

# Chapter 6

## Leasing

AHFC provides rental assistance to an eligible family through three relationships:

- AHFC and the Family are related through the Voucher
- AHFC and the Landlord are related through the Housing Assistance Payments (HAP) Contract
- The Family and the Landlord are related through the Lease Agreement

### 1. Reasonable Accommodation

Families may request a reasonable accommodation to extend shopping time, move between jurisdictions for medical or care reasons, acquire documentation in an accessible format, or request additional assistance to help with the moving process. Reasonable accommodation requests will be referred to the local AHFC office.

### 2. Required Processes

AHFC will not subsidize a family's requested tenancy unless:

1. The required paperwork (Landlord Papers) has been returned to AHFC for review;
2. AHFC has confirmed the family has not exceeded their maximum rent contribution (when required);
3. AHFC has screened the landlord;
4. The unit has been inspected and meets Housing Quality Standards (HQS);
5. The contract rent requested by the landlord meets Rent Reasonableness criteria; and
6. The required paperwork has been executed as follows:
  - a) The assisted lease by the landlord and family
  - b) The HAP Contract by AHFC and the landlord

A family must notify AHFC and the landlord in writing before moving from an assisted unit. See Exhibits 6-2 (Family Moves) and 6-3 (Family Portability).

### 3. Housing Assistance Payments (HAP) Contract

#### **HUD Regulation 24 CFR 982.309(a)**

Term of assisted tenancy. Initial term of lease.

(1) Except as provided in paragraph (a)(2) of this section, the initial lease term must be for at least one year.

(2) The PHA may approve a shorter initial lease term if the PHA determines that:

- (i) Such shorter term would improve housing opportunities for the tenant; and
- (ii) Such shorter term is the prevailing local market practice.

(b) Term of HAP contract.

(1) The term of the HAP contract begins on the first day of the lease term and ends on the last day of the lease term.

(2) The HAP contract terminates if any of the following occurs:

- (i) The lease is terminated by the owner or the tenant;
- (ii) The PHA terminates the HAP contract; or
- (iii) The PHA terminates assistance for the family.

#### **HUD Regulation 24 CFR 982.451(a)**

(1) The HAP contract must be in the form required by HUD.

(2) The term of the HAP contract is the same as the term of the lease.

#### **AHFC Policy**

1. If the lease specifies an initial term, the HAP Contract initial term shall match.
2. If the lease does not specify an initial term or end date for the initial term, the HAP Contract initial term shall be for a minimum of one year. HAP Contracts end on the last day of a month.
3. If a lease does not specify an end date beyond the initial term, the HAP Contract shall continue automatically until terminated in accordance with the provisions in paragraph (b) above.

The amount of HAP to the owner is determined by AHFC in accordance with HUD regulations and other requirements. The HAP amount is subject to change during the HAP contract term. AHFC will prorate the HAP for the first month if assistance begins on any day other than the first day of the month.

The monthly HAP by AHFC is credited toward the monthly rent to owner under the family's lease. The total rent paid by the family plus AHFC's housing assistance to the owner may not be more than the rent to the owner. The owner must immediately return any excess payment to AHFC. The owner may not demand or accept any rent payment from the family in excess of this maximum and must immediately return any excess rent payment to the family.

The family is not responsible for payment of the portion of rent to owner covered by the HAP Contract between AHFC and the owner. AHFC must pay the HAP promptly when due to the owner in accordance with the HAP Contract. State law allows a landlord to assess late charges when the rent is late. AHFC may be obligated to pay a late payment fee to the landlord for a late HAP if the payments are not paid promptly when due after the first two calendar months of the HAP Contract term.

### **3.A Landlord Screening of Family**

Listing a family on an AHFC waiting list or selecting a family for participation in the program is not a representation by AHFC to the landlord about the family's expected behavior or the family's suitability for tenancy. Such screening is the landlord's responsibility as stated on the Request for Tenancy Approval.

Owners are permitted and encouraged to screen families on the basis of their tenancy histories. An owner may consider a family's background with respect to such factors as:

- Payment of rent and utility bills;
- Caring for a unit and premises;
- Respecting the rights of others to peaceful enjoyment of housing;
- Drug-related or other criminal activity that is a threat to the life, safety, or property of others; and
- Compliance with other essential conditions of tenancy.

### **3.B AHFC Owner Screening**

AHFC must not approve an owner/landlord for participation in the program if AHFC has been informed (by HUD or otherwise) that the owner is debarred, suspended, or subject to a limited denial of participation (24 CFR 982.306). When directed by HUD, AHFC must not approve an owner if:

1. The federal government has instituted an administrative or judicial action against the owner for violation of the Fair Housing Act or other federal equal opportunity requirements, and such action is pending; or
2. A court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements.

AHFC may deny approval to lease a unit from an owner for any of the following reasons:

1. The owner has violated an obligation or obligations under a HAP Contract;
2. The owner has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program;

3. The owner has a history or practice of non-compliance with the HQS for units leased under the Housing Choice Voucher program, or with applicable housing standards for units leased with project-based section 8 assistance or leased under any other federal housing program;
4. The owner has a history or practice of renting units that fail to meet state or local housing codes;
5. The owner has not paid state or local real estate taxes, fines, or assessments.
6. The owner wishes to rent to a parent, child, grandparent, grandchild, sister, or brother under the Housing Choice Voucher program. The exception to this restriction would be if the owner were to rent to a family member in order to provide reasonable accommodation for a family member who is a person with disabilities (24 CFR 982.306(d)).
7. The owner refuses or has a history of refusing to terminate the tenancy of a family who threatens the health or safety of other residents, managers, HA employees, or the owner; disturbs the peaceful enjoyment of others residing in the immediate vicinity; or engages in drug-related or violent criminal activity.

### **3.C When a New HAP Contract Is Required**

In accordance with 24 CFR 982.308 and item 15 of HAP Contract Tenancy Addendum, a new HAP is required whenever:

1. Responsibility for appliances or payment of utilities changes.
2. Changes in the term of the lease.
  - a) "Term" meaning one of the elements of a proposed or concluded agreement or a condition of the lease.
  - b) This includes a change in the security deposit amount.
3. If the family moves to a new unit, even if in the same building or complex.
4. If the family and owner request a new HAP.
5. If the owner offers the family a new lease.
  - a) The owner may offer the family a new lease, for a term beginning at any time after the initial term. The owner must give the tenant written notice of the offer, with a copy to AHFC, at least 60 calendar days before the proposed beginning date of the new lease term. The offer must specify a reasonable time limit for acceptance by the family.
  - b) In the above circumstances, when the family is continuing to lease in place with voucher assistance, AHFC does not issue a new voucher. There is no need for a new RTFA and no need to require a new briefing.

### **3.D When a New HAP Contract Is Not Required**

1. AHFC is not required to execute a new HAP Contract for changes to family composition or a change in the amount of rent to owner.
2. An owner and family may extend the initial twelve month lease at its anniversary. This extends the initial lease and thereby extends the HAP Contract. After the initial 12-month term, the extending lease terms can be for less than one year.
3. If the family signs a short-term lease for less than 12 months, AHFC will continue to treat the lease as an extension for another 12 months. The family and owner are required to give notice before they end the lease.

### **3.E Ending a Contract**

A landlord or the family may request to end the HAP Contract or assisted lease. See Termination of Assistance and Tenancy for procedures.

## **4. Required Paperwork**

All paperwork referenced in this chapter is provided to the family during the briefing class (see Chapter 5). AHFC may receive paperwork from the family, from the landlord, or from both. The following documents must be completed and submitted to AHFC in order for the tenancy to be evaluated:

- Request for Tenancy Approval (RFTA). All required signatures must be in place by the inspection.
- Lead-Based Paint Disclosure if the unit was constructed before January 1, 1978. All required signatures must be in place by the inspection.
- Lease Agreement with the rent, utilities, unit address, security deposit, and parties' names filled in. AHFC recommends the family not sign the lease until the inspection. See below for lease and security deposit requirements.
- Property Ownership Verification. For landlords with current contracts, AHFC may utilize file copies of Property Ownership Verification and W-9 forms.
- W-9. The information on this form should correspond to the payee on the Property Ownership Verification.

#### **4.A Incomplete Paperwork**

If the paperwork provided to AHFC is incomplete, AHFC will contact the family and let them know what is needed to complete the paperwork. Contact may be in the form of a telephone call, email to the family, or written notice. The contact will be documented in the family's record.

- If the paperwork is not completed within the timeframe specified, the RFTA will be rejected.
- The family will be notified, and if the voucher has not expired, the family may obtain a new set of paperwork to continue shopping.

Tolling of the family's shopping time will not begin until AHFC has received a complete paperwork package.

#### **4.B Complete Paperwork**

Once the completed paperwork has been received, AHFC will proceed to evaluating the family's maximum rent contribution.

### **5. Review Owner's Lease**

Under program regulations at 24 CFR 982.308, AHFC must review the owner's lease for certain required information. These requirements are discussed below. The owner's lease is acceptable provided it is in a standard form that is used for other unassisted tenants in the premises.

#### **5.A Tenant's Legal Capacity to Enter Lease**

The tenant (person or persons, other than live-in aid, who executes the lease as lessee of the dwelling unit) must have legal capacity to enter into a lease under state or local law. A family member may not enter into a lease if under the age of 18 or not legally emancipated.

#### **5.B Lease Terms**

The lease must specify an initial term. The initial term of the lease must be for at least one year. AHFC may approve a shorter term if it would improve housing opportunities and is a prevailing local market practice. An initial term of less than one-year requires the approval of the Director of Housing Operations or designee.

#### **5.C Security Deposits**

The owner may collect a security deposit from the family consistent with state law (24 CFR 982.313). The security deposit may not exceed deposits required on the private market or in excess of amounts charged by the owner to unassisted tenants.

## **5.D Utilities and Appliances**

The lease must specify what utilities and appliances are supplied by the owner and what utilities and appliances are supplied by the family.

- For tenant-based voucher families, the utility allowance is based on the lesser of the size of the unit rented or the family's subsidy level<sup>1</sup>.
- For project-based voucher families, the utility allowance is based on the size of the unit rented.
- AHFC may establish a special utility allowance on a case-by-case basis, as a reasonable accommodation for a disabled person.

The most current utility allowance will be applied at initial leasing. See Chapter 1 for rules governing establishment of the utility allowance.

## **5.E AHFC Approval of Lease**

The owner's lease is an agreement between the family and owner and does not require approval by AHFC. The HAP Contract shall require the owner to certify that the terms and conditions of the lease are consistent with state and local law. It will be a violation of the HAP Contract if the certification of consistency is deficient (24 CFR 982.308(b)).

## **5.F Leasing in Place**

A family may have occupied the dwelling before their selection for participation in the program. The family and landlord are required to execute a new lease in conjunction with the HAP Contract.

## **6. Family's Maximum Contribution**

This requirement applies each time the family decides to move to a new unit. See Chapter 4 for the maximum family contribution.

## **7. Schedule and Conduct Unit Inspection**

Once all requirements above are met, staff may schedule the Housing Quality Standards (HQS) inspection. AHFC will schedule the inspection within a reasonable time of receipt of the RFTA.

---

<sup>1</sup> Section 242 of the 2014 HUD Appropriations Act formally known as Title II of Division L of Public Law 113-76, 128 Stat. 5, approved January 17, 2014. Published in the *Federal Register* on June 25, 2014.

### **7.A Inspection Day Requirements**

An adult family member or representative and the landlord or landlord's agent must be present at the move-in inspection.

1. The family is responsible for telling the landlord the date and time of the scheduled inspection.
2. The landlord or representative must be present at the inspection to provide access to any secured areas containing HQS-inspectable items.

### **7.B Conduct Inspection**

Each unit must pass the HQS inspection before beginning rental assistance. See Chapter 7 for these guidelines.

### **7.C Determine Rent Reasonableness**

Each unit must have a rent reasonableness determination performed before beginning rental assistance. See Exhibit 6-1 for these guidelines.

## **8. Execute Paperwork**

Once the unit passes its HQS inspection, paperwork to begin the rental assistance may now be signed.

## **9. Post Contract and Inspection**

To begin payments to the landlord, staff will post the HAP Contract and inspection in the computer database. Before posting a HAP Contract, staff will confirm the following:

- The dates on the lease and the HAP Contract match,
- The lease has been signed by an adult household member and the Landlord, and
- The HAP Contract has been signed by the Landlord and AHFC

## **10. Moving with Continued Assistance**

The family is considered to be "continuously assisted" after first receiving assistance, even if the family is between HAP Contracts (See Chapter 2 for the continuously assisted definition). AHFC prohibits participating families from moving during the initial term of assisted occupancy either within AHFC's jurisdiction or outside of AHFC's jurisdiction. Exceptions may be made on a case-by-case basis (see the Violence Against Women Act exhibit, the Emergency Transfer Plan exhibit, and Lease Termination Agreements).



## 10.A How Many Moves

### HUD Regulation 24 CFR 982.354(c)

- (1) A participant family may move with continued assistance under the program, either inside the PHA jurisdiction, or under the portability procedures (See § 982.353) in accordance with the PHA's policies.
- (2) Consistent with applicable civil rights laws and regulations, the PHA may establish policies that:
  - (i) Prohibit any move by the family during the initial lease term;
  - (ii) Prohibit more than one move by the family during any one-year period; and
  - (iii) The above policies do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, and the move is needed to protect the health or safety of the family or family member, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar day period preceding the family's request to move.

### AHFC Policy

1. See the Violence Against Women Act exhibit for exceptions to these rules.
2. The family may move only one time in a 12-month period (or a lease term, if approved for less than 12 months) either within or outside AHFC's jurisdiction.
3. If a family is approved to move before fulfilling a full 12 months (or lease term), the family must remain in their next unit for a minimum of 12 months (or a lease term, if approved for less than 12 months).
4. At any time, AHFC may deny permission for a family to move, if:
  - a. AHFC does not have sufficient funding for continued assistance.
  - b. AHFC is seeking to deny or terminate assistance because of any action or inaction by the family, as set forth in 24 CFR 982.552.
  - c. A family with time-limited assistance does not have at least 12 months of rental assistance remaining. This limit applies whether the family moves to a new unit or another AHFC jurisdiction. An exception may be granted under the following conditions:
    - i. The reason for the move is no fault of the family or the household is moving to a less expensive unit to relieve shelter burden; **and**
    - ii. The family is able to find a landlord willing to enter into a shorter-term lease (month-to-month or to coincide with the term of assistance remaining); **and**
    - iii. The regional manager approves the move.
  - d. In no case will a family be allowed to move and negotiate a lease term to extend their rental assistance beyond its termination date.

### **10.B Moves Within the Same Jurisdiction**

A family may move to a new unit and continue rental assistance if conditions under How Many Moves above are satisfied and:

1. The assisted lease for the old unit has terminated. This includes a termination because:
  - a) AHFC has terminated the HAP Contract for an owner's breach; or
  - b) The lease has been terminated by mutual agreement of the owner and the tenant.
2. The owner has given the tenant proper notice to vacate after the first year of the lease.
3. The tenant has given proper notice of lease termination.

### **10.C Moves Outside the Original Jurisdiction**

Applicants or participants wishing to move between or outside AHFC jurisdictions must meet the criteria governing eligibility to move.

1. The head, spouse, or co-head must have established a domicile for 30 days prior to application in the area where they received their voucher OR must have received assistance in that area for 12 months.
2. If the family is a new admission (from the waiting list) and has established a domicile, they must meet the income limit for the area to which they are moving.
3. The family's total tenant payment must be less than the payment standard at the receiving location.
4. If AHFC is administering a family's voucher:
  - a) The initial housing authority does not have to agree to the move for moves to another AHFC jurisdiction.
  - b) The initial housing authority must agree to the move for moves to another housing authority.
5. For time-limited programs: The family must have at least twelve (12) months of assistance remaining.

### **10.D Overlapping HAP Contracts**

When a family chooses to move, it is not always possible for the family to end an existing contract at the end of one month and begin the next contract on the first day of the following month. It is acceptable for HAP Contracts to "overlap" during a month for a family. This is not considered duplicate subsidy.

1. If the family is moving at the end of the lease/HAP, AHFC will terminate the existing HAP Contract on the expiration date. The new HAP Contract will start when the new unit passes the HQS inspection and the family takes possession of the unit.

2. If the family moves mid-year or mid-month, the existing HAP will be terminated at the end of the month in which the family moved. The new HAP will be effective the date the unit passes the HQS inspection and the family takes possession of the unit, even if this occurs prior to the end of the existing HAP.
3. The family must pay their portion of rent due under both leases for both assisted units during the overlapping period.

### **10.E Required Process**

The family must begin the process when they wish to move and comply with the following.

1. The family must be in compliance with lease termination procedures as stated in Chapter 8 (proper written notice).
2. The family must complete the Request to Move or Port (moves between jurisdictions or ports).
3. The family must be in good standing with their family obligations under the Housing Choice Voucher Program.
4. The family must:
  - a) Be current on any AHFC payment agreements for moves within or between AHFC jurisdictions.
  - b) Pay any AHFC payment agreements in full before porting.
5. The family will be required to certify their family's composition and may need to complete an income examination if the move coincides with the family's regular examination.
6. The family must receive a new voucher.
  - a) For moves within the same jurisdiction, see Chapter 5
  - b) For moves to another AHFC jurisdiction, see Exhibit 6-2
  - c) For ports outside AHFC's jurisdictions, see Exhibit 6-3

### **10.F Family Security Deposit**

When the family vacates the unit, the owner must notify the family in writing (24 CFR 982.313) of the disposition of their security deposit in accordance with the Alaska Uniform Residential Landlord and Tenant Act (Alaska Statute 34.03).

## **Numbered Memo**

20-37 Chapter 6 Leasing