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March 5, 2013

Carolyn Tomei, Chair
Human Services and Housing Committee
Oregon State Legislature
900 Court Street NE
Salem, OR 97301

RE: HB 2639

Dear Distinguished Committee Members:

I write on behalf of the North West Real Estate Investors Association (NWREIA) and in regard to the proposed House Bill 2639 (HB2639) currently before your committee. Please accept these comments on behalf of NWREIA.

The legislation before you has presented itself with the laudable aspiration of prohibiting discrimination against an underprivileged section of our community: those who, due to their life's circumstances, are in need of public assistance to secure and pay for their housing. On its' surface, HB 2639 prohibits against a landlord after considering a tenant's source of income, being from the government coffers, in making a rental decision. This would appear to simply enshrine in statute the very Oregon ideal of ensuring that our community is open to all persons. However, this well intentioned bill incorporates a whole host of unintended consequences contained in the details. Consequences which should be fully debated and explored before you vote on this bill.

HB 2639 as it stands will incorporate into Oregon law the entire federal bureaucracy which has developed around the "Section 8". Section 8 is a program that assists those in need with securing housing by making direct payments to a participant's landlord of a portion of the rent due under the lease, while the tenant remains responsible for the remainder of the rent. Yet this program includes not only a simply monetary apportionment of the rental obligation, but includes a set of contractual terms which a landlord must agree to without any ability to negotiate. (I have attached a sample of a typical Section 8 contract for your consideration.) Should HB 2639 be enshrined in Oregon law, then the plain language of the bill would prohibit a landlord from declining to be subject to this adhesive contract because in so doing the landlord would be considering the "source of income" of the tenant, which is inseparable from the contractual terms which a landlord may find objectionable.

Thus while on the surface the bill appears to simply characterize as discriminatory a denial of tenant who just 'gets help from the government' to pay their rent, in reality it casts as discriminatory a decision which may be predicated upon the well-reasoned business decisions of a landlord. This does not promote the Oregon ideal of inclusivity, but rather penalizes the freedom of contract and commerce which is essential to the growth and recovery of our state's economy.

Of course this calls into question which terms in a Section 8 contract a landlord may find objectionable. Although I have attached the sample contract, I feel it proper to point out a few of the terms which may be reasonably objected to, as well as some additional terms which call into question the real world consequences that may flow from this legislation:

- Part B of HAP Contract, §3, §§(a) *“The owner must maintain the contract unit and premises in accordance with the housing quality standards (HQS)”* §§ (c) *“If the owner does not maintain the contract unit in accordance with the HQS...the [Public Housing Authority (PHA)] may exercise any available remedies. PHA remedies include recovery of overpayments, suspension of housing assistance payments, abatement or other reduction of housing assistance payments...”* While Oregon law requires that all residential lease premises be maintained in habitable condition, the unilateral authority of the PHA to exercise such authority without any clear recourse by the landlord to have this decision reviewed is repugnant to our already established system of balances.
- Part B of HAP Contract, §4, §§ (9) *“The PHA may terminate the HAP contract if the PHA determines that the unit does not meet all requirements of the HQS, or determines that the owner has otherwise breached the HAP contract.”* This unilateral power of the PHA in a lease is not equally afforded to the landlord and constitutes a dramatic change in Oregon law. It is also once again unclear what, if any, recourse a landlord has for an arbitrary decision in this regard by the PHA.
- Part B of HAP Contract, §6, §§ (c) *“The PHA must redetermine the reasonable rent when required in accordance with HUD requirements. The PHA may redetermine the reasonable rent at any time”* This term attacks the fundamental right of contract, allows the PHA to unilaterally alter contracts entered into in good faith, and is hostile to the principle of a free market.
- Part C of HAP Contract, §5, §§(d) *“A PHA failure to pay the housing assistance payment to the owner is not a violation of the lease. The owner may not terminate the tenancy for nonpayment of the PHA housing assistance payment”* Presenting a landlord with a contract that purports to “guarantee” a lease payment, while in the next breath it specifies that the failure of one party to uphold the contract is not grounds for breach is astounding. While this possibility may seem remote, the recent upheavals and uncertainties in our nation’s economy suggest that this possibility is not remote but rather likely.

We believe that the above concerns demonstrate that a landlord’s reluctance to enter into a Section 8 contract may not be the product of a discriminatory motive, but rather evidence of well founded and sound business judgment. Many landlords survive upon their rental income, and are already exposed to significant losses associated with a tenant’s breach of a lease, which often results in hefty legal bills for a landlord that are often unrecoverable from a judgment-proof tenant.¹

1 It is also uncertain where the state will find sufficient reserves to fund HB 2639’s Housing Choice Guarantee Program.


There is an additional section of the HAP contract which is especially problematic for the members of NWREIA, which is an organization dedicated to the small real estate investor whose activities promote the growth of the Oregon economy, and bring vitality into the housing market. In Part B of the HAP Contract, at §14, a property owner who enters into the contract is explicitly prohibited from assigning the contract to a new owner without the prior written consent of the PHA. Once again, this provision on its' surface seems to be of little consequence, it will certainly have a chilling effect upon the exchange and transfer of real estate. This additional hurdle of obtaining PHA consent, as well as any prospective buyer's reluctance to be subject to the uncertainties of this contract of adhesion, may derail the sale of a landowner's property.

It is the firm belief of the members of NWREIA that no person in our community should be subject to discrimination due to their life's circumstances. Every person should have the right to safe and stable housing. Every person should be judged on their conduct, on not their need for help from the government to get by. In this period of economic uncertainty the need for community support is more acute than ever, but this need for support extends equally to the landlord as it does to the tenant. However, enacting legislation that puts a landlord in such a disparate bargaining position does not foster an inclusive community, but rather draws lines of opposition and breeds resentment amongst our citizens.

While we at NWREIA applaud the goals of HB 2639, it is our belief that the effects of the legislation will extend beyond the accomplishment of the goal and will have unintended consequences that should be fully fairly analyzed before any change to the fundamental structure of Oregon law is made. In an area of law that has such a dramatic and daily impact upon the lives of the significant majority of the population, it is critical that accuracy not be satisfied for haste.

Very truly yours,

REEVES, KAHN, HENNESSY & ELKINS



J. Michael Harris

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Enclosure: HAP contract

**Housing Assistance Payments Contract
(HAP Contract)
Section 8 Tenant Based Assistance
Housing Choice Voucher Program**

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

Part B of HAP Contract: Body of Contract

1 Purpose

- a This is a HAP contract between the PHA and the owner. The HAP contract is entered to provide assistance for the family under the Section 8 voucher program (see HUD program regulations at 24 Code of Federal Regulations Part 982)
- b The HAP contract only applies to the household and contract unit specified in Part A of the HAP contract
- c During the HAP contract term the PHA will pay housing assistance payments to the owner in accordance with the HAP contract
- d The family will reside in the contract unit with assistance under the Section 8 voucher program. The housing assistance payments by the PHA assist the tenant to lease the contract unit from the owner for occupancy by the family

2 Lease of Contract Unit

- a The owner has leased the contract unit to the tenant for occupancy by the family with assistance under the Section 8 voucher program.
- b The PHA has approved leasing of the unit in accordance with requirements of the Section 8 voucher program
- c The lease for the contract unit must include word-for-word all provisions of the tenancy addendum required by HUD (Part C of the HAP contract)
- d The owner certifies that:
 - (1) The owner and the tenant have entered into a lease of the contract unit that includes all provisions of the tenancy addendum
 - (2) The lease is in a standard form that is used in the locality by the owner and that is generally used for other unassisted tenants in the premises
 - (3) The lease is consistent with State and local law
- e The owner is responsible for screening the family's behavior or suitability for tenancy. The PHA is not responsible for such screening. The PHA has no liability or responsibility to the owner or other persons for the family's behavior or the family's conduct in tenancy

3 Maintenance, Utilities, and Other Services

- a The owner must maintain the contract unit and premises in accordance with the housing quality standards (HQS)
- b The owner must provide all utilities needed to comply with the HQS
- c If the owner does not maintain the contract unit in accordance with the HQS or fails to provide all utilities needed to comply with the HQS, the PHA may exercise any available remedies. PHA remedies

for such breach include recovery of overpayments, suspension of housing assistance payments, abatement or other reduction of housing assistance payments, termination of housing assistance payments, and termination of the HAP contract. The PHA may not exercise such remedies against the owner because of an HQS breach for which the family is responsible and that is not caused by the owner.

- d The PHA shall not make any housing assistance payments if the contract unit does not meet the HQS, unless the owner corrects the defect within the period specified by the PHA and the PHA verifies the correction. If a defect is life threatening, the owner must correct the defect within no more than 24 hours. For other defects, the owner must correct the defect within the period specified by the PHA.
- e The PHA may inspect the contract unit and premises at such times as the PHA determines necessary, to ensure that the unit is in accordance with the HQS.
- f The PHA must notify the owner of any HQS defects shown by the inspection.
- g The owner must provide all housing services as agreed to in the lease.

4 Term of HAP Contract

- a **Relation to lease term.** The term of the HAP contract begins on the first day of the initial term of the lease and terminates on the last day of the term of the lease (including the initial lease term and any extensions)
- b **When HAP contract terminates**
 - (1) The HAP contract terminates automatically if the lease is terminated by the owner or the tenant
 - (2) The PHA may terminate program assistance for the family for any grounds authorized in accordance with HUD requirements. If the PHA terminates program assistance for the family, the HAP contract terminates automatically.
 - (3) If the family moves from the contract unit, the HAP contract terminates automatically.
 - (4) The HAP contract terminates automatically 180 calendar days after the last housing assistance payment to the owner.
 - (5) The PHA may terminate the HAP contract if the PHA determines, in accordance with HUD requirements, that available program funding is not sufficient to support continued assistance for families in the program.
 - (6) The HAP contract terminates automatically upon the death of a single member household, including single member households with a live-in aide.

form HUD 52641 (6/2009)
ref Handbook 7420 B

- (7) The PHA may terminate the HAP contract if the PHA determines that the contract unit does not provide adequate space in accordance with the IQS because of an increase in family size or a change in family composition
- (8) If the family breaks up the PHA may terminate the HAP contract or may continue housing assistance payments on behalf of family members who remain in the contract unit
- (9) The PHA may terminate the HAP contract if the PHA determines that the unit does not meet all requirements of the IQS or determines that the owner has otherwise breached the HAP contract

5 Provision and Payment for Utilities and Appliances

- a The lease must specify what utilities are to be provided or paid by the owner or the tenant.
- b The lease must specify what appliances are to be provided or paid by the owner or the tenant
- c Part A of the HAP contract specifies what utilities and appliances are to be provided or paid by the owner or the tenant. The lease shall be consistent with the HAP contract

6 Rent to Owner: Reasonable Rent

- a During the HAP contract term, the rent to owner may at no time exceed the reasonable rent for the contract unit as most recently determined or redetermined by the PHA in accordance with HUD requirements
- b The PHA must determine whether the rent to owner is reasonable in comparison to rent for other comparable unassisted units. To make this determination, the PHA must consider:
 - (1) The location, quality, size, unit type, and age of the contract unit; and
 - (2) Any amenities, housing services, maintenance and utilities provided and paid by the owner
- c The PHA must redetermine the reasonable rent when required in accordance with HUD requirements. The PHA may redetermine the reasonable rent at any time
- d During the HAP contract term, the rent to owner may not exceed rent charged by the owner for comparable unassisted units in the premises. The owner must give the PHA any information requested by the PHA on rents charged by the owner for other units in the premises or elsewhere

7 PHA Payment to Owner

- a When paid
 - (1) During the term of the HAP contract, the PHA must make monthly housing assistance payments to the owner on behalf of the family at the beginning of each month
 - (2) The PHA must pay housing assistance payments promptly when due to the owner
 - (3) If housing assistance payments are not paid promptly when due after the first two calendar months of the HAP contract term, the PHA shall pay the owner penalties if all of the following circumstances apply: (i) Such penalties are in accordance with generally accepted practices and law as applicable in the local housing market,

governing penalties for late payment of rent by a tenant; (ii) It is the owner's practice to charge such penalties for assisted and unassisted tenants; and (iii) The owner also charges such penalties against the tenant for late payment of family rent to owner. However, the PHA shall not be obligated to pay any late payment penalty if HUD determines that late payment by the PHA is due to factors beyond the PHA's control. Moreover, the PHA shall not be obligated to pay any late payment penalty if housing assistance payments by the PHA are delayed or denied as a remedy for owner breach of the HAP contract (including any of the following PHA remedies: recovery of overpayments, suspension of housing assistance payments, abatement or reduction of housing assistance payments, termination of housing assistance payments, and termination of the contract)

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

- b **Owner compliance with HAP contract** Unless the owner has complied with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments under the HAP contract

c Amount of PHA payment to owner

- (1) The amount of the monthly PHA housing assistance payment to the owner shall be determined by the PHA in accordance with HUD requirements for a tenancy under the voucher program
- (2) The amount of the PHA housing assistance payment is subject to change during the HAP contract term in accordance with HUD requirements. The PHA must notify the family and the owner of any changes in the amount of the housing assistance payment
- (3) The housing assistance payment for the first month of the HAP contract term shall be prorated for a partial month

- d **Application of payment** The monthly housing assistance payment shall be credited against the monthly rent to owner for the contract unit

e Limit of PHA responsibility

- (1) The PHA is only responsible for making housing assistance payments to the owner in accordance with the HAP contract and HUD requirements for a tenancy under the voucher program
- (2) The PHA shall not pay any portion of the rent to owner in excess of the housing assistance payment. The PHA shall not pay any other claim by the owner against the family

- 1 **Overpayment to owner** If the PHA determines that the owner is not entitled to the housing assistance payment or any part of it, the PHA, in addition to other remedies, may deduct the amount of the overpayment from any amounts due the owner (including amounts due under any other Section 8 assistance contract)

8 Owner Certification

During the term of this contract, the owner certifies that:

- a The owner is maintaining the contract unit and premises in accordance with the HQS
- b The contract unit is leased to the tenant. The lease includes the tenancy addendum (Part C of the HAP contract) and is in accordance with the HAP contract and program requirements. The owner has provided the lease to the PHA, including any revisions of the lease.
- c The rent to owner does not exceed rents charged by the owner for rental of comparable unassisted units in the premises.
- d Except for the rent to owner, the owner has not received and will not receive any payments or other consideration (from the family, the PHA, HUD or any other public or private source) for rental of the contract unit during the HAP contract term.
- e The family does not own or have any interest in the contract unit.
- f To the best of the owner's knowledge, the members of the family reside in the contract unit, and the unit is the family's only residence.
- g The owner (including a principal or other interested party) is not the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the PHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities.

9 Prohibition of Discrimination In accordance with applicable equal opportunity statutes, Executive Orders, and regulations:

- a The owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability in connection with the HAP contract.
- b The owner must cooperate with the PHA and HUD in conducting equal opportunity compliance reviews and complaint investigations in connection with the HAP contract.

10 Owner's Breach of HAP Contract

- a Any of the following actions by the owner (including a principal or other interested party) is a breach of the HAP contract by the owner:
 - (1) If the owner has violated any obligation under the HAP contract, including the owner's obligation to maintain the unit in accordance with the HQS.
 - (2) If the owner has violated any obligation under any other housing assistance payments contract under Section 8.
 - (3) If the owner has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal housing assistance program.
 - (4) For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement; or if the owner has committed fraud, bribery, or any other corrupt or criminal act in connection with the mortgage or loan.

(5) If the owner has engaged in any drug-related criminal activity or any violent criminal activity.

- b If the PHA determines that a breach has occurred, the PHA may exercise any of its rights and remedies under the HAP contract or any other available rights and remedies for such breach. The PHA shall notify the owner of such determination, including a brief statement of the reasons for the determination. The notice by the PHA to the owner may require the owner to take corrective action, as verified or determined by the PHA, by a deadline prescribed in the notice.
- c The PHA's rights and remedies for owner breach of the HAP contract include recovery of overpayments, suspension of housing assistance payments, abatement or other reduction of housing assistance payments, termination of housing assistance payments, and termination of the HAP contract.
- d The PHA may seek and obtain additional relief by judicial order or action, including specific performance, other injunctive relief, or order for damages.
- e Even if the family continues to live in the contract unit, the PHA may exercise any rights and remedies for owner breach of the HAP contract.
- f The PHA's exercise or non-exercise of any right or remedy for owner breach of the HAP contract is not a waiver of the right to exercise that or any other right or remedy at any time.

11 PHA and HUD Access to Premises and Owner's Records

- a The owner must provide any information pertinent to the HAP contract that the PHA or HUD may reasonably require.
- b The PHA, HUD, and the Comptroller General of the United States shall have full and free access to the contract unit and the premises, and to all accounts and other records of the owner that are relevant to the HAP contract, including the right to examine or audit the records and to make copies.
- c The owner must grant such access to computerized or other electronic records and to any computers, equipment, or facilities containing such records, and must provide any information or assistance needed to access the records.

12 Exclusion of Third Party Rights

- a The family is not a party to or third party beneficiary of Part B of the HAP contract. The family may not enforce any provision of Part B, and may not exercise any right or remedy against the owner or PHA under Part B.
- b The tenant or the PHA may enforce the tenancy addendum (Part C of the HAP contract) against the owner, and may exercise any right or remedy against the owner under the tenancy addendum.
- c The PHA does not assume any responsibility for injury to, or any liability to, any person injured as a result of the owner's action or failure to act in connection with management of the contract unit or the premises or with implementation of the HAP contract, or as a result of any other action or failure to act by the owner.
- d The owner is not the agent of the PHA, and the HAP contract does not create or affect any relationship between the PHA and any lender to the owner or any suppliers, employees, contractors, or subcontractors used by the owner in connection with management of

the contract unit or the premises or with implementation of the HAP contract

the Fair Housing Act or other Federal equal opportunity requirements

13 Conflict of Interest

- a "Covered individual" means a person or entity who is a member of any of the following classes:
- (1) Any present or former member or officer of the PHA (except a PHA commissioner who is a participant in the program);
 - (2) Any employee of the PHA or any contractor, sub-contractor or agent of the PHA who formulates policy or who influences decisions with respect to the program;
 - (3) Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the program; or
- (1) Any member of the Congress of the United States
- b A covered individual may not have any direct or indirect interest in the HAP contract or in any benefits or payments under the contract (including the interest of an immediate family member of such covered individual) while such person is a covered individual or during one year thereafter
- c "Immediate family member" means the spouse, parent (including a stepparent), child (including a stepchild), grandparent, grandchild, sister or brother (including a stepsister or stepbrother) of any covered individual
- d The owner certifies and is responsible for assuring that no person or entity has or will have a prohibited interest at execution of the HAP contract or at any time during the HAP contract term
- e If a prohibited interest occurs, the owner shall promptly and fully disclose such interest to the PHA and HUD
- f The conflict of interest prohibition under this section may be waived by the HUD field office for good cause
- g No member of or delegate to the Congress of the United States or resident commissioner shall be admitted to any share or part of the HAP contract or to any benefits which may arise from it

- e The HAP contract may not be assigned to a new owner if the new owner (including a principal or other interested party) is the parent, child, grandparent, grandchild, sister or brother of any member of the family unless the PHA has determined (and has notified the family of such determination) that approving the assignment notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities.
- f The PHA may deny approval to assign the HAP contract if the owner or proposed new owner (including a principal or other interested party):
- (1) Has violated obligations under a housing assistance payments contract under Section 8;
 - (2) Has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing program;
 - (3) Has engaged in any drug related criminal activity or any violent criminal activity;
 - (4) Has a history or practice of non-compliance with the HQS for units leased under the Section 8 tenant based programs or non-compliance with applicable housing standards for units leased with project based Section 8 assistance or for units leased under any other Federal housing program;
 - (5) Has a history or practice of failing to terminate tenancy of tenants assisted under any 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:
 - (a) Threatens the right to peaceful enjoyment of the premises by other residents;
 - (b) Threatens the health or safety of other residents, employees of the PHA or of owner employees or other persons engaged in management of the housing;
 - (c) Threatens the health or safety of, or the right to peaceful enjoyment of their residents by, persons residing in the immediate vicinity of the premises; or
 - (d) Is drug-related criminal activity or violent criminal activity;
 - (6) Has a history or practice of renting units that fail to meet State or local housing codes; or
 - (7) Has not paid State or local real estate taxes, fines or assessments
- g The new owner must agree to be bound by and comply with the HAP contract. The agreement must be in writing and in a form acceptable to the PHA. The new owner must give the PHA a copy of the executed agreement.

14 Assignment of the HAP Contract

- a The owner may not assign the HAP contract to a new owner without the prior written consent of the PHA
- b If the owner requests PHA consent to assign the HAP contract to a new owner, the owner shall supply any information as required by the PHA pertinent to the proposed assignment
- c The HAP contract may not be assigned to a new owner that is debarred, suspended or subject to a limited denial of participation under HUD regulations (see 24 Code of Federal Regulations Part 24)
- d The HAP contract may not be assigned to a new owner if HUD has prohibited such assignment because:
- (1) The Federal government has instituted an administrative or judicial action against the owner or proposed new 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 or proposed new owner violated

15 Foreclosure. In the case of any foreclosure, the immediate successor in interest in the property pursuant to the foreclosure shall assume such interest subject to the lease between the prior owner and the tenant and to the HAP contract between the prior owner and the PHA for the occupied unit. This provision does not affect any State or local law that provides longer time periods or other additional protections for tenants. This provision will sunset on December 31, 2012 unless extended by law.

16 **Written Notices** Any notice by the PHA or the owner in connection with this contract must be in writing

17 **Entire Agreement: Interpretation**

- a The HAP contract contains the entire agreement between the owner and the PHA
- b The HAP contract shall be interpreted and implemented in accordance with all statutory requirements and with all HUD requirements including the HUD program regulations at 24 Code of Federal Regulations Part 982

**Housing Assistance Payments Contract
(HAP Contract)
Section 8 Tenant Based Assistance
Housing Choice Voucher Program**

U S Department of Housing
and Urban Development
Office of Public and Indian Housing

Part C of HAP Contract: Tenancy Addendum

1 Section 8 Voucher Program

- a The owner is leasing the contract unit to the tenant for occupancy by the tenant's family with assistance for a tenancy under the Section 8 housing choice voucher program (voucher program) of the United States Department of Housing and Urban Development (HUD)
- b The owner has entered into a Housing Assistance Payments Contract (HAP contract) with the PHA under the voucher program. Under the HAP contract, the PHA will make housing assistance payments to the owner to assist the tenant in leasing the unit from the owner.

2 Lease

- a The owner has given the PHA a copy of the lease including any revisions agreed by the owner and the tenant. The owner certifies that the terms of the lease are in accordance with all provisions of the HAP contract and that the lease includes the tenancy addendum.
- b The tenant shall have the right to enforce the tenancy addendum against the owner. If there is any conflict between the tenancy addendum and any other provisions of the lease, the language of the tenancy addendum shall control.

3 Use of Contract Unit

- a During the lease term, the family will reside in the contract unit with assistance under the voucher program.
- b The composition of the household must be approved by the PHA. The family must promptly inform the PHA of the birth, adoption, or court-awarded custody of a child. Other persons may not be added to the household without prior written approval of the owner and the PHA.
- c The contract unit may only be used for residence by the PHA-approved household members. The unit must be the family's only residence. Members of the household may engage in legal profit-making activities incidental to primary use of the unit for residence by members of the family.
- d The tenant may not sublease or let the unit.
- e The tenant may not assign the lease or transfer the unit.

4 Rent to Owner

- a The initial rent to owner may not exceed the amount approved by the PHA in accordance with HUD requirements.
- b Changes in the rent to owner shall be determined by the provisions of the lease. However, the owner may not raise the rent during the initial term of the lease.

- c During the term of the lease (including the initial term of the lease and any extension term), the rent to owner may at no time exceed:
 - (1) The reasonable rent for the unit as most recently determined or redetermined by the PHA in accordance with HUD requirements or
 - (2) Rent charged by the owner for comparable unassisted units in the premises.

5 Family Payment to Owner

- a The family is responsible for paying the owner any portion of the rent to owner that is not covered by the PHA housing assistance payment.
- b Each month, the PHA will make a housing assistance payment to the owner on behalf of the family in accordance with the HAP contract. The amount of the monthly housing assistance payment will be determined by the PHA in accordance with HUD requirements for a tenancy under the Section 8 voucher program.
- c The monthly housing assistance payment shall be credited against the monthly rent to owner for the contract unit.
- d The tenant is not responsible for paying the portion of rent to owner covered by the PHA housing assistance payment under the HAP contract between the owner and the PHA. A PHA failure to pay the housing assistance payment to the owner is not a violation of the lease. The owner may not terminate the tenancy for nonpayment of the PHA housing assistance payment.
- e The owner may not charge or accept from the family or from any other source any payment for rent of the unit in addition to the rent to owner. Rent to owner includes all housing services, maintenance, utilities, and appliances to be provided and paid by the owner in accordance with the lease.
- f The owner must immediately return any excess rent payment to the tenant.

6 Other Fees and Charges

- a Rent to owner does not include cost of any meals or supportive services or furniture which may be provided by the owner.
- b The owner may not require the tenant or family members to pay charges for any meals or supportive services or furniture which may be provided by the owner. Nonpayment of any such charges is not grounds for termination of tenancy.
- c The owner may not charge the tenant extra amounts for items customarily included in rent to owner in the locality or provided at no additional cost to unsubsidized tenants in the premises.

7 Maintenance, Utilities, and Other Services

- a **Maintenance**

- (1) The owner must maintain the unit and premises in accordance with the HQS
- (2) Maintenance and replacement (including redecoration) must be in accordance with the standard practice for the building concerned as established by the owner

b Utilities and appliances

- (1) The owner must provide all utilities needed to comply with the HQS
- (2) The owner is not responsible for a breach of the HQS caused by the tenant's failure to
 - (a) Pay for any utilities that are to be paid by the tenant
 - (b) Provide and maintain any appliances that are to be provided by the tenant

c Family damage The owner is not responsible for a breach of the HQS because of damages beyond normal wear and tear caused by any member of the household or by a guest

d Housing services The owner must provide all housing services as agreed to in the lease

8 Termination of Tenancy by Owner

a Requirements The owner may only terminate the tenancy in accordance with the lease and HUD requirements

b Grounds During the term of the lease (the initial term of the lease or any extension term), the owner may only terminate the tenancy because of:

- (1) Serious or repeated violation of the lease;
- (2) Violation of Federal State or local law that imposes obligations on the tenant in connection with the occupancy or use of the unit and the premises;
- (3) Criminal activity or alcohol abuse (as provided in paragraph c); or
- (4) Other good cause (as provided in paragraph d)

c Criminal activity or alcohol abuse

- (1) The owner may terminate the tenancy during the term of the lease if any member of the household a guest or another person under a resident's control commits any of the following types of criminal activity:
 - (a) Any criminal activity that threatens the health or safety of or the right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises);
 - (b) Any criminal activity that 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;
 - (c) Any violent criminal activity on or near the premises; or
 - (d) Any drug related criminal activity on or near the premises

(2) The owner may terminate the tenancy during the term of the lease if any member of the household is:

- (a) Fleeing to avoid prosecution or custody or confinement after conviction for a crime, or attempt to commit a crime that is a felony under the laws of the place from which the individual flees, or that in the case of the State of New Jersey is a high misdemeanor; or
- (b) Violating a condition of probation or parole under Federal or State law

(3) The owner may terminate the tenancy for criminal activity by a household member in accordance with this section if the owner determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity

(4) The owner may terminate the tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health safety or right to peaceful enjoyment of the premises by other residents

d Other good cause for termination of tenancy

(1) During the initial lease term other good cause for termination of tenancy must be something the family did or failed to do

(2) During the initial lease term or during any extension term other good cause may include:

- (a) Disturbance of neighbors
- (b) Destruction of property or
- (c) Living or housekeeping habits that cause damage to the unit or premises

(3) After the initial lease term, such good cause may include:

- (a) The tenant's failure to accept the owner's offer of a new lease or revision;
- (b) The owner's desire to use the unit for personal or family use or for a purpose other than use as a residential rental unit; or
- (c) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, the owner's desire to rent the unit for a higher rent)

(4) The examples of other good cause in this paragraph do not preempt any State or local laws to the contrary

(5) In the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease requiring the tenant to vacate 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 (a) will occupy the unit as a primary residence; and (b) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice. This

provision shall not affect any State or local law that provides for longer time periods or additional protections for tenants. This provision will sunset on December 31, 2012 unless extended by law.

e. Protections for Victims of Abuse

- (1) An incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as serious or repeated violations of the lease or other "good cause" for termination of the assistance tenancy or occupancy rights of such a victim.
- (2) Criminal activity directly relating to abuse engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be cause for termination of assistance tenancy or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of domestic violence, dating violence, or stalking.
- (3) Notwithstanding any restrictions on admission, occupancy, or terminations of occupancy or assistance or any Federal, State, or local law to the contrary, a PHA owner or manager may bifurcate a lease, or otherwise remove a household member from a lease, without regard to whether a household member is a signatory to the lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others. This action may be taken without evicting, removing, terminating assistance to, or otherwise penalizing the victim of the violence who is also a tenant or lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by Federal, State, and local law for the termination of leases or assistance under the housing choice voucher program.
- (4) Nothing in this section may be construed to limit the authority of a public housing agency owner or manager when notified to honor court orders addressing rights of access or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up.
- (5) Nothing in this section limits any otherwise available authority of an owner or manager to evict or the public housing agency to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the owner, manager, or public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a

more demanding standard than other tenants in determining whether to evict or terminate.

- (6) Nothing in this section may be construed to limit the authority of an owner or manager to evict or the public housing agency to terminate assistance to any tenant if the owner, manager, or public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if the tenant is not evicted or terminated from assistance.
- (7) Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.

f. **Eviction by court action.** The owner may only evict the tenant by a court action.

g. Owner notice of grounds

- (1) At or before the beginning of a court action to evict the tenant, the owner must give the tenant a notice that specifies the grounds for termination of tenancy. The notice may be included in or combined with any owner eviction notice.
- (2) The owner must give the PHA a copy of any owner eviction notice at the same time the owner notifies the tenant.
- (3) Eviction notice means a notice to vacate or a complaint or other initial pleading used to begin an eviction action under State or local law.

9. Lease: Relation to HAP Contract

If the HAP contract terminates for any reason, the lease terminates automatically.

10. PHA Termination of Assistance

The PHA may terminate program assistance for the family for any grounds authorized in accordance with HUD requirements. If the PHA terminates program assistance for the family, the lease terminates automatically.

11. Family Move Out

The tenant must notify the PHA and the owner before the family moves out of the unit.

12. Security Deposit

- a. The owner may collect a security deposit from the tenant. (However, the PHA may prohibit the owner from collecting a security deposit in excess of private market practice or in excess of amounts charged by the owner to unassisted tenants. Any such PHA required restriction must be specified in the HAP contract.)
- b. When the family moves out of the contract unit, the owner, subject to State and local law, may use the security deposit, including any interest on the deposit, as reimbursement for any unpaid rent payable by the tenant, any damages to the unit, or any other amounts that the tenant owes under the lease.

- c The owner must give the tenant a list of all items charged against the security deposit, and the amount of each item. After deducting the amount, if any, used to reimburse the owner, the owner must promptly refund the full amount of the unused balance to the tenant.
- d If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may collect the balance from the tenant.

13 Prohibition of Discrimination

In accordance with applicable equal opportunity statutes, Executive Orders, and regulations, the owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability in connection with the lease.

14 Conflict with Other Provisions of Lease

- a The terms of the tenancy addendum are prescribed by HUD in accordance with Federal law and regulation as a condition for Federal assistance to the tenant and tenant's family under the Section 8 voucher program.
- b In case of any conflict between the provisions of the tenancy addendum as required by HUD and any other provisions of the lease or any other agreement between the owner and the tenant, the requirements of the HUD-required tenancy addendum shall control.

15 Changes in Lease or Rent

- a The tenant and the owner may not make any change in the tenancy addendum. However, if the tenant and the owner agree to any other changes in the lease, such changes must be in writing, and the owner must immediately give the PHA a copy of such changes. The lease, including any changes, must be in accordance with the requirements of the tenancy addendum.
- b 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:
 - (1) If there are any changes in lease requirements governing tenant or owner responsibilities for utilities or appliances;
 - (2) If there are any changes in lease provisions governing the term of the lease;
 - (3) If the family moves to a new unit, even if the unit is in the same building or complex.
- c PHA approval of the tenancy and execution of a new HAP contract are not required for agreed changes in the lease other than as specified in paragraph b.
- d The owner must 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 the amount of the rent to owner following any such agreed change may not exceed the reasonable rent for the unit as most recently determined or redetermined by the PHA in accordance with HUD requirements.

Any notice under the lease by the tenant to the owner or by the owner to the tenant must be in writing.

17 Definitions

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

Family The persons who may reside in the unit with assistance under the program.

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

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

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

HUD The U.S. Department of Housing and Urban Development.

HUD requirements HUD requirements for the Section 8 program. HUD requirements are issued by HUD headquarters, as regulations, Federal Register notices, or other binding program directives.

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

PHA Public Housing Agency.

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

Program The Section 8 housing choice voucher program.

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

Section 8 Section 8 of the United States Housing Act of 1937 (42 United States Code 1437f).

Tenant The family member (or members) who leases the unit from the owner.

Voucher program The Section 8 housing choice voucher program. Under this program, HUD provides funds to a PHA for rent subsidy on behalf of eligible families. The tenancy under the lease will be assisted with rent subsidy for a tenancy under the voucher program.

16 Notices