

Draft Fiscal Year 2021 5-Year PHA Plan and Housing Choice Voucher Administrative Plan

Public Comments and Agency Responses

The Montana Department of Commerce (MDOC) would like to thank those agencies and individuals that provided comments. Below are the public comments and agency responses.

General Comments

Kristine Keller, Citizen, Comment

Holy cow. What a lost opportunity. I hope next time MDOC is prepared with a walk through of proposed changes, descriptions of what difference they believe it will make, and definitions of language. Thanks!

MDOC Response

MDOC did make a list of all proposed changes and posted that list on the Montana Housing website at the time that the draft plan was made available to the public. MDOC appreciates your feedback and will consider it with future Admin Plans.

Human Resource Development Council District 9 Comment

Including a glossary would be beneficial.

MDOC Response

MDOC will consider creating a glossary of terms for future Admin Plans.

Human Resource Development Council District 9 Comment

Breaking the links up per chapter is distracting. Having one concise link would make it easier to utilize the search feature instead of having to open every chapter link to search.

MDOC Response

MDOC utilizes the Nan McKay template for the HCV Admin Plan. The reasoning behind posting all chapters separately is that it makes updating specific chapters and reposting on the website more efficient. MDOC can make a merged document available upon request.

Opportunities, Inc., Comment

90 days renewal/Income check – maybe consider emails to be sent out that can be done from home.

MDOC Response

MDOC requires an income check every 90 days for those that have zero income. MDOC has not limited the way in which these reexaminations are conducted at this time.

Shyla Patera, North Central Independent Living Services, Comment

My name is Shyla Patera. I am an IL Specialist with North Central Independent Living Services, Inc. in Black Eagle Montana. Our Center for Independent living advocates for north central Montanans with disabilities to live in our communities and a long-time housing advocate. NCILS submits these comments on the Section 8 and HUD tenant administrative manual.

Section 8 Vouchers are a key piece of housing tenancy for many Montanans who are renters. NCILS hopes that Montana housing will keep applying for and utilizing many voucher options, which will help all Montanans. NCILS and others are excited by the options for portability. If permanent supportive housing is to become a permanent housing model in Montana, we need to ensure that accessibility is paramount. Permanent supportive housing needs to support renters with disabilities and their community living desires. Requiring a case manager should not be mandatory to access housing. Also, all DPHHS case managers, housers, and landlords need to educate one another on the systems our citizens need and are utilizing.

NCILS asks that that HUD pursue flexible ideas and solutions to solving HUD barriers that are preventing access to housing. We also would ask that the Board of Housing, the State of Montana advocate for those who wish to reintegrate into Montana communities that have lived in institutional settings, i.e. the Montana Developmental Center, Warm Springs, correctional, and other nursing home settings. We believe that the State of Montana should help cities and rural areas explore 811 Housing, TBRA and other appropriate DPHHS and housing supports available in order to facilitate successful community transitions and meet Montana's Olmstead priorities.

Montana Housing also needs to make sure that low income citizens and all renters have access to legal resources when challenging fair housing claims, appeal timelines for landlord – tenant issues should follow Montana laws. Fees collected for housing damages to someone on Social Security programs should be levied, pro-rated and commensurate with income. Housing authorities need to recognize that not all disabilities can be accommodated in the commonly practiced and legally accepted ways. Montana housing should explore the use of assistive technology throughout housing stock and really study the practical implications of reasonable accommodation and modification policies. NCILS has worked with north central Montana citizens who have struggled to request and attend fair hearing accommodation requests. Before eviction is served and the eviction process is started, a fair housing hearing should be available and have occurred as apart of residential tenancy.

NCILS staff have had to deal with custodial and housing issues both in child protective and in cases of family divorce. If a parenting plan or family reunification plan is in place, disability and housing concerns should be a paramount concern when determination of occupancy.

Thank you, Montana Housing and Community Development Division, for consideration of these comments.

MDOC Response

Montana Housing recently received funding from HUD for the Mainstream Voucher program. This program provides a preference for persons with disabilities between the ages of 18 and 61 who meet one of the following criteria:

- 1. Transitioning out of institutional and other segregated settings;*
- 2. At serious risk of institutionalization;*
- 3. Currently experiencing homelessness (as defined in the HEARTH Act) and/or eligible persons that are referred by the State of Montana’s Coordinated Entry System (CES); and*
- 4. Previously experienced homelessness and currently a client in a Permanent Supportive Housing or Rapid Rehousing project.*

This program is limited to 60 vouchers and will provide assistance to at risk populations in Montana.

The HCV program contracts with eleven Field Agents across the state to for rental assistance vouchers and does not have geographical preferences. We currently assist with rental payments in urban, suburban, and rural areas across the state.

Montana Fair Housing investigates allegations of discrimination in housing, counsels victims of discrimination, and facilitates both the state and federal complaint process. They also assist victims of housing discrimination, under specific circumstances, in securing the representation of counsel when the filing of a complaint in court is deemed the best option (source: www.montanafairhousing.org).

Voucher size in the HCV program is determined by the number of persons within the household. One bedroom is assigned for every two persons. Increases in voucher size beyond the current household size are done on a case-by-case basis.

Housing Authority of Billings Comment

A tenant would like to see MT Housing modify rent determination letters to include more guidance on policy/procedure of what to do if the family disagrees with the determination.

MDOC Response

The following language is included in the Payment Determination letter:

“The current amount of your Housing Assistance, shown below, was calculated using income information you reported as reflected in the attached documentation. If you believe this is incorrect, it is your responsibility to notify your local field agency within 10 days of the date on this notification. If your income is more than you have reported, and you do not notify your local field agent, you will be required to repay the Department of Commerce and possibly

lose your assistance for failure to report income. If your income is less than what is reported, you will be paying more than your fair share for rent.”

Additionally, MDOC includes a copy of the Family Report Summary and the Eligibility Summary for participants to review with their Payment Determination letter.

Housing Authority of Billings Comment

A tenant also suggested that policy updates be sent to landlords to make sure they are advised of changes.

MDOC Response

MDOC provides landlords copies of the signed HAP at participant lease up. Landlords are encouraged to contact the local Field Agency with any questions regarding the HCV program. In addition, MDOC has provided copies of HUD forms including HAP Contract, Tenancy Addendum and Landlord Information sheet on its website at <https://housing.mt.gov/Rental-Housing/Landlords>.

Housing Authority of Billings Comment – FIVE YEAR PLAN COMMENT

What has Montana Housing envisioned in the goal to explore expanding FSS opportunities?

MDOC Response

MDOC has been holding meetings with the Field Agency executive directors which has included discussions regarding the current services Field Agencies are providing and what services they would like to provide in the future. MDOC will be working with the agencies that have expressed interest in the Family Self-Sufficiency program.

Housing Authority of Billings Comment – FIVE YEAR PLAN COMMENT

Suggestion: Montana housing distribute a progress report on goals to families on the program.

MDOC Response

MDOC will consider this suggestion for future PHA Plans.

Chapter 1 – Overview of the Program and Plan

1-I.D. The PHA's Programs

The following programs are included under this administrative plan:

MDOC Policy

MDOC's administrative plan is applicable to the operation of the Housing Choice Voucher program. In addition, the administrative plan addresses policies for the following special programs:

- MOD Rehab
- HUD-VASH
- Congregate Housing
- Group Homes

Shared Housing
Cooperative Housing
Manufactured Homes (where the family does not own the home and leases the home and the space)
Homeownership
Family Self-Sufficiency
Mainstream Voucher

Human Resource Council District XI Comment

MDOC added Family Self Sufficiency and Mainstream Voucher to the list of special programs the Admin Plan’s policies address. Suggestion: Mainstream Voucher should be defined.

MDOC Response

MDOC added language to Chapter 1.1.D. defining the Mainstream Voucher program.

Human Resource Development Council District 7 Comment

What is considered reasonable notice for us to do an inspection?

MDOC Response

24 CFR 982.305(b)(2)(i)(B) states that PHAs must inspect the unit, determine whether the unit satisfies the HQS, and notify the family and owner of the determination within a reasonable time (for PHAs with more than 1250 budgeted units). To the extent practicable, such inspection and determination must be completed within 15 days after the family and owner submit a request for approval of the tenancy.

The regulation also stipulates that agencies that have less than 1,250 units must complete the process within 15 days. Since MDOC allocates their 3,000 plus units to the 11 field agencies, the amount each agency is allocated falls well below the 1,250 units identified in the regulation. Thus, MDOC is following the regulation for 1,250 budgeted units and requires each agency to conduct the inspection, determine the unit meets HQS and notify the owner and family of the results within 15 days.

Human Resource Development Council District 7 Comment

What can we do if a property management company or landlord lets us know a client isn’t paying rent, but the owner isn’t doing anything to collect the tenant’s portion because they are okay just receiving our part of it?

MDOC Response

Per Part C of the HAP Contract: Tenancy Addendum, 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.” By signing the HAP Contract, the landlord is agreeing to these terms. Landlords must follow the terms of the HAP Contract

and the lease; if they are not following these terms they are in violation of their HAP Contract.

Human Resource Development Council District 9 Comment

Not understanding the reason for name change; would appreciate an explanation. "Choice" is a tough name option because of the lack of choice when searching for units that accept the funding requirement outside of tax credit units in Bozeman area.

MDOC Response

The Section 8 program was established in 1974 and was later changed to the Housing Choice Voucher Program in 1998 when Congress merged the certificate and voucher components of the Section 8 program. It is the federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market... the participant is free to choose any housing that meets the requirements of the program and is not limited to units located in subsidized housing projects (source: HUD Housing Choice Voucher Fact Sheet).

The HCV program partners with private landlords across Montana and is committed to landlord engagement to help expand leasing opportunities in tight markets, such as Bozeman.

Chapter 2 – Fair Housing and Equal Opportunity

2-II.C. Request for Accommodation

MDOC Policy

Reasonable accommodation requests can be made orally or in writing, however, it is helpful for both the applicant/participant and MDOC if the request is made in writing. The request can be made by a family member or someone else who is acting on their behalf. MDOC will encourage the family to make their request in writing using a reasonable accommodation request form. However, MDOC will consider the accommodation any time the family indicates that an accommodation is needed whether or not a formal written request is submitted.

Human Resource Development Council District 7 Comment

Can a Field Agent make the request on behalf of the tenant or does it need to be someone else?

MDOC Response

In the MDOC Policy, it states that someone other than the applicant/participant may make the request on their behalf.

2-III.B. Oral Interpretation

MDOC Policy

MDOC will utilize electronic services, such as Google Translate as necessary to effectively communicate with limited English speakers. Where LEP persons desire, they will be permitted to use, at their own

expense, an interpreter of their own choosing, in place of or as a supplement to the free language services offered by MDOC. The interpreter may be a family member or friend.

MDOC will analyze the various kinds of contacts it has with the public, to assess language needs and decide what reasonable steps may be taken. "Reasonable steps" may not be reasonable where the costs imposed substantially exceed the benefits.

Human Resource Development Council District 7 Comment

As far as for a translation service, is there another this that we are able to use instead of Google Translate as with there is a higher chance of miscommunication happened compared to a service with a trained translator?

MDOC Response

Yes; MDOC and its Field Agents are not limited to Google Translate.

Human Resource Development Council District 7 Comment

This policy talks about the family paying for a translator or someone to help them communicate. Does MDOC have any low-income resources we can let our clients know about if that service is needed?

MDOC Response

MDOC's policy does not require a person to have a bilingual person accompany him/her or to pay for the service MDOC provides for free. However, if a person desires to use an interpreter of their own choosing, then any cost associated with that choice will be the responsibility of the person with LEP.

Chapter 3 – Eligibility

3-I.J. Guests

MDOC Policy

A guest can remain in the assisted unit no longer than 30 consecutive days or a total of 90 cumulative calendar days during any 12-month period, or in accordance with the terms of the lease agreement, whichever is more restrictive.

Children who are subject to a joint custody arrangement or for whom a family has visitation privileges, that are not included as a family member because they live outside of the assisted household more than 50 percent of the time, are not subject to the time limitations of guests as described above.

A family may request an exception to this policy for valid reasons (e.g., care of a relative recovering from a medical procedure is expected to last 40 consecutive days). An exception will not be made unless the family can provide a lease or other documentation identifying where the person legally resides. Exceptions must also be approved from the landlord.

Human Resource Development Council District 7 Comment

Who is able to determine the guest rule doesn't apply a Field Agency or does it need to be a Contract Manager if documentation is proven for another residents?

MDOC Response

Per MDOC Policy, the most restrictive agreement should be used to determine the guest rule.

3-II.B. Citizenship or Eligible Immigration Status

MDOC Policy

MDOC will not provide assistance to a family before the verification of at least one family member.

When MDOC determines that an applicant family does not include any citizens, nationals, or eligible noncitizens, following the verification process, the family will be sent a written notice within 14 calendar days of its determination.

The notice will explain the reasons for the denial of assistance, that the family may be eligible for proration of assistance, and will advise the family of its right to request an appeal to the USCIS, or to request an informal hearing with MDOC. The informal hearing with MDOC may be requested in lieu of the USCIS appeal, or at the conclusion of the USCIS appeal process. The notice must also inform the applicant process, but that it may be delayed pending the completion of the informal hearing process.

Informal hearing procedures are contained in Chapter 16.

Human Resource Council District XI Comment

Suggestion: Clarify at what point in the application process MDOC will verify the citizenship status of applicants.

MDOC Response

MDOC added "MDOC will determine citizenship status of applicants at the time of their briefing. See Chapter 5 for additional information."

3-II.B. Citizenship or Eligible Immigration Status

Mixed Families

A family is eligible for assistance as long as at least one member is a citizen, national, or eligible noncitizen. Families that include eligible and ineligible individuals are considered *mixed families*. Such families will be given notice that their assistance will be prorated, and that they may request a hearing if they contest this determination. See Chapter 6 for a discussion of how rents are prorated, and Chapter 16 for a discussion of informal hearing procedures.

Human Resource Development Council District 7 Comment

In regards to mixed families, does it work if only a child is considered an eligible citizen or does it need to be an adult in order for them to qualify as a mixed family?

MDOC Response

The eligible citizen can be a child under 18.

3-II.E. Students Enrolled in Institutions of Higher Education

Person with Disabilities

The PHA will use the statutory definition under section 3(b)(3)(E) of the 1937 Act to determine whether a student is a *person with disabilities*.

Human Resource Development Council District 9 Comment

Why is the 1937 Act used as the definition if there is more recent regulation?

MDOC Response

The Housing Act of 1937 (Act) is the federal legislation of the United States that provides for subsidies to be paid from the United States government to local public housing agencies in order to improve living conditions for low-income families. The Act is the law that established the definition that is to be used in the Housing Choice Voucher Program.

3-II.D. Family Consent to Release of Information

HUD requires each adult family member, and the head of household, spouse, or cohead, regardless of age, to sign form HUD-9886, Authorization for the Release of Information/Privacy Act Notice, and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance. Chapter 7 provides detailed information concerning the consent forms and verification requirements.

The PHA must deny admission to the program if any member of the applicant family fails to sign and submit the consent forms for obtaining information in accordance with 24 CFR 5, Subparts B and F [24 CFR 982.552(b)(3)].

Human Resource Development Council District 7 Comment

If the tenant is unable to sign any of the forms is someone able to sign on their behalf or what is the timeline they need to sign documents in?

MDOC Response

If a participant/applicant is unable to sign for themselves, they will need to provide a release for another individual to sign on their behalf.

3-I.K. Foster Children and Foster Adults

MDOC Policy

A foster child is a child that is in the legal guardianship or custody of a state, county, or private adoption or foster care agency, yet is cared for by foster parents in their own homes, under some kind of short-term or long-term foster care arrangement with the custodial agency. MDOC will verify with the foster care agency how many foster children resided in the unit within the last 12 months to determine the family subsidy standard.

A foster child or foster adult may be allowed to reside in the unit if their presence would not result in a violation of HQS space standards according to 24 CFR 982.401.

Human Resource Development Council District 7 Comment

When does MDOC verify with the care agency how many foster children resided in the unit, is it at the annual or the start of the calendar year?

MDOC Response

According to Chapter 11, “families must request MDOC approval within 30 days to add a new family member, live-in aide, foster child, or foster adult”.

3-I.L. Absent Family Members

Absent Students

MDOC Policy

When someone who has been considered a family member attends school away from home, the person will continue to be considered a family member unless information becomes available to MDOC indicating that the student has established a separate household, or the family declares that the student has established a separate household. The head of household will make the determination as to whether they wish to keep the student in the household.

Human Resource Development Council District 7 Comment

How long can a family member be absent as a student prior to them needing to be removed for the current HH?

MDOC Response

Children, such as students, can be temporarily absent from the unit. A child can remain a member of the household until either a court order is issued that permanently removes the child or the head of household removes the child.

Human Resource Development Council District 7 Comment

If a foster child has been removed from their home and are placed in another home who received Section 8 wouldn't they need to be removed from their current HH to be added into another?

MDOC Response

Yes; if a foster child is placed into another household, then an interim reexamination will need to be conducted to update the household composition.

3-II.A. Income Eligibility and Targeting

Definitions of the Income Limits

Low-income family. A family whose annual income does not exceed 80 percent of the median income for the area, adjusted for family size.

Very low-income family. A family whose annual income does not exceed 50 percent of the median income for the area, adjusted for family size.

Extremely low-income family. A family whose annual income does not exceed the federal poverty level or 30 percent of the median income for the area, whichever number is higher.

Area median income is determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 30, 50, or 80 percent of the median income for an area if HUD finds that such variations are necessary because of unusually high or low family incomes.

Human Resource Development Council District 7 Comment

What is the federal poverty level used to determine eligibility or should we always use the area median income?

MDOC Response

Extremely low-income family is defined in 24 CFR 5.603(b) as “a family whose annual income does not exceed the federal poverty level or 30 percent of the median income for the area, whichever is higher”. HUD establishes income limits annually and publishes them on HUD Exchange. These income limits are used by the HCV program.

3-II.B. Citizenship or Eligible Immigration Status [24 CFR 5, Subpart E]

MDOC Policy

Family members who declare citizenship or national status will not be required to provide additional documentation unless MDOC receives information indicating that an individual’s declaration may not be accurate.

MDOC will determine citizenship status of applicants at the time of their briefing. See Chapter 5 for additional information.

Human Resource Development Council District 7 Comment

Does it need to be verified for all family members or just one before assistance can start?

MDOC Response

24 CFR 5.508(b) requires each family member, regardless of age.

3-III.C. Other Permitted Reasons for Denial of Assistance

Previous Behavior in Assisted Housing [24 CFR 982.552(c)]

MDOC Policy

MDOC will deny assistance to an applicant family if:

- The family does not provide information that MDOC or HUD determines is necessary in the administration of the program.
- The family does not provide complete and true information to MDOC.
- Any family member has been evicted from federally-assisted housing in the last three years.
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.

- The family owes rent or other amounts to MDOC or any PHA in connection with Section 8 or other public housing assistance under the 1937 Housing Act, unless the family repays the full amount of the debt prior to being selected from the waiting list.
- The family has not reimbursed MDOC or any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease, unless the family repays the full amount of the debt prior to being selected from the waiting list.
- The family has breached the terms of a repayment agreement entered into with MDOC, unless the family repays the full amount of the debt covered in the repayment agreement prior to being selected from the waiting list.
- A family member has engaged in or threatened violent or abusive behavior toward MDOC or Field Agency personnel.
- Abusive or violent behavior towards MDOC or Field Agency personnel includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.
- Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to deny assistance, MDOC will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, MDOC may, on a case-by-case basis, decide not to deny assistance.

Human Resource Development Council District 7 Comment

Is there a way we can see the eviction from public or privately owned housing as a result of criminal activity is that is being used a factor to deny assistance?

MDOC Response

Field Agents can ask for the information from the public entities, but MDOC does not require said information.

3-III.D. SCREENING

Screening for Eligibility

PHAs are authorized to obtain criminal conviction records from law enforcement agencies to screen applicants for admission to the HCV program. This authority assists the PHA in complying with HUD requirements and PHA policies to deny assistance to applicants who are engaging in or have engaged in certain criminal activities. In order to obtain access to the records the PHA must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

MDOC Policy

MDOC will perform a criminal background check through National Sex Offender Public Website (NSOPW), Sexual Violent Offender Registry (SVOR), and Con Web for every adult household member.

Human Resource Development Council District 7 Comment

3-20 (3-111.D) Is the background check due for every household member like what was said in the September training or just all of the adult in the household?

MDOC Response

A background check is required for every adult household member.

Exhibit 3-1: Detailed Definitions Related to Disabilities

Individual with Handicaps [24 CFR 8.3]

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. The term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. As used in this definition, the phrase:

- (1) Physical or mental impairment includes:
 - (a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
 - (b) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.
- (2) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
- (3) Has a record of such an impairment means a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
- (4) *Is regarded as having an impairment* means:
 - (a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;
 - (b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or
 - (c) Has none of the impairments defined in paragraph (1) of this section but is treated by a recipient as having such an impairment.

Human Resource Development Council District 9 Comment

This is different than HUD rules.

MDOC Response

The above definitions above are found in 24 CFR 8.3.

Human Resource Development Council District 9 Comment

HUD lists a lengthier, more expansive definition. ADA Guidelines should be included i.e., ADA stipulates health information does not have to be disclosed.

Personal experience from attendees is pressure from MDOC to share personal health information that should be protected.

Advocacy v confidentiality.

MDOC Response

MDOC does not require personal health information when conducting reviews of Reasonable Accommodation requests. MDOC does require that participants provide an identifiable connections, or nexus, between the requested accommodation and the individual's disability if the need for an accommodation is not readily apparent or known to the PHA.

Montana Legal Services Association Comment

MLSA has concerns about the policy that allows MDOC to deny assistance to an applicant family if the family owes rent or other amounts to MDOC or any PHA in connection with prior HCV or public housing assistance, unless the family pays the full amount of the debt. There is no requirement that MDOC or the PHA has to have proved the amount alleged due to a fact-finder such as a judge or hearing officer.

MDOC Response

HUD requires that PHAs follow the requirements stipulated in PIH Notice 2017-12 which includes proper notification to the tenant of the debt owed and his/her rights to a hearing. Additionally, only those debts that have been entered into HUD's system of debts owed is what MDOC uses for determining whether a previous debt is owed to a PHA.

3-III.C. Other Permitted Reasons for Denial of Assistance

Previous Behavior in Assisted Housing

HUD authorizes the PHA to deny assistance based on the family's previous behavior in assisted housing. Per the alternative requirements listed in the *Federal Register* notice dated December 29, 2014, PHAs are no longer permitted to deny assistance to a family because the family previously failed to meet its obligations under the Family Self-Sufficiency (FSS) program [FR Notice 12/29/14].

MDOC Policy

MDOC will deny assistance to an applicant family if:

- The family does not provide information that MDOC or HUD determines is necessary in the administration of the program.
- The family does not provide complete and true information to MDOC.
- Any family member has been evicted from federally-assisted housing in the last three years.
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
- The family owes rent or other amounts to MDOC or any PHA in connection with Section 8 or other public housing assistance under the 1937 Housing Act, unless the family repays the full amount of the debt prior to being selected from the waiting list.

- The family has not reimbursed MDOC or any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease, unless the family repays the full amount of the debt prior to being selected from the waiting list.
- The family has breached the terms of a repayment agreement entered into with MDOC, unless the family repays the full amount of the debt covered in the repayment agreement prior to being selected from the waiting list.
- A family member has engaged in or threatened violent or abusive behavior toward MDOC or Field Agency personnel.
- Abusive or violent behavior towards MDOC or Field Agency personnel includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.
- Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to deny assistance, MDOC will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, MDOC may, on a case-by-case basis, decide not to deny assistance.

Montana Legal Services Association Comment

Before being allowed to deny assistance to an HCV-applicant family, MDOC or the PHA should be required to prove the validity of the alleged debt to a court, or a hearing officer. The debt alleged by MDOC or the PHA may not have any legitimate basis in the law, and the applicant should have been given the opportunity to dispute the debt. A district judge in Missoula has recently ruled that the common practice of landlords referring unadjudicated debts to collection agencies is not legal. [Galbraith v. PPM, Inc., Cause No. DV 16-928, Montana Fourth Judicial District Court, Order on Summary Judgement, July 2018]. The judge found that placing unadjudicated debts with a collection agency shifts the burden to prove the lawfulness of the debt from the landlord to the tenant, which is impermissible under Montana’s landlord-tenant laws. The same reasoning would apply to debts alleged by a PHA or MDOC against a family – those agencies should have the burden to prove the validity of the debt alleged against the family, and should not be able to use that alleged debt as the basis for denying the family a HCV unless the debt has been proven.

Without a court judgement or at least an informal hearing officer decision, the amount that MDOC or PHA alleges to be due from a past tenant is nothing more than an allegation against the tenant – it is not a legally enforceable debt to be accepted as lawful and used as a basis for denial of the tenant’s application for a HCV. The tenant should have the right to contest the debt before a fact-finder (such as a hearing officer, judge, or jury).

MLSA acknowledges that MDOC’s policy allows MDOC to consider the mitigating factors in Section 3-III.E., and on a case-by-case basis, to decide not to deny HCV assistance to the family with the alleged past debt. MLSA encourages MDOC to put more structure in this provision, and to require that MDOC or the PHA must have proved the alleged debt to a court or a family an opportunity to be heard concerning the alleged debt, before MDOC decides to deny the family a voucher based on the alleged past debt.

MLSA made this same comment to the proposed 2019 Admin Plan. MDOC's response was that HUD allows denial of assistance based on the family's previous behavior in assisted housing. Just because HUD allows it doesn't mean that MDOC must allow it – it's discretionary.

MDOC Response

MDOC's policy is based solely on HUD's allowance to deny assistance based on the family's previous behavior in "assisted housing" which include debts owed to MDOC or another PHA in connection with Section 8 or other public housing assistance under the 1937 Act. The policy does not pertain to debts an applicant may owe to a previous landlord. Also, HUD Form 52675 provides notice to applicants and tenants on what information is required to be reported and discusses tenant's rights.

Chapter 4 – Applications, Waiting List, and Tenant Selection

Human Resource Development Council District 7 Comment

When you are referring to the Mainstream vouchers you talk about preference for them, but it is not fully understood what you mean by preference. Are you meaning the area of which they want to live or the situation that they are in that takes preference over another can you please clarify?

MDOC Response

The Mainstream voucher preferences are identified in 4-III.C. Selection Method. There are four categories identified that would make an applicant eligible for the Mainstream preference. If an applicant is disabled, between the ages of 18-61, and meets one of those four statements (by providing documentation), then they will be placed on the Waiting List for the 60 Mainstream vouchers by date and time of when the application was received. Mainstream vouchers will then be issued from this separate Waiting List, regardless of their location in the state.

Human Resource Development Council District 7 Comment

With the Mainstream vouchers the plan says there will be 60 for the state, how are those being divided up?

MDOC Response

The Mainstream vouchers will be issued on a first-come, first-served basis according to the time and date the applications were received regardless of region the applicants applied for.

4-II.C. Opening and Closing the Waiting List

Housing Authority of Billings Comment

Several staff expressed concerns that families that decided to transfer application to other areas were still being given vouchers ahead of others already on the waitlist for that area. Proposed changes did not seem to address this issue.

MDOC Response

Applicants are pulled from the Waiting List based on the date and time their completed application is submitted.

4-II.C. Opening and Closing the Waiting List

MDOC Policy

MDOC may close the waiting list when the estimated waiting period for housing assistance for applicants on the list reaches 24 months for the most current applicants.

Where MDOC has particular preferences or funding criteria that require a specific category of family, MDOC has chosen to close the waiting list for that limited preference only once the number of applicants who qualify for the preference has been reached. Applicants that have claimed a limited preference remain eligible for assistance, by the date and time of application.

Human Resource Council District XI Comment

In the updated policy for “Where MDOC has a particular preference”... What preference is being referred too? Is this referring to 30% AMI and 50% AMI? Suggestion: Define what preference is being discussed.

MDOC Response

This section is not referencing a specific preference, rather it is a general statement that if the number of vouchers for a specific limited preference (example being Mainstream vouchers) have been issued, then other applicants that have claimed said preference are still considered eligible and remain on the Waiting List in the order of the date and time in which their completed applications were received.

Human Resource Development Council District 9 Comment

Doesn't closing the waitlist defeat the purpose of having a waitlist? Will this make it more difficult for applicants who will have to call and check to see if the waitlist is “open”?

MDOC Response

MDOC has never utilized this option but wishes to have the flexibility to close the Waiting List if it is ever needed. For example, when MDOC fell into shortfall in 2017, rather than continue to accept applications at a time when no vouchers were allowed to be issued, MDOC could have closed the Waiting List.

4-II.E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES

MDOC Policy

While the family is on the waiting list, the family must contact MDOC and make any applicable changes to update current residence or mailing address, contact information, phone number within 30 calendar days. The applicant can update their application by downloading the change form on MDOC's website and send to MDOC via email or mail.

If the family does not report a change which causes MDOC to be unable to reach them by mail within one documented contact attempt, MDOC will remove the family from the wait list through the disposition process. If the notice is returned by the post office, the applicant will be removed from the waiting list without further notice.

4-III.D. NOTIFICATION OF SELECTION

When a family has been selected from the waiting list, the PHA must notify the family [24 CFR 982.554(a)].

MDOC Policy

The applicant will be notified when they have reached the top of the waiting list and are eligible for possible selection from the wait list.

The notice will advise the family of the Field Agency area in which they will be leasing in according to the area they have designated on their application. It will also state if they do not wish to lease in that area to complete a change form or request a change through Assistance Connect to change Field Agency areas.

The notice will inform the family of the following:

- Date, time, and location of the scheduled application interview, including any procedures for rescheduling the interview;
- Who is required to attend the interview;
- All documents that must be provided at the interview, including information about what constitutes acceptable documentation;
- If the notice is returned by the post office, the applicant will be removed from the waiting list without further notice.

Montana Legal Services Association Comment

These policies only require MDOC to make one attempt at contacting a family on the wait list. And to only use only one method to contact the family – mail. MDOC proposed to omit the requirement to contact the family by the family’s preferred contact method.

MLSA recognizes that it’s often challenging to make contact with individuals of limited means, but MLSA encourages MDOC to make more than one attempt to contact a family. And to use the family’s preferred contact method, instead of U.S.P.S. mail. Many of MLSA’s clients (and many staff) do not pay attention to their mail.

If the family has told MDOC that it prefers contact by email, it is not burdensome for MDOC to use that form of contact.

The consequences for the family are so dire – being removed from the wait list, which could add years to their wait for an affordable rental – it’s preferable for MDOC to try contacting the family by every means that the family provided to MDOC (email, U.S.P.S. mail, phone numbers), instead of just one method. (A few years ago, MLSA started sending text messages to clients to remind them of appointments. That has greatly decreased the number of clients who no-show for their appointments. So many people rely on their cell

phones as their primary communication device – perhaps MDOC could use text-messaging to send notices to applicants, in addition to sending letters by mail and email).

MDOC Response

MDOC’s method of contacting an applicant is through the applicant’s preferred contact method as indicated by the applicant. Applicants are responsible for ensuring the information MDOC has on how to reach them is up to date so that they don’t miss a valuable opportunity to be contacted. Applicants that have been removed from the Waiting List receive a notification letter that includes information on how to request an informal review.

4-II.E. Reporting Changes in Family Circumstances

MDOC Policy

While the family is on the waiting list, the family must contact MDOC and make any applicable changes to update current residence or mailing address, contact information, phone number within 30 calendar days. The applicant can update their application by downloading the change form on MDOC’s website and send to MDOC via email or mail.

Action, Inc., Comment

Because of challenges with access to computers can there be a phone number for applicants to make the changes to their waiting list information?

MDOC Response

MDOC’s Field Agencies have copies of the Information Change Form in their offices. All applicants can reach out to their Field Agents to request the form and the Field Agent can provide it to MDOC to update information on the Waiting List.

Certain Earned Income of Full-Time Students – Current Rule

Earnings in excess of \$480 for each full-time student 18 years old or older (except for the head, spouse, or cohead) are not counted [24 CFR 5.609(c)(11)]. To be considered “full-time,” a student must be considered “full-time” by an educational institution with a degree or certificate program [HCV GB, p. 5-29].

Action, Inc., Comment

Could there be an exception to the rule [24 CFR 5.609(c)(11)] if the head of the HH is a single parent and is also a full-time student? Can the \$480 annual amount apply to the H of HH?

MDOC Response

MDOC 24 CFR 5.603 defines dependent as a member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 year of age, or is a person with a disability, or is a full-time student. A head a household never qualifies as a dependent.

4-III.C. Selection Method

MDOC Policy

MDOC's Waiting List will be sorted by date and time of application.

Limited Local Preference

MDOC has established a limited local preference for new admission Mainstream vouchers and will limit the number of applicants who qualify for the preference to 60.

Each preference for the Mainstream Voucher program will be treated equally and applied by date and time of application to the Waiting List.

The preferences below apply to applicant families that include a non-elderly person(s) with disabilities who is at least 18 years old and not yet 62 years old who meet one of the below subsections (a) through (d):

- a) Transitioning out of institutional and other segregated settings
 - Institutional settings include mental health institutes, nursing homes, and institutions for individuals with developmental disabilities where he or she resided for 90 days or less.

Verification –

- Discharge paperwork or written/oral referral, or
- Written record of intake worker's due diligence to obtain above evidence and certification by individual existing institution.

- b) At serious risk of institutionalization

Verification –

- Written referral from a public or private professional or agency that would have the knowledge to provide such verification.

- c) Currently experiencing homelessness (as defined in the HEARTH Act [https://files.hudexchange.info/resources/documents/HomelessAssistanceActAmendedbyHEARTH.H.pdf](https://files.hudexchange.info/resources/documents/HomelessAssistanceActAmendedbyHEARTH.pdf)) and/or eligible persons that are referred by the state of Montana's Coordinated Entry System (CES).

- MDOC has defined homeless for this preference as the following:
 - 1) Individuals and families who lack a fixed, regular, and adequate nighttime residence, and includes an individual who is exiting an institution where they resided for 90 days or less and who resided in an emergency shelter or a place not meant for human habitation immediately before entering that institution;
 - 2) Individuals and families who are fleeing, or are attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or family member.

Verification –

- Written observation by the outreach worker;
 - Certification by a nonprofit or state or local government that the individual or head of household seeking assistance met the criteria of homelessness under another federal statute;
 - Written referral by another housing or service provider;
 - HUD form 5382 or alternative verification; or
 - Written referral by the State of Montana’s CES.
 - If referred by the State of Montana’s CES; only the referral is required, and no other verification will be requested.
- d) Previously experienced homelessness and currently a client in a Permanent Supportive Housing or Rapid Rehousing project.

Verification –

- Written referral from a Permanent Supportive Housing or Rapid Rehousing project.

Human Resource Council District XI Comment

Suggestion: Provide clarification of what the limited local preference for new admission Mainstream vouchers refers to.

MDOC Response

MDOC will underline each preference in the reference section to provide a clear indicator of each of the four preferences.

Human Resource Council District XI Comment

Suggestion: State of Montana should be removed and local CES should be the replacement.

MDOC Response

MDOC will continue to list the State of Montana and reference the statewide CES as there is a central website, <https://montanacoc.org/category/hmis-coordinated-entry/>, with information which does reference the regional/local jurisdictions.

Human Resource Council District XI Comment

No State of Montana System for CES.

MDOC Response

MDOC will continue to list the State of Montana and reference the statewide CES as there is a central website, <https://montanacoc.org/category/hmis-coordinated-entry/>, with information which does reference the regional/local jurisdictions.

Action, Inc., Comment

How would the 60 vouchers be distributed to agencies or communities across Montana and will there be case management services attached to these vouchers?

MDOC Response

MDOC will issue Mainstream Vouchers according to the day and time which the eligible household was placed onto the Waiting List. MDOC does not require case management services for those that have qualified for Mainstream Vouchers.

MDOC Policy

...(continued from previous section)...

- c) Previously experienced homelessness and currently a client in a Permanent Supportive Housing or Rapid Rehousing project.

Verification –

- o Written referral from a Permanent Supportive Housing or Rapid Rehousing project.

Human Resource Council District XI Comment

How will this be implemented?

MDOC Response

MDOC is developing the implementation steps and will be providing specific guidance once available.

Chapter 5 – Briefings and Voucher Issuance

Opportunities, Inc., Comment

Telephone change – out of town seems fine but if you are local it should be mandatory to do a physical briefing.

MDOC Response

MDOC does not dictate which briefing option that a Field Agency chooses to utilize.

Opportunities, Inc., Comment

For certain people if they need help understanding how things work, request that they bring a friend or family member with them to briefings or have someone who can assist at the briefings.

MDOC Response

If an applicant requires an accommodation, they can request the accommodation from their respective Field Agency. Only the head of household is required to attend briefings, but it is suggested that all adult household members attend briefings. If a head of household would like to have an additional person with them at the briefing, then they need to provide notice to the Field Agency prior to the scheduled briefing.

Housing Authority of Billings Comment – FIVE YEAR PLAN COMMENT

Several staff expressed concern about conducting phone interviews because it is more time-consuming to offer phone interviews and briefings and staffing resources are limited.

Staff feel it should be better defined when phone briefings should be allowed and that they are offered as an exception. For example, it would be appropriate to offer as an accommodation or when travel/distance limit a families access to the Field Agency office.

MDOC Response

MDOC allows each contracted field agency the flexibility to decide which process works best for them.

5-I.B. Briefing

MDOC Policy

Briefings will be conducted by Field Agency either in person or by telephone. Briefings may also be conducted in groups or individually.

For in-person briefings, the head of household is required to attend, and it is strongly suggested that all adult members of the household attend the briefing. For telephone briefings, the head of household will be contacted.

Human Resource Council District XI Comment

Suggestion: All adults in household should be required to attend.

MDOC Response

MDOC strongly suggests that all adult household members attend briefings, but it is not required as it could put a financial or other burden on the household.

5-II.B. Determining Family Unit (Voucher) Size [24 CFR 982.402]

MDOC Policy

MDOC will assign one bedroom for each two persons within the household. This subsidy standard will apply to the following:

- All new program participants,
- Any program participants that wish to change units, and
- Any program participants that have a change in family composition that affects the subsidy standards at annual reexamination.

MDOC will grant one additional bedroom to accommodate a full-time live-in aide.

Live-in aides will be allotted a maximum of one bedroom. No additional bedrooms will be provided for additional family members of the live-in aide.

Foster children will be considered when determining bedroom size upon third party verification of placement and reviewed at annual reexamination.

Efficiency units (zero bedroom) will not be assigned.

MDOC will reference the following chart in determining the appropriate voucher size for a family:

| Voucher Size | Persons in Household (Minimum – Maximum) |
|--------------|---|
| 1 Bedroom | 1-2 |
| 2 Bedrooms | 3-4 |
| 3 Bedrooms | 5-6 |
| 4 Bedrooms | 7-8 |
| 5 Bedrooms | 9-10 |

Human Resource Development Council District 9 Comment

2 heartbeats per room ruling is destructive for families with kiddos of opposite genders. Leases often state rooms must be used for their sole purpose - MDOC indicates a living room can be used for a sleeping room; these two don't mesh.

1-bedrooms are also the hardest to find in the Gallatin Valley.

MDOC Response

A subsidy standard is the amount of money a PHA will pay toward the rent of a unit and is based on the family size, not on where individual family members must sleep. The HCV program places the choice of housing in the hands of the individual family. Participant families are encouraged to consider several housing choices to secure the best housing for the family needs. A family can select a unit that is below or above the payment standard associated with the voucher size they are eligible for. If the unit rent is greater than the payment standard, the family will be required to pay the additional amount not to exceed 40% of the household's adjusted income to qualify.

24 CFR 982.402(b)(1) states that the PHA subsidy standards must provide for the smallest number of bedrooms needed to house a family without overcrowding. 24 CFR 982.401(d)(2)(ii) states that the dwelling unit must have at least one bedroom or living/sleeping room for each two persons. In setting the subsidy standards to HUD's regulations, MDOC has been able to lower the cost per unit which allows for MDOC to provide assistance to more families.

Action for Eastern Montana Comment

Can this policy be re-evaluated so that tenants are not forced to move because of a family composition change that leads to a lower payment standard.

MDOC Response

MDOC's policy is in place to ensure the maximum number of families can be provided rental assistance. Tenants are not forced to move because of a family composition change, they are required to pay out-of-pocket for any rent that is above the subsidy limit.

5-II.E. Voucher Term and Extensions

MDOC Policy

The initial voucher term will be 60 calendar days.

The family must submit a Request for Tenancy Approval and proposed lease within the 60-day period unless MDOC grants an extension.

The initial voucher term for VASH applicants will be 120 calendar days.

Action for Eastern Montana Comment

With well documented Field Agent notes can this 60-day period be extended 15 to 30 days to allow applicants more time to find rentals.

MDOC Response

MDOC may consider up to two additional extensions of 30 calendar days on a case-by-case basis. MDOC will notify the family of the term of the extension. The maximum voucher term will not exceed 120 days.

MDOC will approve additional extensions only in the following circumstances:

- *It is necessary as a reasonable accommodation for a person with disabilities.*
- *It is necessary due to reasons beyond the family's control, as determined by MDOC.*

Chapter 6 – Income and Subsidy Determinations

Human Resource Development Council District 7 Comment

If a client is claiming Zero income for an extended period of time and EIV is not showing anything as reported income are we allowed to ask how things are getting paid?

MDOC Response

Participants that are claiming zero income are required to certify every 90 days about their income status. If a participant is found to have not reported their income accurately, MDOC may pursue back payment for all unreported income which resulted in overpayment of HAP.

6-I.H. Periodic Payments

Periodic Payment Excluded from Annual Income

MDOC Policy

MDOC will exclude payments for the care of foster children and foster adults only if the care is provided through an official arrangement with a local welfare agency.

Human Resource Development Council District 7 Comment

PG. 6-19 Per MDOC policy we are excluding income foster care payment that are being received as payment for caring for the child that was placed by a local agency, so it this something that needs to be reviewed if it has been counted prior?

MDOC Response

Yes, this should be reviewed as it is excluded income.

6-III.C. Applying Payment Standards [24 CFR 982.505; 982.503(b)]

Decreases

MDOC Policy

If MDOC changes its payment standard schedule resulting in a lower payment standard amount, during the term of a HAP contract, MDOC will not reduce the payment standard used to calculate subsidy for families under a HAP contract as long as the HAP contract remains in effect and there are no changes to the household composition and remains in the existing approved unit prior to the new payment standard going into effect.

MDOC will not establish different policies for decreases in the payment standard for designated areas within their jurisdiction.

Human Resource Development Council District 7 Comment

Pg 6-37 (Decreases) So at the end of the initial HAP contract if the payment standards decrease would we change to the current payment standard or leave it how it says due to them being month to month?

MDOC Response

MDOC will not reduce the payment standard used to calculate subsidy for families under a HAP contract as long as the HAP contract remains in effect and there are no changes in the family composition.

6-III.B. Financial Hardships Affecting Minimum Rent [24 CFR 5.630]

Implementation of Hardship Exemption

MDOC Policy

To qualify for a hardship exemption, a family must submit a request for a hardship exemption in writing. The request must explain the nature of the hardship and how the hardship has affected the family's ability to pay the minimum rent.

MDOC will make the determination of hardship within 30 calendar days and notify the family in writing of their determination.

Montana Legal Services Association Comment

Page 6-34 requires the family to request in writing a hardship exemption from the minimum rent requirement. Nowhere in the Plan is MDOC obligated to inform families of the availability of the hardship exemption. It's impossible for a family to exercise a right that they don't even know they have. MLSA proposes that something like this sentence be added to the "MDOC Policy" at the bottom of the page:

"For any family that reports having 0 income and that is required to pay the minimum rent, MDOC will notify that family in writing of the procedure for requesting a hardship exemption from paying minimum rent."

MLSA made this same comment in 2019, and MDOC responded that informing tenants of the hardship exemption option is addressed in MDOC's internal operating procedures. But those procedures should also be included in the Admin Plan, which is readily available to the public and to PHA residents, unlike the MDOC internal operating procedures. Tenants are the ones who benefit from the hardship exemption – if they don't know that exemption exists, and if MDOC or its field agents don't follow their own internal operating procedures and inform the tenant of the option, tenants who qualify for the exemption could be evicted for nonpayment.

MDOC Response

MDOC's Field Agents are aware of the Hardship Exemption policy and work with participants that report zero income to determine if they qualify for the exemption. Field Agents will review the scenarios in which participants may qualify for an exemption, and if they do, will provide the paperwork to participants to fill out and sign.

Chapter 7 – Verification

7-III.I. Zero Annual Income Status

MDOC Policy

MDOC will check UIV sources and/or request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SS, SSI, and earnings are not being received by families claiming to have zero annual income.

MDOC will review all zero income families every 90 days and verify their income in EIV.

Housing Authority of Billings Comment

Section 7.III.I – Clarification on 90 days for zero income recertification. 90 days from the effective date? Or 90 days from signed certification? Will family be required to sign new forms?

MDOC Response

The family will be required to sign a new Zero Income Certification form 90 days from the effective date.

7-I.D. Third Party Written and Oral Verification

When Third-Party Verification is Not Required

MDOC Policy

If the family cannot provide original documents and it is not cost effective to pay a service charge, MDOC will accept a self-certification as verification.

Human Resource Development Council District 7 Comment

PG7-6 When 3rd Party Verification is not readily available, it would be helpful to outline what constitutes too much? (e.g., if the third party verification would cost the family \$5.00 to obtain, is that too much? Would \$20.00 be too much?)

MDOC Response

Families are not required to expend funds to secure required documentation under the HCV Program. PIH Notice 2018-18's hierarchy allows for oral verification or tenant declaration as a last resort if third party documentation is unavailable. The file must be fully documented as to why the type of verification was used.

7-II.B. Social Security Numbers

MDOC Policy

Applicants

MDOC will deny admission to the program for the applicant and all household members that do not disclose and provide documentation of their SSN. If the family is otherwise eligible to participate in the program, the family will be able to maintain their position on the waiting list pursuant to requirements in Chapter 3.

Participants

Addition of a New Household Member With SSN Assigned – When a participant requests to add a new household member (regardless of age) who has a SSA-assigned SSN, the participant must disclose the SSN and provide the documentation of the SSN. If the participant is unable to disclose the SSN and provide the required documentation, the new household member cannot be added until the family provides the required documentation. MDOC will allow the participant family a period not to exceed 90 calendar days from the date the family requested to add a new member to comply with the requirement to provide the documentation if MDOC determines the failure to meet the SSN disclosure and documentation requirements are due to circumstances that could not have been foreseen and were outside the control of the family and there is a reasonable likelihood that the family will be able to disclose the SSN and provide such documentation of the SSN by the deadline. If the participant family is unable to comply with the above requirement by the specified deadline, the entire family's assistance will be terminated.

Addition of a New Household Member Under Age 6 Without Assigned SSN - The new household member without a SSN is to be added to the household and will remain in the household during the allotted time (90 calendar days from date household member is added) to provide the documents. If the family is unable to disclose the documentation within the 90 calendar days, MDOC will grant the family an additional 90-day period only if MDOC determines the family was unable to comply due to circumstances that could not have reasonably been foreseen and were outside the control of the family. Examples include but are not limited to: delayed processing of SSN application by SSA, natural disaster, fire, death in family, etc. MDOC will terminate the entire family's assistance upon expiration of the provided time period if the family has failed to comply with the SSN disclosure and documentation requirements.

MDOC will generate an ALT ID pursuant to instructions contained in PIH Notice 2018-24 when adding the new household member without an assigned SSN.

Human Resource Development Council District 7 Comment

If a family is adding a foster child to the household, are they able to be added to the household without a social if they are under 6 or would the addition of a new HH member be in effect in this case? Or do they have the 90 days to get it to us but can add them to the hh?

MDOC Response

If a child under the age of 6 is being added to the household, they can be added without a SSN, and, if needed, can qualify for an extension on the timeframe. The household will need to provide MDOC explanation of the reason to need the extension.

Chapter 8 – Housing Quality Standards and Rent Reasonableness Determinations

Human Resource Development Council District 7 Comment

Landlords are wondering if there is a way to go back to every year inspections instead of bi-annual, they feel this is better for them when they are in the program as it is a second way of checking on their places.

MDOC Response

MDOC moved from annual inspections to biennial inspections to lower the administrative burden of the Field Agencies administering the HCV program. MDOC will continue to require biennial inspections for participants of the HCV program.

Section 8-II.F. concerning reinspection – MDOC proposes this change to the Plan:
The family and the owner will be given reasonable notice of the reinspection appointment.

If the Field Agency is unable to gain entry to the unit in order to conduct the scheduled reinspection, the Field Agency will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

Montana Legal Services Association Comment

MLSA suggests that the family should not be terminated if the HQS deficiency (and reason for reinspection) was caused by landlord, not the family. The policy already provides that MDOC or the Field Agency will give notice of the reinspection appointment to the landlord and the family – the burden should be on the landlord to make the unit available for the reinspection. (A tenant shouldn't have to take off work to be home for the reinspection appointment.)

MDOC Response

MDOC does not terminate a family for deficiencies for which the landlord is responsible. And, unless it is a new admission or change of unit, unless a deficiency is for health and safety, reinspections are not being conducted; the landlord and tenant must sign off on completed repairs.

Housing Authority of Billings Comment – FIVE YEAR PLAN COMMENT

Non-life threatening – This paragraph states that “No more than 30 calendar days will be allowed for the correction.” There does not appear to be language to allow for extensions to this. In our field agency area, many owners were not able to get replacement siding and window parts within 30 calendar days due to catastrophic hail storms and damage and extensions were necessary to allow owners time to work with insurance and make repairs.

Also, Same Section paragraph 2, “The Field Agency may accept a signed self-certification from the owner and tenant that the repairs have been corrected for biennial and special inspections only.” Will MDOC require both parties to sign the self-certification? And for Mod Rehab units as well?

MDOC Response

Chapter 8 page 13 does allow for extensions on non-life threatening deficiencies. Field Agents must contact MDOC to request an extension and provide reasoning for the extension. Mod Rehab units must be reinspected. MDOC does require a signed self-certification from the owner and the tenant that the repairs have been completed.

Chapter 9 – General Leasing Policies

9-I.B. Requesting Tenancy Approval

MDOC Policy

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

Completed RTA must be submitted as hard copies, in-person, by mail, by email, or by fax.

The family may not submit, and MDOC will not process, more than one (1) RTA at a time.

When the family submits the RTA MDOC will review the RTA for completeness.

- If the RTA is incomplete (including lack of signature by family, owner, or both), MDOC will notify the family and the owner of the deficiencies.
- Missing information and/or missing documents will not be accepted by phone.

Because of the time sensitive nature of the tenancy approval process, MDOC will attempt to communicate with the owner and family by phone, fax, or email. MDOC will use mail when the parties cannot be reached by phone, fax, or email.

Human Resource Development Council District 7 Comment

PG9-3 RTA- Landlords are happy that they are no longer able to submit RTA as they feel it take pressure off of them and leaves the client responsible.

MDOC Response

Thank you for your comment.

Human Resource Council District XI Comment

Suggestion: The RTA should be returned to the field agent by the owner so information is accurate and there is no chance that a tenant could change information.

MDOC Response

The RTA should be completed and signed by the owner before returning it to the family.

9-I.E. Lease and Tenancy Addendum

Security Deposit

MDOC Policy

MDOC will allow the owner to collect any security deposit amount the owner determines is appropriate. Therefore, no modifications to the HAP contract will be necessary.

Human Resource Development Council District 7 Comment

Pg9-6 Security Deposits- Wouldn't it be more client-centric to disallow larger deposits asked by a landlord?

MDOC Response

While MDOC policy allows a landlord to collect a deposit that the landlord deems appropriate, it is the family's choice as to whether they wish to accept the conditions of the lease agreement.

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 PHA to approve the assisted tenancy in the selected unit.

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

- Completed Request for Tenancy Approval (RTA) – Form HUD-52517
- Copy of the proposed lease, including the HUD-prescribed Tenancy Addendum – Form HUD-52641-A

The RTA 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 PHA to determine whether to approve the assisted tenancy in this unit.

Owners must certify 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.

Owners must certify that they are not the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has granted a request for reasonable accommodation for a person with disabilities who is a member of the tenant household.

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.

Both the RTA and the proposed lease must be submitted no later than the expiration date stated on the voucher. [HCV GB p.8-15].

Human Resource Council District XI Comment

What MDOC do with a proposed lease? We do not feel like the owners are going to do this additional step. This would happen before the inspection so there are no dates for tenancy available. The field agent would subsequently need to get an additional lease once the inspection was complete. We do not think this is an appropriate step at this time. Suggestion: a sample lease should not be required at the time of RTA.

MDOC Response

24 CFR 982.302(c) states that a family must submit a request for approval of the tenancy and a copy of the lease, including the HUD prescribed tenancy addendum.

Chapter 10 – Moving with Continued Assistance and Portability

Housing Authority of Billings Comment – FIVE YEAR PLAN COMMENT

A tenant has concerns that participant families would lose housing options by being placed on “hold”. It is unrealistic to assume a landlord will hold a unit for any length of time. Also, if the family needs to move and MT Housing places a hold on moving, families could become homeless.

How would MT Housing track a Hold list for movers? How would that list be ranked? By date of move request? By date of original application? Other ranking?

MDOC Response

When MDOC had to impose move restrictions due to funding issues in 2017, MDOC worked with each agency that had families in a move status to ensure that families were not displaced. MDOC would employ the same procedures if faced with funding issues in the future.

Pursuant to MDOC’s Admin Plan, families placed on hold will take precedence over families on the waiting list. The hold list will be reviewed to determine what stage each family is in regarding their move status on a case by case basis and proceed accordingly based on the status.

Furthermore, the Admin Plan reads: In the event of insufficient funding for assistance, MDOC will place (1) applicants who have been issued an initial voucher and not leased up, and (2) participants who are requesting to move on hold. On hold means MDOC will not act on the request until MDOC receives sufficient funding and the funds are available for assistance. MDOC will send families notice of their hold status. Families who are placed

on hold for the aforementioned reason will take precedence over families on the waiting list. MDOC will use the same procedures for notifying families that have requests on hold as the notice procedures used for families on the waiting list (see section 4-III.D.).

Human Resource Development Council District 7 Comment

Chapter 10- At one point MDOC was thinking about making a checklist/work flow chart to make the steps for portability more manageable, has this been complete? We feel that it would be very beneficial to the contracted agencies.

MDOC Response

MDOC continues to create processes and procedures for the various aspects of the HCV program, including portability. As MDOC finalizes these processes and procedures they will be made available to the Field Agents.

Chapter 11 – Reexaminations

11-I.F. Effective Dates

MDOC Policy

In general, an increase in the family share of the rent that results from an annual reexamination will take effect on the family’s anniversary date, and the family will be notified at least 30 calendar days in advance. If the family causes a delay in processing the annual reexamination, increases or decreases in the family share of the rent will be applied retroactively, to the scheduled effective date of the annual reexamination. In the event of an increase, the family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

Housing Authority of Billings Comment

Use of “anniversary date” language is somewhat confusing for families, especially those that may have been a lease in place. To be consistent, staff suggests MT Housing using annual reexamination date instead.

MDOC Response

Anniversary date refers to the date in which a family leased in the HCV program. The annual reexamination date is the first day of the month in which the family leased in the HCV program.

Chapter 12 – Termination of Assistance and Tenancy

12-III.B. Grounds for Owner Termination of Tenancy

Serious or Repeated Lease Violations

The owner is permitted to terminate the family’s tenancy for serious or repeated violations of the terms and conditions of the lease, except when the violations are related to incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking, and the victim is protected from eviction by VAWA (see section 12-II.E). An example of a serious lease violation includes failure to pay rent or other amounts due under the lease. However, the PHA’s failure to make a HAP payment to the owner is not a violation of the lease between the family and the owner.

Montana Legal Services Association Comment

CFR allows termination for serious violation, but not for repeated.

MDOC Response

24 CFR 982.310(a)(1) allows for an owner to terminate tenancy for serious or repeated lease violations, and 24 CFR 98.551(e) obligations of participant, also states family may not commit any serious or repeated violation of the lease. Thus, if an owner terminates tenancy based on a repeated lease violation, MDOC can accept that termination and act accordingly.

12-I.D. Mandatory Termination of Assistance

Eviction [24 CFR 982.552(b)(2), 24 CFR 5.2005(c)(1)]

The PHA must terminate assistance whenever a family is evicted from a unit assisted under the HCV program for a serious or repeated violation of the lease. As discussed further in section 12-II.E, incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking.

MDOC Policy

A family will be considered evicted if the family receives a formal eviction notice from the court. If the family moves after a legal eviction order has been issued, the family will be considered evicted, whether or not physical enforcement of the order was necessary.

If a family moves after the owner has given the family an eviction notice for serious lease violations but before a legal eviction order has been issued, termination of assistance is not mandatory. In such cases MDOC will determine whether the family has committed serious violations of the lease based on available evidence and may terminate assistance or take any of the alternative measures described in section 12-II.C. In making its decision, MDOC will consider the factors described in sections 12-II.D and 12-II.E. Upon consideration of such factors, MDOC may, on a case-by-case basis, choose not to terminate assistance.

Serious lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criterion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests.

Montana Legal Services Association Comment

That is impermissible because HUD does not authorize termination for a "repeated" violating. 24 CFR 982.552(b)(2) provides: "The PHA must terminate program assistance for a family evicted from housing assisted under the program for serious violation of the lease." It does not say serious or repeated violation. Further, the way that MDOC has worked its policy would mean that any "repeated" violation could be enough to support MDOC termination, even if the repeated violation is for something minor and not serious. MLSA proposes removing the words "or repeated" in this section at p. 12-2.

MDOC Response

24 CFR 982.310(a)(1) allows for an owner to terminate tenancy for serious or repeated lease violations, and 24 CFR 98.551(e) obligations of participant, also states family may not commit any serious or repeated violation of the lease. Thus, if an owner terminates tenancy based on a repeated lease violation, MDOC can accept that termination and act accordingly.

12-I.E. Mandatory Policies and Other Authorized Terminations

Other Authorized Reasons for Termination of Assistance [24 CFR 982.552(c), 24 CFR 5.2005(c)]

HUD permits the PHA to terminate assistance under a number of other circumstances. It is left to the discretion of the PHA whether such circumstances in general warrant consideration for the termination of assistance. As discussed further in section 12-II.E, the Violence against Women Act of 2013 (VAWA) explicitly prohibits PHAs from considering incidents of, or criminal activity directly related to, domestic violence, dating violence, sexual assault, or stalking as reasons for terminating the assistance of a victim of such abuse.

Additionally, per the alternative requirements listed in the *Federal Register* notice dated December 29, 2014, PHAs are no longer permitted to terminate assistance to a family due to the family's failure to meet its obligations under the Family Self-Sufficiency (FSS) contract of participation [FR Notice 12/29/14].

MDOC Policy

MDOC will terminate a family's assistance if:

- The family has failed to comply with any family obligations under the program. See Exhibit 12-1 for a listing of family obligations and related MDOC policies.
- Any family member has been evicted from federally-assisted housing in the last three years.
- Any PHA has ever terminated assistance under the program for any member of the family.
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
- The family currently owes rent or other amounts to any PHA in connection with Section 8 or public housing assistance under the 1937 Act.
- The family has not reimbursed MDOC or any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.
- The family has breached the terms of a repayment agreement entered into with MDOC.
- A family member has engaged in or threatened violent or abusive behavior toward MDOC and/or Field Agency personnel.
- Abusive or violent behavior towards PHA personnel includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to terminate assistance, MDOC will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, MDOC may, on a case-by-case basis, choose not to terminate assistance.

Montana Legal Services Association Comment

As described in comments above to Ch. 3 Eligibility, MLSA has concerns about the policy because MDOC or the PHA are not required to prove the validity of these alleged debts to a court or hearing officer, and the family may not have had the opportunity to dispute the debt.

MDOC Response

MDOC's policy is based solely on HUD's allowance to deny assistance based on the family's previous behavior in "assisted housing" which include debts owed to MDOC or another PHA in connection with Section 8 or other public housing assistance under the 1937 Act. The policy does not pertain to debts an applicant may owe to a previous landlord. Also, HUD Form 52675 provides notice to applicants and tenants on what information is required to be reported and discusses tenant's rights.

12-II.F. TERMINATION NOTICE

HUD regulations require PHAs to provide written notice of termination of assistance to a family only when the family is entitled to an informal hearing. However, since the family's HAP contract and lease will also terminate when the family's assistance terminates [form HUD-52641], it is a good business practice to provide written notification to both owner and family anytime assistance will be terminated, whether voluntarily or involuntarily.

MDOC Policy

Whenever a family's assistance will be terminated, MDOC will send a written notice of termination to the family and to the owner. MDOC will also send a form HUD-5382 and form HUD-5380 to the family with the termination notice. The notice will state the date on which the termination will become effective. This date generally will be at least 30 calendar days following the date of the termination notice, but exceptions will be made whenever HUD rules, other PHA policies, or the circumstances surrounding the termination require.

When MDOC notifies an owner that a family's assistance will be terminated.

Montana Legal Services Association Comment

There may be a typo at the top of p. 12-13. This fragment probably needs to be omitted (probably an editing oversight by MDOC).

MDOC Response

Thank you for notifying us of this fragmented sentence. MDOC has eliminated the fragmented sentence.

Chapter 13 – Owners

MDOC Policy

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

- Making available material about the program to property owners and managers on MDOC’s website,
- Contacting property owners and managers by phone or in-person,
- Holding owner recruitment/information meetings at least once a year,
- Participating in community-based organizations comprised of private property and apartment owners and managers, and
- Developing working relationships with owners and real estate brokers associations.

Outreach strategies will be monitored for effectiveness and adapted accordingly.

Human Resource Council District XI Comment

Thoughts: How is MDOC going to help with coordinating inspections and leasing activities? Suggestion: MDOC coordinating inspections with the local field office and the owner would be challenging. This should be removed from the admin plan and the coordination piece explained differently.

MDOC Response

The Retention section of 13-I.A. has been deleted as part of the public draft document.

Chapter 14 – Program Integrity

No comments received.

Chapter 15 – Special Housing types

Human Resource Development Council District 7 Comment

Special Housing Types, at this time it is said that MDOC will consider types such as one-room Occupancy, group home, ect. However, there isn’t any other detail for how this will work in any of these situations for MDOC is this something we are actively doing and can we get more information about it.

MDOC Response

Single Room Occupancies (SROs) are not allowed by MDOC. Language has been added to this section regarding SROs.

MDOC does allow group homes as a reasonable accommodation. The regulations for each type of housing are listed at the start of Chapter 14.

15-III.A. OVERVIEW

A group home is a state-licensed facility intended for occupancy by elderly persons and/or persons with disabilities. Except for live-in aides, all persons living in a group home, whether assisted or not, must be elderly persons or persons with disabilities. Persons living in a group home must not require continuous medical or nursing care.

A group home consists of bedrooms for residents, which can be shared by no more than two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.

No more than 12 persons may reside in a group home including assisted and unassisted residents and any live-in aides.

If approved by the PHA, a live-in aide may live in the group home with a person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in a group home, a separate lease and HAP contract is executed for each assisted family, and the standard form of the HAP contract is used.

Human Resource Development Council District 7 Comment

For our community partners that are working with us is there anything we can provide to them so they are more aware of thing like the ability to look in to group homes for some of the people that may need it or even about the live-in aides.

MDOC Response

MDOC will review requests for group home rental assistance by reasonable accommodation only.

Human Resource Development Council District 7 Comment

FSS - at this time our agency does not currently have any FSS Clients but has talked about it is it possible to get some guidance on how to begin this process and how many individuals we could have in the FSS program.

MDOC Response

Please discuss with MDOC about starting a FSS program.

Human Resource Development Council District 7 Comment

For FSS- is there a limitation for what this money can be used for or how much they are allowed to save?

MDOC Response

FSS families are not restricted in what the FSS funds can be used for once they have successfully graduated from the FSS Program. The amount of funds that is contributed

into the family's FSS escrow account is determined by an escrow calculation based on the family's increase in income compared to the income the family had at the time of enrollment into FSS program.

Chapter 16 – Program Administration

16-II.B. Payment Standards

MDOC Policy

MDOC will review the appropriateness of the payment standards on an annual basis when the new FMR is published. In addition to ensuring the payment standards are always within the basic range, which is 90% up to 110% of the FMR.

Human Resource Council District XI Comment

Thoughts: MDOC will review the quality of units selected by what means? How will this be determined?

MDOC Response

The Quality of Units selected section of 16-II.B. has been deleted as part of the public draft document.

Human Resource Council District XI Comment

General discussion regarding preferences: How would using CES and identifying homeless status be used as a preference? What would the process be?

MDOC Response

CES and identifying homeless status is proposed as a way to verify the homeless status for Mainstream voucher applicants only. MDOC will be reviewing and verifying all submitted documentation to demonstrate Mainstream voucher preferences for at least the first 60 vouchers.

16-III.B. Informal Reviews

Scheduling an Informal Review

MDOC Policy

A request for an informal review must be made in writing and delivered to MDOC either in person or by first class mail, by the close of the business day, no later than 20 calendar days from the date of MDOC's denial of assistance.

MDOC must schedule and send written notice of the informal review within 20 calendar days of the family's request.

Montana Legal Services Association Comment

MLSA suggests that this policy be modified, to allow a family to submit the written request to MDOC by email or by fax as well, or by delivering it in person to the field agent. Many families use their cell phones as their main means of communication, and use email on their phones. Allowing them to request an informal review by email would not be

burdensome to MDOC. On p. 16-10, at the bottom, the MDOC Policy allows a request for informal hearing to be delivered to MDOC by electronic transmission, so it makes sense to allow the same for a request for informal review.

MDOC's 2019 response to this MLSA comment was that "MDOC will update this section to match the language regarding ways requests for informal hearings may be delivered." But it doesn't not appear that MDOC made that change in the current draft. Page 16-8 at top still needs to have the words "or electronic transmission" added.

MDOC Response

Participants can provide written correspondence via email to Field Agents who will ensure that the communication is received by MDOC.

16-II.B. Payment Standards [24 CFR 982.503; HCV GB, Chapter 7]

The payment standard sets the maximum subsidy payment a family can receive from the PHA each month [24 CFR 982.505(a)]. Payment standards are based on fair market rents (FMRs) published annually by HUD. FMRs are set at a percentile within the rent distribution of standard quality rental housing units in each FMR area. For most jurisdictions FMRs are set at the 40th percentile of rents in the market area.

The PHA must establish a payment standard schedule that establishes payment standard amounts for each FMR area within the PHA's jurisdiction, and for each unit size within each of the FMR areas. For each unit size, the PHA may establish a single payment standard amount for the whole FMR area or may set different payment standards for different parts of the FMR area. Unless HUD grants an exception, the PHA is required to establish a payment standard within a "basic range" established by HUD – between 90 and 110 percent of the published FMR for each unit size.

Human Resource Development Council District 9 Comment

Is it 110% or 120%?

MDOC Response

110%.

Updating Payment Standards

MDOC Policy

MDOC will review the appropriateness of the payment standards on an annual basis when the new FMR is published. In addition, to ensuring the payment standards are always within the basic range, which is 90% up to 110% of the FMR.

Changes to payment standard amounts will be effective on January 1st of every year.

Human Resource Development Council District 9 Comment

It would be more effective to have the payment standard come into effect for everybody Jan 1 instead of at their annual reexamination date resulting in some households missing out.

MDOC Response

24 CFR 982.505(c)(4) states that an increase in the payment standard amount during the HAP contract term will be made effective on the family’s first regular reexamination on or after the effective date of the increase. If a family’s regular reexamination date is January 1st, that’s the effective date of the new payment standard. If the family’s regular reexamination date is after January 1st, then the increase will occur on the family’s regular reexamination date. MDOC is unable to determine how a family would miss out on the increased payment standard unless the family’s composition changed that would result in using a lower payment standard.

16-III.C. Informal Hearings for Participants

Informal Hearing Officer [24 CFR 982.555(e)(4)]

Informal hearings will be conducted by a person or persons approved by the PHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

MDOC Policy

MDOC has designated the following to serve as hearing officers:

- Montana Department of Commerce Legal Counsel,
- Housing Division Operations Manager,
- Or other qualified individual other than the person or subordinate to the person who made the decision.

Montana Legal Services Association Comment

On p. 16-11, MDOC designates the MDOC Legal Counsel and the Housing Division Operations Manager as persons who may serve as Informal Hearing Officers. MLSA acknowledges that 24 CFR 982.555 does not prohibit those options, but MLSA has concerns about those options. It is important for the hearing officer to be a neutral third party, someone who has “no skin in the game.” If MDOC uses its own staffperson as the hearing officer, even if that staffperson allegedly had no part in the decision being appealed, the family may not feel that the hearing process was fair. Having an MDOC staffperson review the MDOC decision which is adverse to the family gives the appearance of impropriety or possibly bias. Also, even if the MDOC staffperson/hearing officer had no part in the decision being appealed, that staffperson may have overheard conversations in the MDOC office among other MDOC staff, discussing the decision. Also, if an MDOC staffperson is the primary witness against the family at the informal hearing, it would be natural for the hearing officer/staffperson to be inclined to believe that witness, based on their professional working relationship with that coworker.

To promote the integrity of the MDOC informal hearing process, upon which the family’s continued housing assistance may depend, MLSA urges MDOC not to use its own staffpersons as hearing officers.

MDOC Response

If MDOC determines that a designated staff person assigned to serve as a hearing officer has been involved in a particular case file, another qualified individual will be assigned.

Chapter 17 – Project-Based Vouchers

No comments received.

Chapter 18 – Project-Based Vouchers (PBV) Under the Rental Assistance Demonstration (RAD) Program

No comments received.

Chapter 19 – Family Self-Sufficiency Action Plan

Housing Authority of Billings Comment

Part VIII “If the family fails to report income a second time, the family will be terminated from the FSS Program and may be terminated from the housing assistance program.”

Why is this true for FSS participants but not other HCV participants? Staff would like to see this applied to ALL program participants, equally.

Is the unreported dollar amount for FSS the same as for other HCV participants (\$2,400)?

Would like to see MT Housing add that repayments must be completed before allowing a family to join FSS program.

MDOC Response

FSS participants may be earning escrow funds which are paid from federal funds that are not available to other HCV participants. By imposing this requirement to terminate participation in the FSS Program terminates the federal funds being deposited into an escrow account.

FSS Participants are HCV Participants and are subject to the same unreported dollar amount of \$2,400.

There is no provision in PIH Notice 2018-18 that allows a PHA to restrict a HCV participant from participating in the FSS Program if the participant is current on a repayment plan.