Chapter 9

GENERAL LEASING POLICIES

INTRODUCTION

Chapter 9 covers the leasing process beginning with the family's submission of a Request for Tenancy Approval (RFTA) to execution of the HAP contract.

In order for the DMMHA to assist a family in a particular dwelling unit, or execute a Housing Assistance Payments (HAP) contract with the owner of a dwelling unit, the DMMHA must first determine that all the following program requirements are met:

- The unit itself must qualify as an eligible unit [24 CFR 982.305(a)]
- The unit must have a current City Occupancy Permit (where required).
- The unit must be inspected by the DMMHA and meet the Housing Quality Standards (HQS) [24 CFR 982.305(a)]
- The lease offered by the owner must comply with program requirements and must include the required Tenancy Addendum [24 CFR 982.305(a)]
- The rent to be charged by the owner for the unit must be reasonable [24 CFR 982.305(a)]
- The owner must be an eligible owner, comply with program requirements as determined by the DMMHA, with no conflicts of interest [24 CFR 982.306]
- For families initially leasing a unit or relocating to a different unit only: Where the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family cannot exceed 40 percent of the family’s monthly adjusted income [24 CFR 982.305(a)]

9-I.A. TENANT SCREENING

The DMMHA has no liability or responsibility to the owner or other persons for the family’s behavior or suitability for tenancy [24 CFR 982.307(a)(1)].

The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before DMMHA approval of the tenancy, the DMMHA will inform the owner that screening and selection for tenancy is the responsibility of the owner [24 CFR 982.307(a)(2)]. The DMMHA will also inform the owner or manager or their responsibility to comply with the Violence Against Women Act of 2013 (VAWA).

The DMMHA will provide the owner, upon written request, with the family's current and prior address (as shown in the DMMHA records); and the name and address (if known to the DMMHA) of the landlord at the family's current and prior address. [24 CFR 982.307(b)(1)].

The DMMHA’s policy on providing information to the owner will be included in the family’s briefing packet [24 CFR 982.307(b)(3)].
9-I.B. REQUESTING TENANCY APPROVAL [Form HUD-52517]

After the family is issued a voucher, the family must locate an eligible unit, with an owner or landlord willing to participate in the voucher program. Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the owner and the family must request the DMMHA to approve the assisted tenancy in the selected unit.

The owner and the family must submit two documents to the DMMHA:

- Completed Request for Tenancy Approval (RFTA)
- Copy of the proposed lease, including the HUD-prescribed Tenancy Addendum – Form HUD-52641-A

The RFTA contains important 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, necessary for the DMMHA to determine whether to approve the assisted tenancy in this unit.

**Certifications**

Owners must certify:

1. to the most recent amount of rent charged for the unit and provide an explanation for any difference between the prior rent and the proposed rent.
2. that they are not the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the DMMHA has granted a request for reasonable accommodation for a person with disabilities who is a member of the tenant household.
3. For units constructed prior to 1978, owners must 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.

**Other Requirements**

Both the RFTA and the proposed lease must be submitted no later than the expiration date stated on the voucher.

The RFTA must be signed by both the family and the owner.

The owner may submit the RFTA on behalf of the family, although the DMMHA recommends that the family return the RFTA to ensure the RFTA is submitted prior to the expiration date of the voucher.

Completed RFTA (including the proposed dwelling lease) must be submitted as hard copies, in-person, by mail, or by fax.

The family may not submit, and the DMMHA will not process, more than one (1) RFTA at a time.

**Completeness**

When the family submits the RFTA the DMMHA will review the RFTA for completeness.

If the RFTA is incomplete (including lack of signature by family, owner, or both), or if the dwelling lease is not submitted with the RFTA, the DMMHA will notify the family and the
owner of the deficiencies. Missing information and/or missing documents will only be accepted as hard copies, in-person, by mail, or by fax. The DMMHA will not accept missing information over the phone.

**Terms**

When the family submits the RFTA and proposed lease, the DMMHA will also review the terms of the RFTA for consistency with the terms of the proposed lease.

If the terms of the RFTA are not consistent with the terms of the proposed lease, the DMMHA will notify the family and the owner of the discrepancies. Corrections to the terms of the RFTA and/or the proposed lease will only be accepted as hard copies, in-person, by mail or by fax. The DMMHA will not accept corrections by phone.

Because of the time sensitive nature of the tenancy approval process, the DMMHA will attempt to communicate with the owner and family by phone or fax. The DMMHA will use mail when the parties can’t be reached by phone or fax.

**Rescission**

Should the family and/or the owner decide they no longer wish to enter into a dwelling lease agreement after a Request for Tenancy Approval has been submitted to the Agency, a Mutual Rescission of the Request for Tenancy Approval must be obtained from the Agency and signed by both parties. Failure to comply with this requirement could result in the expiration of the Housing Choice Voucher.

**Disapproval of Request for Tenancy Approval**

The DMMHA reserves the right to deny a Request for Tenancy Approval should the form be incomplete or contain false statements. A Request for Tenancy Approval may also be denied if the unit fails to meet HQS. In the event that the presence of Lead Based Paint is detected during an entry inspection, the Section 8 client/applicant may request a new Request for Tenancy Approval after giving written notice to the owner and DMMHA within 5 days of receipt of the inspection results to advise that they no longer wish to enter into a lease for that unit.

**9-I.C. OWNER PARTICIPATION**

The DMMHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria whereby the DMMHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. There are also criteria for which DMMHA must disapprove an owner. No owner has a right to participate in the HCV program [24 CFR 982.306(e)]

See Chapter 13 for a full discussion of owner qualification to participate in the HCV program.

**9-I.D. ELIGIBLE UNITS**

There are a number of criteria that a dwelling unit must meet in order to be eligible for assistance under the voucher program. A voucher-holder family may request DMMHA review of eligibility for any available rental dwelling unit on the market in the DMMHA’s jurisdiction. This includes the dwelling unit they are currently occupying.
Ineligible Units [24 CFR 982.352(a)]
The DMMHA may not assist a unit under the voucher program if the unit is a public housing or Indian housing unit; a 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; units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions; a unit or units occupied by its owner or by a person with any interest in the unit.

DMMHA-Owned Units [24 CFR 982.352(b)]
The DMMHA does not have any eligible DMMHA-owned units available for leasing under the voucher program.

Special Housing Types [24 CFR 982 Subpart M]
See Chapter 15 for specific information and policies on any of the special housing types that the DMMHA has chosen to allow.

Duplicative Assistance [24 CFR 982.352(c)]
A family may not receive the benefit of HCV 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.

Housing Quality Standards (HQS) [24 CFR 982.305 and 24 CFR 982.401]
In order to be eligible, the dwelling unit must be in decent, safe and sanitary condition. This determination is made using HUD’s Housing Quality Standards (HQS) and/or equivalent state or
local standards approved by HUD. See Chapter 8 for a full discussion of the HQS standards, as well as the process for HQS inspection at initial leasing.

**Unit Size**

In order to be eligible, the dwelling unit must be appropriate for the number of persons in the household. A family will be allowed to lease an otherwise acceptable dwelling unit with fewer bedrooms than the number of bedrooms stated on the voucher issued to the family, provided the unit meets the applicable HQS space requirements [24 CFR 982.402(d)]. The family will be allowed to lease an otherwise acceptable dwelling unit with more bedrooms than the number of bedrooms stated on the voucher issued to the family. See Chapter 5 for a full discussion of subsidy standards.

**Rent Reasonableness [24 CFR 982.305 and 24 CFR 982.507]**

In order to be eligible, the dwelling unit must have a reasonable rent. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See Chapter 8 for a full discussion of rent reasonableness and the rent reasonableness determination process.

**Rent Burden [24 CFR 982.508]**

Where a family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the family share cannot exceed 40% of the family’s adjusted monthly income. The term “family share” refers to the amount the family pays toward rent and utilities. The gross rent for the unit minus the total housing assistance payment (HAP) for the unit equals the family share. See Chapter 6 for a discussion of calculation of gross rent, the use of payment standards, and calculation of family income, family share of rent and HAP.

### 9-I.E. LEASE AND TENANCY ADDENDUM

The family and the owner must execute a written dwelling lease agreement for the assisted unit. This written lease is a contract between the tenant family and the owner; the DMMHA is not a party to this contract.

The tenant must have legal capacity to enter a lease under State and local law. 'Legal capacity' means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner [24 CFR 982.308(a)]

**Lease Form and Tenancy Addendum [24 CFR 982.308]**

If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form, and the owner must certify thereto in the HAP contract between the owner and DMMHA.

All provisions in the HUD-required Tenancy Addendum must be added word-for-word to the owner's standard lease form. The Tenancy Addendum includes the HUD requirements for the tenancy. Because it is a part of the lease, the tenant shall have the right to enforce the Tenancy Addendum against the owner. If there is a conflict between the owner’s lease and the Tenancy Addendum, the terms of the Tenancy Addendum shall prevail over any other provisions of the lease.
The DMMHA will have a model lease available for owners who do not use a standard lease form for their unassisted tenants. The model lease contains the HUD-prescribed tenancy addendum.

**Lease Information [24 CFR 982.308(d)]**

The assisted dwelling lease must contain all of the required information as listed below:

- The names of the owner and the tenant.
- The unit rented (address, apartment number, and any other information needed to identify the contract unit).
- The term of the lease (initial term and any provisions for renewal).
- The amount of the monthly rent to owner.
- A 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.
- Security deposit amount requested (to ensure it is no more than one month’s contract rent approved by DMMHA).
- Guardian Signature (if applicable).

**Term of Assisted Tenancy**

The initial term of the assisted dwelling lease must be for at least one year [24 CFR 982.309]. The initial lease term is also stated in the HAP contract. Shorter lease terms will only be permitted for targeted funding programs where regulations permit shorter lease terms.

The DMMHA will generally accept lease terms that are one-year in duration and begin on the first day of the month after all relevant Section 8 Housing Choice Voucher requirements are met. Any provisions for renewal of the dwelling lease will be stated in the dwelling lease.

The DMMHA, may, at its sole discretion, make an exception to the start date of the lease term for the following reasons:

1) Instances where it is determined necessary under the protections of the Violence Against Women Act;

2) To allow for proration of Housing Assistance Payments for instances in which it is determined necessary due to emergency situations beyond the voucher holder or participant’s control or in situations related to natural disasters;

3) For participants in the Veteran’s Administrative Supportive Housing Program (VASH) and the Project Based Voucher Program (PBV); or

4) In instances involving Public Housing residents receiving Section 8 Housing Choice Vouchers as a result of the DMMHA Public Housing Disposition Program.

During the initial term of the lease, the owner may not raise the rent to owner [24 CFR 982.309].
The DMMHA may execute the HAP contract even if there is less than one year remaining from the beginning of the initial lease term to the end of the last expiring funding increment under the consolidated ACC. [24 CFR 982.309(b)].

**Security Deposit [24 CFR 982.313 (a) and (b)]**

The amount of security deposit established by the property owner, in no instance may exceed one month’s contract rent or be higher than the amount of the security deposit required of unassisted tenants.

**Separate Non-Lease Agreements between Owner and Tenant**

Owners may not demand or accept any rent payment from the family in excess of the rent to the owner as set forth in the lease approved by DMMHA minus the DMMHA’s housing assistance payments to the owner [24 CFR 982.451(b)(4)].

The owner may not charge the tenant extra amounts for items, appliances, or services customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)]. Any items, appliances, or other services that are customarily provided to unassisted families as part of the dwelling lease with those families, or are permanently installed in the dwelling unit must be included in the dwelling lease for the assisted family as part of the rent to the owner approved by DMMHA. These items, appliances or services cannot be placed under a separate non-lease agreement between the owner and family.

The DMMHA permits owners and families to execute separate, non-lease agreements (side-payment agreements) for services, appliances (other than range and refrigerator) and other items that are not included in the lease. Such arrangements must be submitted to the DMMHA in writing.

Any items, appliances, or other services that are not customarily provided to unassisted families as part of the dwelling lease with those families, are not permanently installed in the dwelling unit and where the family has the sole option of not utilizing the item, appliance or service, may be included in a separate non-lease agreement between the owner and the family. Separate non-lease agreements that involve additional items, appliances or other services may be considered amenities offered by the owner and may be taken into consideration when determining the reasonableness of the rent for the property.

**DMMHA Review of Lease**

The DMMHA will review the dwelling lease information for compliance with all applicable HUD requirements.

If the dwelling lease is incomplete or incorrect for program and HUD requirements, the DMMHA will notify the family and the owner of the deficiencies. Missing and corrected lease information will only be accepted as hard copies, in-person, by mail, e-mail or by fax. The DMMHA may, at its sole discretion, accept missing and corrected information over the phone.

Because the initial leasing process is time-sensitive, the DMMHA will attempt to communicate with the owner and family by phone, e-mail or fax. The DMMHA will use mail when the parties can’t be reached by phone, e-mail or fax.

The DMMHA will not review the owner’s lease for compliance with state/local law.
If DMMHA determines that a proposed lease, the dwelling unit or the contract rent, cannot be approved for any reason, the Case Manager will notify the property owner and family in writing. A copy of this notice will be maintained in the family’s file with the Request for Tenancy Approval.

9-I.F. TENANCY APPROVAL [24 CFR 982.305]

After reviewing the family’s Request for Tenancy Approval, with proposed dwelling lease, the DMMHA will promptly notify the family and owner, in writing, whether the assisted tenancy is approved.

Prior to approving the assisted tenancy and execution of a HAP contract, the DMMHA will ensure that all required actions and determinations, discussed in Part I of this chapter have been completed.

These actions include ensuring that the unit is eligible; the unit has been inspected by the DMMHA and meets the Housing Quality Standards (HQS); the lease offered by the owner complies with program requirements and includes the required Tenancy Addendum; the rent to be charged by the owner for the unit is reasonable; where the family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family does not exceed 40 percent of the family’s monthly adjusted income [24 CFR 982.305(a)]; the owner is an eligible owner, not disapproved by the DMMHA, with no conflicts of interest [24 CFR 982.306]; the family and the owner have executed the lease, including the Tenancy Addendum, and the lead-based paint disclosure information [24 CFR 982.305(b)].

If the terms of the RFTA/proposed lease are changed for any reason, including but not limited to negotiation with the DMMHA, the DMMHA will obtain corrected copies of the RFTA and proposed lease, signed by the family and the owner.

Corrections to the RFTA/proposed lease will only be accepted as hard copies, in-person, by mail, or by fax. The DMMHA will not accept corrections over the phone.

If the DMMHA determines that the tenancy cannot be approved for any reason, the owner and the family will be notified in writing and given the opportunity to address any reasons for disapproval. The DMMHA will instruct the owner and family of the steps that are necessary to obtain approval of the tenancy.

Where the tenancy is not approvable because the unit does not comply with program requirements, the family must continue to search for eligible housing within the timeframe of the issued voucher.

If the tenancy does not comply due to rent affordability or rent reasonableness, the DMMHA will attempt to negotiate the rent with the owner. If a new, compliant rent is negotiated, the tenancy will be approved. If the owner is not willing to negotiate a compliant rent, the family must continue to search for eligible housing within the timeframe of the issued voucher.

9-I.G. HAP CONTRACT EXECUTION [24 CFR 982.305]

The HAP contract is a written agreement between the DMMHA and the owner of the dwelling unit. Under the HAP contract, the DMMHA agrees to make housing assistance payments to the
owner on behalf of the family, and the owner agrees to comply with all program requirements as stated in the HAP contract.

The HAP contract form is prescribed by HUD.

If the DMMHA has given approval for the family of the assisted tenancy, the owner and the DMMHA shall execute the HAP contract. The DMMHA will not execute the HAP contract until the owner has submitted IRS form W-9. The DMMHA will ensure that the owner receives a copy of the executed HAP contract.

The term of the HAP contract must be the same as the term of the lease [24 CFR 982.451(a)(2)].

The DMMHA is permitted to execute a HAP contract even if the funding currently available does not extend for the full term of the HAP contract.

The DMMHA will make a best effort to ensure that the HAP contract is executed before the beginning of the lease term. Regardless, the HAP contract must be executed no later than 60 calendar days from the beginning of the lease term.

The DMMHA will not pay any housing assistance payment to the owner until the HAP contract has been executed. If the HAP contract is executed during the period of 60 calendar days from the beginning of the lease term, the DMMHA will pay housing assistance payments after execution of the HAP contract (in accordance with the terms of the HAP contract), to cover the portion of the lease term before execution of the HAP contract (a maximum of 60 days).

Any HAP contract executed after the 60 day period is void, and the DMMHA may not pay any housing assistance payment to the owner.

The owner and the assisted family will execute the dwelling lease and the owner must provide a copy to the DMMHA. The DMMHA will ensure that both the owner and the assisted family receive copies of the dwelling lease.

As required under VAWA 2013, once the HAP contract and lease have been executed and the family has been admitted to the program, the DMMHA will notify families of their rights under VAWA by providing all families with a copy of the domestic violence certification form (HUD-5382) as well as the VAWA notice of occupancy rights (form HUD-5380).

See Chapter 13 for a discussion of the HAP contract and contract provisions.

9-I.H. CHANGES IN LEASE OR RENT [24 CFR 982.308]

Owner(s) must submit requests for Contract Rent increases to the family and DMMHA 60 days prior to the effective date. If the tenant and the owner agree to any other changes in the lease (including, but not limited to, an offer a new one-year lease), such changes must be in writing, and the owner must immediately give the DMMHA a copy of such changes. The lease, including any changes, must remain in accordance with the requirements of this chapter.

Under certain circumstances, the execution of a new lease and HAP contract are required. These circumstances include:

- Changes in lease requirements governing tenant or owner responsibilities for utilities or appliances
- Changes in lease provisions governing the term of the lease
• The family moves to a new unit, even if the unit is in the same building or complex

In these cases, if the HCV assistance is to continue, the family must submit a new Request for Tenancy Approval (RFTA) along with a new dwelling lease containing the proposed changes. A new tenancy must then be approved in accordance with this chapter.

Where the owner is changing the amount of the rent, the owner must notify the DMMHA at least 60 days before any such changes go into effect [24 CFR 982.308(g)(4)]. The DMMHA will agree to such an increase only if the amount of the rent to owner is considered reasonable according to the rent reasonableness standards discussed in Chapter 8. If the requested rent is not found to be reasonable, the owner must either reduce the requested rent increase, or terminate the tenancy in accordance with the terms of the lease.

No rent increase is permitted during the initial term of the lease [24 CFR 982.309(a)(3)].

Where the owner is requesting a rent increase, the DMMHA will determine whether the requested increase is reasonable. The owner will be notified of the determination in writing.

Rent increases will go into effect on the first of the month following the 60 day period after the owner notifies the DMMHA of the rent change or on the date specified by the owner, whichever is later.