHA is deemed to be received by the owner?**

Things to Consider

* PHAs also have the discretion to add language to Part A of the HAP contract 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). That discretion is addressed in this section.
* The primary purpose in defining the receipt of a HAP payment is to help clarify what it means for a HAP payment to be paid “promptly.” The HAP contract includes provisions for the owner to impose penalties against the PHA for failure to pay the housing assistance payment on time (see later discussion in the Guide). By explicitly defining what is meant by the receipt of a HAP payment, and placing that language in the HAP contract to be agreed upon and signed by both PHA and owner, the PHA could potentially avoid later disputes and penalties based on the “timeliness” of HAP payments.
* The model plan does not explicitly adopt any policy that defines when the housing assistance payment by the PHA is deemed received by the owner. Therefore, no modifications to the HAP contracts will be necessary on this issue. You may wish to adopt such a definition. If so, you could adopt some alternative policy language.

🞎 *Option 1:* *Use the model plan language shown below. No changes to the model plan are needed.*

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

🞎 *Option 2: Use another PHA-established policy. Edit the model plan language or delete it and insert the PHA’s policy.*

**13-II.C. HAP CONTRACT PAYMENTS**

**General**

This section offers a summary discussion of the key requirements relative to PHA payment of housing assistance payments to the owner. **No policy decisions are required.**  However, PHA procedures will be necessary to ensure that accurate HAP payments are made promptly to each owner on behalf of the assisted family, at the beginning of each month.

**Owner Certification of Compliance**

This section is a brief statement on the requirement for the owner to comply with all provisions of the HAP contract in order to be entitled to receive housing assistance payments under the HAP contract. **No policy decisions are required.**

**Late HAP Payments [24 CFR 982.451(a)(5)]**

This section is a summary of the circumstances under which the owner could legitimately charge the PHA “penalties” for HAP payments that are not paid promptly by the PHA at the beginning of the month, as well as circumstances under which the PHA might not be required to pay a late penalty.

**No policy decisions are required.** However, be aware of the policy decision discussed in the Guide under Section 13-II.B. PHAs have the discretion to add language to Part A of the HAP contract that defines when the housing assistance payment by the PHA is deemed received by the owner. The primary purpose in defining the receipt of a HAP payment is to help clarify what it means for a HAP payment to be paid “promptly.” Such a definition, included in the HAP contract, could potentially avoid later disputes and penalties based on the “timeliness” of PHA HAP payments.

**Termination of HAP Payments [24 CFR 982.311(b)]**

This section discusses the circumstances under which HAP payments will terminate. Essentially, the housing assistance payments terminate when the HAP contract terminates.

**☑ Decision Point: Where an owner has initiated eviction proceedings against a tenant family, how long will the PHA continue to make HAP payments to the owner after the owner has obtained a court judgment or other process allowing the owner to evict the tenant?**

Things to Consider

* Housing assistance payments also terminate when the lease is terminated by the owner in accordance with the terms of the lease. There are circumstances under which the owner has *initiated* eviction proceedings against the family, but has yet to obtain any sort of formal or legal judgment on the eviction, and the family continues to reside in the unit. Under these circumstances, the PHA must continue to make housing assistance payments to the owner until the owner has obtained a court judgment or other process allowing the owner to evict the tenant.
* However, there may also be circumstances under which the owner has obtained a court judgment or other process which allows the owner to evict the tenant, but the family has yet to physically move from the unit and the owner has yet to physically evict the family. Under these circumstances, the regulations state that the PHA *may* continue to make HAP payments until the family moves or the family is evicted from the unit.
* This requires a policy decision from the PHA on how it will handle these limited circumstances. Some reasonable administrative delay between court order and physical eviction may be necessary. However, if the delay persists beyond some reasonable time, the PHA may wish to set policy which limits the PHA’s liability for HAP payments in these situations.
* The model plan language adopts a reasonable approach which should address the vast majority of such situations. After the owner has obtained a court judgment or other process allowing the owner to evict the tenant, the PHA will agree to continue to make HAP payments to the owner until the family actually moves from the unit or until the family is actually evicted from the unit, whichever is earlier. In this situation, the owner has a responsibility to keep the PHA informed of the date when the family actually moves from the unit or the family is actually evicted from the unit. You may wish to adopt a more stringent policy which limits the PHA’s liability for HAP payments only up to the regulatory required point of a court judgment or other process which allows the owner to evict the tenant. If so, you may edit the model plan language or delete it and substitute your own policy statement.

🞎 *Option 1:* *Use the model plan language shown below. No changes to the model plan are needed.*

The owner must inform the PHA when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.

The owner must inform the PHA when the owner has obtained a court judgment or other process allowing the owner to evict the tenant and provide the PHA with a copy of such judgment or determination.

After the owner has obtained a court judgment or other process allowing the owner to evict the tenant, the PHA will continue to make HAP payments to the owner until the family actually moves from the unit or until the family is physically evicted from the unit, whichever is earlier. The owner must inform the PHA of the date when the family actually moves from the unit or the family is physically evicted from the unit.

🞎 *Option 2: Use another PHA-established policy. Edit the model plan language or delete it and insert the PHA’s policy.*

**13-II.D. BREACH OF HAP CONTRACT [24 CFR 982.453]**

There are a number of circumstances under which an owner might breach the HAP contract. These circumstances are outlined in the plan.

**☑ Decision Point: What steps will the PHA take to determine if an owner breach of HAP contract has occurred, and what factors will the PHA consider in deciding on an appropriate remedy?**

Things to Consider

* The model plan language provides some level of review and consideration not required by the regulations. This PHA review is necessary both in fairness to and consideration of the owner’s situation, as well as to help establish the appropriate PHA remedy, if any, for the HAP contract breach.

🞎 *Option 1:* *Use the model plan language shown below. No changes to the model plan are needed.*

Before the PHA invokes a remedy against an owner, the PHA will evaluate all information and documents available to determine if the contract has been breached.

If relevant, the PHA will conduct an audit of the owner’s records pertaining to the tenancy or unit.

If it is determined that the owner has breached the contract, the PHA will consider all of the relevant factors including the seriousness of the breach, the effect on the family, the owner’s record of compliance and the number and seriousness of any prior HAP contract violations.

🞎 *Option 2: Use another PHA-established policy. Edit the model plan language or delete it and insert the PHA’s policy.*

**13-II.E. HAP CONTRACT TERM AND TERMINATIONS**

This section specifically addresses the term of the HAP contract and circumstances under which the HAP contract would terminate.

There are a number of situations where the PHA must terminate the HAP contract. There are other discretionary circumstances where the PHA may, but is not required to, terminate the HAP contract.

**☑ Decision Point: Under what circumstances will the PHA elect to terminate the HAP contract?**

Things to Consider

* The model plan language adopts several discretionary criteria under which a PHA may elect to terminate the HAP contract. The policy does not require termination under these circumstances, but preserves the PHA’s right to terminate. Many of these circumstances are discussed elsewhere in the plan and all are discussed in the regulations.

🞎 *Option 1:* *Use the model plan language shown below. No changes to the model plan are needed.*

The PHA may elect to terminate the HAP contract in each of the following situations:

Available program funding is not sufficient to support continued assistance for families in the program [24 CFR 982.454];

The unit does not meet size requirements due to change in family composition [24 CFR 982.403] – see Chapter 8;

The unit does not meet housing quality standards [24 CFR 982.404] – see Chapter 8;

The family breaks up [HUD Form 52641] – see Chapter 3;

The owner breaches the HAP contract [24 CFR 982.453(b)] – see Section 13-II.D.

🞎 *Option 2: Use another PHA-established policy. Edit the model plan language or delete it and insert the PHA’s policy.*

Where the PHA terminates the HAP contract, the PHA must give the owner and the family written notice. The notice must specify the reasons for the termination and the effective date of the termination. Once a HAP contract is terminated, no further HAP payments may be made under that contract.

**☑ Decision Point: When does the HAP contract terminate, after the PHA has provided a written HAP contract termination notice to the owner and the tenant?**

Things to Consider

* A key policy decision here is the exact date at which the HAP contract terminates, after the PHA provides notice. The PHA must develop a policy for establishing the effective date of any HAP contract termination.
* The model plan language adopts the policy that generally the HAP contract terminates at the end of the calendar month that follows the calendar month in which the PHA gives written notice to the owner. This would allow at least 30 days’ notice to the owner and family that HAP assistance will terminate. Shorter notice periods may be subject to legal challenge.

🞎 *Option 1:* *Use the model plan language shown below. No changes to the model plan are needed.*

Generally, the HAP contract terminates at the end of the calendar month that follows the calendar month in which the PHA gives written notice to the owner.

The PHA cannot make any HAP payment for any month after the month the family vacates the unit.

The owner is not entitled to any housing assistance payment after this period and must return to the PHA any housing assistance payment received after this period.

🞎 *Option 2: Use another PHA-established policy. Edit the model plan language or delete it and insert the PHA’s policy.*

**13-II.F. CHANGE IN OWNERSHIP / ASSIGNMENT OF THE HAP CONTRACT [HUD-52641]**

When a dwelling unit with an assisted family changes ownership, the HAP contract cannot be assigned to the new owner without the prior written consent of the PHA. An owner under a HAP contract must notify the PHA in writing prior to a change in the legal ownership of the unit and must supply all information as requested by the PHA.

**☑ Decision Point: How will the PHA handle approval of assignment of a HAP contract from one owner to another owner?**

Things to Consider

* The new owner must also be qualified to become an owner under the HCV program and must agree to be bound by and comply with the HAP contract. The agreement between the new owner and the former owner must be in a form that the PHA finds acceptable. The new owner must provide the PHA with a copy of the executed agreement.
* PHA policy decisions here relate to the type of information the PHA will request in order to approve the assignment of the HAP contract to a new owner, and how that information will be communicated to the PHA. The model plan language requires the agreement to be in writing, and requires the new owner to provide several pieces of information.

🞎 *Option 1:* *Use the model plan language shown below. No changes to the model plan are needed.*

Assignment of the HAP contract will be approved only if the new owner is qualified to become an owner under the HCV program according to the policies in Section 13-I.D. of this chapter.

The PHA must receive a signed, written request from the existing owner stating the name and address of the new HAP payee and the effective date of the assignment in order to change the HAP payee under an outstanding HAP contract.

Within 10 business days of receiving the owner’s request, the PHA will inform the current owner in writing whether the assignment may take place.

The new owner must provide a written certification to the PHA that includes:

A copy of the escrow statement or other document showing the transfer of title and recorded deed;

A copy of the owner’s IRS Form W-9, Request for Taxpayer Identification Number and Certification, or the social security number of the new owner;

The effective date of the HAP contract assignment;

A written agreement to comply with the terms of the HAP contract;

A certification that the new owner is not a prohibited relative

If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, the PHA will terminate the HAP contract with the old owner. If the new owner wants to offer the family a new lease, and the family elects to stay with continued assistance, the PHA will process the leasing in accordance with the policies in Chapter 9.

🞎 *Option 2: Use another PHA-established policy. Edit the model plan language or delete it and insert the PHA’s policy.*

**13-II.G. FORECLOSURE [Notice PIH 2010-49]**

Families receiving HCV Assistance are entitled to certain protections set forth under the Protecting Tenants at Foreclosure Act (PTFA).

**☑ Decision Point: How will the PHA apply the requirements of the PTFA?**

Things to Consider

* The Protecting Tenants at Foreclosure Act (PTFA) was signed into law in 2009. HUD subsequently issued Notice PIH 2010-49 and amended the HAP contract for the HCV program, however, the law temporarily sunset on December 31, 2014. As such, HUD removed the language related to the law from the HAP contract in April 2018.
* However, the law was reinstated and permanently extended in May 2018. While the applicable HUD notice expired on December 31, 2011, Notice PIH 2010-49 remains guidance for PHAs on how to apply the law.
* The law itself amends the statute for the HCV program to require:
* “During the term of the lease, the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable federal, state, or local law, or for other good cause…and in the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease vacating the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner— (i) will occupy the unit as a primary residence; and (ii) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice.”
* “In the case of any foreclosure on any federally related mortgage loan (as that term is defined in Section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602)) or on any residential real property in which a recipient of assistance under this subsection resides, the immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to the lease between the prior owner and the tenant and to the housing assistance payments contract between the prior owner and the public housing agency for the occupied unit, except that this provision and the provisions related to foreclosure in subparagraph (C) shall not affect any state or local law that provides longer time periods or other additional protections for tenants.”
* While Notice PIH 2010-49 is no longer mandatory, the PHA may wish to adopt the requirements of the notice as safe harbor guidance. The notice states the PHA should:
* Make all reasonable efforts to determine the status of the foreclosure and ownership of the property;
* Continue to make payments to the original owner until ownership legally transfers in accordance with the HAP contract;
* Attempt to obtain a written acknowledgement of the assignment of the HAP contract from the successor in interest. Even if the new owner does not acknowledge the assignment of the HAP contract in writing, the assignment is still effective by operation of law;
* Inform the tenant that they must continue to pay rent in accordance with the lease, and if the successor in interest refuses to accept payment or cannot be identified, the tenant should pay rent into escrow. Failure to pay rent may constitute an independent ground for eviction;
* Inform the tenant in the event that the PHA is unable to make HAP payments to the successor in interest due to an action or inaction by the successor that prevents such payments (e.g., rejection of payments or failure to maintain the property according to housing quality standards), or due to an inability to identify the successor, the PHA may use the funds that would have been used to pay the rent for other purposes. These other purposes may include:
  + - To pay the utilities that are the owner’s responsibility after taking reasonable steps to notify the owner; except that if the unit has been or will be rendered uninhabitable due to termination or threat of termination of service, prior notice is not required. In the latter case, the PHA shall notify the owner within a reasonable time after making the utility payment; or
    - To pay for the family’s reasonable moving costs, including security deposit costs.
* Refer the tenant, as needed, to the local legal aid office in order to ensure adequate protection of the tenant’s rights and enforcement of the successor in interest’s performance under the HAP contract.
* Make reasonable inquiries to determine whether the unit, in addition to having a tenant receiving HCV assistance, will be or has been assisted under the Neighborhood Stabilization Program (NSP). (For further guidance on cases in where the units have been assisted under the NSP, see Notice PIH 2010-49.)
* Notify HCV applicants who have been issued a voucher, participant heads of household, and current and prospective owners of HCV-assisted housing of the protections afforded to tenants under the PTFA.
* The model policy adopts the language from the expired notice as safe harbor guidance in Option 1.

🞎 *Option 1:* *Use the model plan language shown below. No changes to the model plan are needed.*

If a property is in foreclosure, the PHA will make all reasonable efforts to determine the status of the foreclosure and ownership of the property and will continue to make payments to the original owner until ownership legally transfers in accordance with the HAP contract.

The PHA will attempt to obtain a written acknowledgement of the assignment of the HAP contract from the successor in interest. This will include a request for owner information, including a tax identification number and payment instructions from the new owner. Even if the new owner does not acknowledge the assignment of the HAP contract in writing, the assignment is still effective by operation of law.

The PHA will inform the tenant that they must continue to pay rent in accordance with the lease, and if the new owner refuses to accept payment or cannot be identified, the tenant should pay rent into escrow. Failure to pay rent may constitute an independent ground for eviction.

In the event that the PHA is unable to make HAP payments to the new owner due to an action or inaction by the new owner that prevents such payments (e.g., rejection of payments or failure to maintain the property according to housing quality standards), or due to an inability to identify the new owner, the PHA will either use the funds to pay:

The utilities that are the owner’s responsibility after taking reasonable steps to notify the owner; except that if the unit has been or will be rendered uninhabitable due to termination or threat of termination of service, prior notice is not required. In the latter case, the PHA shall notify the owner within a reasonable time after making the utility payment; or

For the family’s reasonable moving costs, including security deposit costs.

The PHA will also refer the tenant, as needed, to the local legal aid office in order to ensure adequate protection of the tenant’s rights and enforcement of the successor in interest’s performance under the HAP contract.

🞎 *Option 2: Use another PHA-established policy. Edit the model plan language or delete it and insert the PHA’s policy.*

**FINALIZING THE DOCUMENT**

Take a final look at the changes you have made in this chapter of the administrative plan.  
Have you:

(1) Added or subtracted any exhibits at the end of the chapter?  Yes  No.

(2) Added, subtracted or reordered any major sections (at the A, B, or C level?)  Yes  No

If you answered yes to either of these questions, you must adjust the chapter to match your changes.

**☑ Decision Point: Are any changes required to this chapter?**

No. No changes to the model plan are needed.

Yes. Edits only. Edit and insert PHA language as appropriate.

Yes. PHA changed the organization of the chapter. Adjust the chapter to reflect your changes **and** review the rest of the document to make sure that any references to section numbers are correct.

**☑ Decision Point: Are changes required in other chapters as a result of changes to this chapter?**

Check the “Things to Consider” under each decision point to identify if changes to the model plan policy will require changes to policies in other chapters of the plan.

No. Changes to other chapters are not necessary.

Yes. Changes to the following chapters are also required: