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CHAPTER 1 Introduction

LEARNING OUTCOMES

Understand the skills needed to conduct hearings and write decisions with hands-on case studies and best-practice strategies.

Upon completion of the Hearing Officer Specialist, you should be able to:

- Apply critical thinking skills to the facts of the case in order to integrate HUD regulations and guidance into the PHA's policies and procedures to make reasoned decisions
- Recognize the elements of cohesive and comprehensive hearing and grievance procedures
- Identify how and when to work with the PHA's 504 coordinator, Legal Aid, and advocacy groups
- Conduct orderly appeals and hearings
- Practice making hearing decisions, with appropriate citations, first in a group and then individually
- Recognize Housing Choice Voucher regulations for informal reviews for applicants and informal hearings for participants
- Identify public housing regulations for informal hearing for applicants and grievance hearing for tenants

Section 1 Overview

In this seminar, you will first be introduced to the regulations regarding reviews and hearings in the housing programs. We'll present a common language, because applying the principles and processes are the same in both programs.

After that, we will look at key PHA policies that articulate how the PHA administers the programs according to the regulations. These policies include the Housing Choice Voucher (HCV) administrative plan and the public housing ACOP and lease. Later, there will be sample excerpts of these policies that will guide your thinking and decision-making as you practice making hearing decisions based on case studies.

We will discuss the PHA's hearing/grievance procedures. In this chapter, we'll explore the appointment of hearing officers. There are many options as to who may serve as hearing officers. These decisions must be reflected in the PHA's grievance procedures.

Then, this seminar will get very practical and hands-on.

At any point, the issue of reasonable accommodation for persons with disabilities may arise, so we'll address this in the seminar. Working closely with the PHA's reasonable accommodation coordinator (sometimes referred to as the 504 coordinator¹) can assist the hearing officer in navigating the hearing process successfully.

We'll use scenarios and learning activities to delve into the program areas most commonly heard in reviews and hearings.

A discussion of how you work with advocacy groups—Legal Aid, domestic violence advocates, LEP advocates, and others—will highlight best-practice strategies and collaborations.

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1. The role of the Section 504 Coordinator is to assist a PHA in meeting requirements under Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs receiving Federal financial assistance.

Section 1: Overview

Then we'll be ready to prepare for the hearing and to conduct hearings! Through a combination of discussion, learning activities, group work, and case studies, you'll think through your hearing decisions.

Writing a clear and defensible hearing decision is the culmination of the learning and practice so far. Before actually practicing making and writing decisions, we'll discuss issues around the written decision, and what happens after the hearing.

ONLINE RESOURCES

Resources and references relevant to this course are available for download at HearingOfficerResources.nanmckay.com. The materials may be accessed and downloaded as often as needed. Additional HUD references can be also found on the NMA References site at: <http://nmareferences.com>. Click the specific program link at the top of the web page to jump directly to the references you wish to access. No login information is required.

Section 2 Due Process

INTRODUCTION

Individuals receiving or applying for PHA program assistance have certain rights guaranteed by the U.S. Constitution when PHAs take certain adverse actions against them.

PHA action to terminate assistance is a government action against individuals, and as such is limited by certain procedural safeguards to protect the individuals' rights. These rights are referred to as due process. The government's authority over individuals is limited by the law—through due process. The work you do embodies these legal principles.

The principle of due process was created as a balance against government action. Statutory hearing rights specifying due process, very similar in intent and even details, can be found across governmental agencies. Due process has been defined and/or clarified by legislation, regulations, case law and various policies.

The hearing is an administrative hearing conducted in accordance with due process. For PHAs, the Code of Federal Regulations (CFR), are the regulations which contain due process procedural requirements. The HCV administrative plan, and the public housing ACOP and grievance procedures are the policies which contain due process procedural requirements. Hearing officers must always use the principles of due process as a touchstone in rendering decisions.

BACKGROUND

The concept of due process has deep historical roots. It is generally accepted that it originated in 1300's-medieval England in the Magna Carta. It was devised to limit the power of the royalty, which in those times was distinguished by the arbitrary seizure of feudal barons' lands and assets, and imprisonment of family members by the king as his right.

The Magna Carta established the principle that the law was a power in its own right to which the king was subject. This principle found its way into our government's founding documents. Early documents used the term "due process" interchangeably with the "law of the land." Finally, due process was written into the Constitution in the Bill of Rights, in the 5th Amendment, as well as into the 14th Amendment.

- U.S. Constitution—government cannot deprive a person of life, liberty or property without due process of law—*5th, 14th Amendments*

Judicial interpretation of "due process" comes to us in the form of case law. U.S. Supreme Court case *Goldberg v. Kelly* (1970) is the most important case for PHAs as it was the first case to hold that due process requires basic procedural safeguards in hearings involving the deprivation of public benefits, in this case welfare benefits. (Welfare recipients have a property interest in the benefits.)

According to *Goldberg v. Kelly*, basic procedural safeguards include an opportunity to confront and cross-examine adverse witnesses and to present positions orally.

In 1973, a federal case held that due process applies to PHAs: *Burr v. New Rochelle Municipal Housing Authority*, (New York).

ELEMENTS OF DUE PROCESS

The PHA must not only meet the minimal procedural due process requirements provided under the regulations, but must also meet any additional requirements imposed by local, state or federal law.

ADEQUATE NOTICE

The notice must state the reasons for the decision specifically enough to allow the person to understand the who, what, where, and when.

OPPORTUNITY TO DEFEND AGAINST THE GOVERNMENT ACTION

The notice must state the authority on which the Housing Authority relies to reach its decision, so the person can prepare an adequate defense.

A HEARING PRIOR TO TERMINATION

The hearing must be fair:

- The person must have an opportunity to be heard
- The right to confront witnesses
- The right to representation
- An impartial decision-maker
- A decision based only on the evidence presented at the hearing
- A decision that includes the reasons and evidence relied upon

LIMITED ENGLISH PROFICIENCY (LEP) REQUIREMENTS

PHAs must comply with HUD's Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, issued on January 22, 2007. The Streamlining Administrative Regulations Final Rule, published March 8, 2016, clarified that LEP obligations apply to hearings.

- The PHA must provide competent oral interpretation, free of charge, upon request.
- For purposes of written translation, PHAs must conduct a four-factor analysis of:
 1. The number or proportion of LEP persons served in the eligible service population;
 2. The frequency which which LEP persons come into contact with the program;
 3. The nature and importance of the program, activity or service provided by the program; and
 4. Resources available and cost.
- The safe harbor guidance for purposes of written translation would be for populations that constitute 1,000 LEP persons, or 5% of the eligible population, whichever is less.
- LEP guidance and materials are available on HUD's fair housing website.

Section 3 Purpose of Reviews and Hearings

BACKGROUND

The public housing grievance process grew out of the efforts in the late 1960s to stop arbitrary evictions and the lawsuit *Goldberg v. Kelly* in 1970 that established due process requirements for people receiving welfare. In 1971, HUD issued an official memorandum that formed the basis of public housing grievance procedures. Regulations followed. In 1983 Congress passed, for the first time, legislation requiring housing authorities to provide grievance procedures for federal public housing.

APPLICANTS, PARTICIPANTS AND TENANTS

First, it's important to know that participants (HCV) and tenants (PH) have much deeper hearing rights than do applicants.

Applicants to the Housing Choice Voucher (HCV) and Public Housing (PH) programs have a more discrete appeal process than do participants/tenants—with one exception.

- The exception is decisions related to restrictions on noncitizens. Decisions related to restrictions on assistance to noncitizens always require the right to a hearing, regardless of whether the family is an applicant or participant/tenants.

PURPOSE

Both reviews and hearings, however, serve the same basic purpose: To resolve applicant or participant disputes with the PHA without legal action and to correct PHA errors that might have occurred in the decision-making process.

- Where applicable, the PHA can correct and reverse its decisions.
- The PHA can also uphold its decisions and demonstrate that the decision is based on relevant HUD regulations and guidance, PHA policies, and preponderance of the evidence. Thus PHA decisions will be more defensible if challenged further.

Section 3: Purpose of Reviews and Hearings

To fulfill the purpose intended for hearings, the following practical principles should be kept in mind:

- The PHA needs to do it right—this is your proof of good faith
- Don't skip any steps
- Respect the family and respect the PHA
- The written decisions are critical and may make or break the case later in court

Section 4 Citations

CITATIONS FOR THIS WORKBOOK

Housing Choice Voucher program

- 24 CFR 982.554: Informal review for applicant
- 24 CFR 982.555: Informal hearing for participant

Public Housing program

- 24 CFR 960.208: Notification to applicants
- 24 CFR Part 966, Subpart B: Grievance Procedures and Requirements
- Streamlining Administrative Regulations Final Rule, March 8, 2016

Restrictions on assistance to noncitizens

- 24 CFR 5.514: Delay, denial, reduction or termination of assistance

MANDATORY AND DISCRETIONARY REFERENCES

The information in this course book is supported by citations. Wherever there is a HUD regulation, notice, or FAQ, that citation will be noted, since these references are mandatory. A mandatory policy or procedure is one that is required by a current law, regulation, notice or handbook.

- For example, 24 CFR 960.253 states, “Once a year, the PHA must give each family the opportunity to choose between” income-based and flat rent.
- 24 CFR 5.615(c)(5) states, “The PHA may not include imputed welfare income in annual income if the family was not an assisted tenant at the time of sanction.”
- If a mandatory references states “The PHA may...”, the PHA needs to establish policy in this area.

Section 4: Citations

The following references are mandatory and binding, and will be cited whenever applicable:

- Statutes
- HUD regulations
- Current Public and Indian Housing (PIH) notices. Older PIH notices have an expiration date. PIH notices may be extended or reinstated.
- HUD handbooks
- Forms required by HUD regulations (such as form HUD-50058)
- Opinions or rulings by HUD’s Office of General Counsel

If there is no mandatory reference, guidance will be cited. For issues not covered by mandatory references, HUD recommends that PHAs develop policies and procedures based on HUD guidance. Using HUD guidance creates a “safe harbor” for PHAs because HUD has determined that the guidance is consistent with applicable requirements.

Since HUD guidance is optional, PHAs may use alternative approaches in developing policies in discretionary areas. However, they must then make their own determination of consistency with applicable requirements. They are not protected by the “safe harbor” concept.

The following HUD references will be cited as guidance. Again, these references are nonbinding—i.e., PHAs are advised, but not required, to follow them (unless the guidance provided is based on mandatory references):

- The Housing Choice Voucher Guidebook and Public Housing Occupancy Guidebook
 - Note that in the absence of regulations in one program, a mandatory or discretionary reference from another program may provide guidance. The PHA, of course, would have to incorporate that guidance in its policy.
- Notices that have expired
- Handbooks that have expired
 - 7465.1, Public Housing Occupancy Handbook, for example, is an expired public housing handbook, but still contains some useful information.

Section 5 Terminology for this Course Book

We'll see that the Housing Choice Voucher and Public Housing programs use somewhat different terms.

Housing Choice Voucher (HCV) applicants are afforded the right to request "informal reviews." HCV participants' full due process or appeal rights extend to the "informal hearing." The term "informal hearing" makes a distinction between a housing authority administrative hearing and a judicial hearing.

Public Housing (PH) uses slightly different terms. Public Housing applicants have a right to request an "informal hearing." Residents' full grievance rights extend to the "fair hearing" or "grievance hearing." There is an extra step in public housing for residents under lease termination notice, where cases are discussed "informally" in an "informal settlement," which is commonly held with the property manager. This step happens before the hearing.

After we go through the regulations for both programs, using these specific terms can get clumsy, and discussing the principles and processes of actually conducting hearings will be smoother if we use common terminology for both HCV and PH.

Thus, we'll use the term "reviews" for applicants of both programs, and the term "hearings" for HCV participants and PH residents. We'll mostly use the term "tenant" for public housing. The legal term "tenant" is an adult who executed the lease, or remaining adult member of the family.

The voucher program policies are referred to as "informal review procedures for applicants" in §982.54(d)(12) and "informal hearing procedures for participants" in §982.54(d)(13), whereas the public housing document is referred to as "grievance procedures" in Subpart B §966.50. Unless we're speaking of the specific program, we'll refer to this document as the "hearing/grievance procedure."

Section 6 The Hearing Officer

DEFINITION OF A HEARING OFFICER

24 CFR 966.53(e)

HUD's Streamlining Administrative Regulations Final Rule codified the definition of a hearing officer for public housing:

Hearing officer means an impartial person or persons selected by the PHA, other than the person who made or approved the decision under review, or a subordinate of that person. Such individual or individuals do not need legal training.

The Housing Choice Voucher program could choose to adopt this definition as safe harbor guidance.

BASIC RESPONSIBILITIES OF A HEARING OFFICER

It's interesting to note that there are many fields that use hearing officers, and it is a career in itself. The generic definition of a hearing officer is an official appointed by a government agency to conduct an investigation or administrative hearing so that the agency can exercise its statutory powers.

A hearing officer for a housing authority, like hearing officers in other fields, researches and utilizes laws, regulations, policies, and precedent decisions to prepare for hearings. The hearing officer conducts hearings to obtain information and evidence relative to disposition of the appeal. They question witnesses and analyzes evidence (including testimony), applicable laws, regulations, policy, and precedent decisions to determine appropriate conclusions. The hearing officer prepares and issues the written decision.

Depending on the size and complexity of the PHA, there may be different hearing officers for the Housing Choice Voucher program than for public housing. In some PHAs, the hearing officer may also schedule hearings.

A career or function as a hearing officer requires an individual with a reputation for ethical behavior and responsibility within and outside of the agency.

Section 6: The Hearing Officer

To summarize, the basic responsibilities of the hearing officer are that they:

- May oversee or hear appeals by applicants for public housing and the Housing Choice Voucher program regarding determination of ineligibility or denial of admission;
- Hear appeals from Housing Choice Voucher participants regarding adverse decisions regarding their Housing Choice Voucher and participation in the program;
- Hears appeals from public housing tenants regarding adverse decisions regarding termination of assistance, PHA requirements related to the tenancy of the resident, or any adverse PHA action or failure to act related to the tenancy of the resident;
- May prepare detailed case documentation based on prior completed work by the PHA, including opening and closing cases, investigation summaries, activity logs, and correspondence. Studies such documentation before presiding over a hearing;
- Issue written decisions for each hearing;
- May assist with the coordination and the scheduling of hearings;
- May assist in the training of new hearing officers;
- May coordinate and/or act as liaison between the PHA or departments and other agencies and organizations; and
- May maintain the required log of all hearing officer decisions of the PHA.

QUALITIES OF A HEARING OFFICER

As well as your tasks and responsibilities, a hearing officer brings some essential qualities to the role. Here are some qualities to consider in a hearing officer:

- Fairness—to families and to the PHA
- Not being afraid to make a decision or ask others for their considered opinion
- Getting out the decision on time
- Being willing to learn from mistakes
- Listening to both sides

**PHA
HEARING OFFICER
PERFORMANCE EVALUATION**

Performance Period: From: _____ To: _____	
Hearing Officer: Last Name: _____ First Name: _____	
Type (Check all that apply): <input type="checkbox"/> In-House <input type="checkbox"/> Attorney <input type="checkbox"/> Volunteer <input type="checkbox"/> Panel Member <input type="checkbox"/> Contractor	
Evaluator (Include title) _____	Date _____
<p>Performance Expectations (Important responsibilities, objectives, outcomes, assignments for and qualities of a Hearing Officer)</p> <p>The Hearing Officer researches and utilizes laws, regulations, policies, and precedent decisions to prepare for hearings. The hearing officer conducts hearings to obtain information and evidence relative to disposition of the appeal. He or she questions witnesses and analyzes evidence (including testimony), applicable laws, regulations, policy, and precedent decisions to determine appropriate conclusions. The hearing officer prepares the written decision.</p> <p>Basic responsibilities of the hearing officer are:</p> <ul style="list-style-type: none"> • May oversee or hear appeals by applicants for public housing and the Housing Choice Voucher program regarding determination of ineligibility or denial of admission. • Hears appeals from Housing Choice Voucher participants regarding adverse decisions regarding their Section 8 certification and/or tenancies. • Hears appeals from public housing residents regarding adverse decisions regarding termination of assistance, PHA requirements related to the tenancy of the resident, or PHA failure to act related to the tenancy of the resident. • May prepare detailed case documentation based on prior completed work by the PHA, including opening and closing cases, investigation summaries, activity logs, and correspondence. Studies such documentation before presiding over a hearing. • Issues written decisions for each hearing. • May assist with the coordination and the scheduling of all appeal hearings. • May assist in the training of new hearing officers. • May review and make determinations concerning requests for reasonable accommodations. • May coordinate and/or act as liaison between the PHA or departments and other agencies and organizations. • May prepare written case for court cases. • Maintains appeal and hearing databases as required, including technical data, reports, and findings. <p>The hearing officer brings some essential qualities to the role. The Hearing officer should be an individual with a reputation for ethical behavior and responsibility within and outside of the agency.</p> <ul style="list-style-type: none"> • Fairness—to families and to the PHA • Impartiality • Thoroughness • Timeliness 	

Directions: Circle the numeric rating (score of 5 is highest) which most closely depicts your experience with this hearing officer.

Experience

Relevant legal, judicial, or administrative law experience
Knowledge and understanding of housing law, HUD regulations and PHA policies

1 2 3 4 5

Comments:

Preparation

Hearing Room is ready for each case
Hearing Officer is on time and ready to begin hearing
Hearing Officer introduces parties, case and makes opening statement explaining hearing process, including Appellant's rights, burden of proof and deadlines

1 2 3 4 5

Comments:

Conduct of the Hearing

The Hearing Officer follows the proper sequence
Answers parties' questions
Gives parties' opportunity to present evidence and question any witnesses
Listens to all the evidence, participates in questioning witnesses
Parties seem at ease
Handles complex issues competently
Keeps hearing moving forward without delays or discussion of irrelevant matters
No ex parte contacts

1 2 3 4 5

Comments:

Professional Demeanor

Hearing Officer maintains impartiality, shows fairness, is respectful, calm
No appearance of bias
Hearings proceed in a calm and orderly way
Handles disruptive, abusive or otherwise inappropriate behavior appropriately
Consistently demonstrates an attitude of orderliness, decisiveness, and self-assurance

1 2 3 4 5

Comments:

Civil Rights Issues

Properly identifies and handles reasonable accommodation issues, LEP issues

1 2 3 4 5

Comments:

Hearing Officer's Decision

Issued within timelines

1 2 3 4 5

Comments:

Decision Contains:

Hearing information:

Name of the tenant/participant; Date, time and place of the hearing;

Name of the hearing officer; Name of family representative (if any).

Background: A brief, impartial statement of the reason for the hearing.

Summary of the Evidence: Summary of testimony of each witness and any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

Findings of Fact: Includes all findings of fact, based on a preponderance of the evidence.

Conclusions: The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence.

Order: Statement of whether the PHA's decision is upheld or overturned.

1 2 3 4 5

Comments:

Effectiveness of Decisions

Number overturned by PHA (circle)

0-5 6-10 11-15 more than 16

Number overturned by Courts (circle)

0-5 6-10 11-15 more than 16

Decisions consistently upheld

1 2 3 4 5

Comments:

Administrative Ability

Correspondence, conduct of prehearing conferences, establishing of hearing dates, coordination of parties handled efficiently

Maintains appeal and hearing databases as required

Assists with training

1 2 3 4 5

Comments:

Section 7 Post-Test

1. The purpose of the hearing is to:
 - a. Terminate the participant
 - b. Bypass the courts
 - c. Resolve complaints before judicial action is necessary
 - d. Correct participant errors
 - e. All of the above
2. Hearing officers are a position unique to housing authorities.
 - a. True
 - b. False
3. The hearing officer is precluded from scheduling hearings.
 - a. True
 - b. False
4. A mandatory policy or procedure is one stated in any of the following except:
 - a. Current law
 - b. HUD regulation
 - c. Guidebook
 - d. Current notice
 - e. Handbook
5. The PHA should never correct or reverse its decisions.
 - a. True
 - b. False
6. A hearing could be about an adverse PHA action or failure to act.
 - a. True
 - b. False

Section 7: Post-Test

7. PHA decisions will be more defensible if:
 - a. The PHA can demonstrate that it has prevailed in a majority of hearings
 - b. The PHA's policies are vague enough to be subject to interpretation by the hearing officer
 - c. The decision is based on relevant HUD regulations and guidance, and PHA policies
 - d. Local judges or magistrates routinely back up the PHA's decisions
8. Generally, applicants have the right to:
 - a. Request a hearing
 - b. Request a grievance hearing
 - c. Dispute PHA policies
 - d. Request an administrative review
 - e. Dispute HUD regulations
9. PHA policies and procedures must address every situation that could arise during participation in the program.
 - a. True
 - b. False
10. When a mandatory reference states, "The PHA may not"... take a particular action, it means:
 - a. The PHA may or may not take that action, on a case-by-case basis
 - b. The PHA is not allowed to take that particular action
 - c. The PHA must set policy stipulating whether or not it will take that action
 - d. The PHA must obtain HUD approval before taking that action

11. When a mandatory reference states, “The PHA may”... take a particular action, it means:
 - a. The PHA may or may not take that action, on a case-by-case basis
 - b. The PHA is not allowed to take that particular action
 - c. The PHA must set policy stipulating whether or not it will take that action
 - d. The PHA must obtain HUD approval before taking that action
 - e. a and c

CHAPTER 2 HUD Regulations Common to the Housing Choice Voucher and Public Housing Programs

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Recognize HUD regulations common to review rights for applicants
- Recognize HUD regulations for hearing rights for applicants and tenants related to restrictions on assistance to noncitizens
- Explain the process for denial based on criminal history
- Recognize HUD regulations for hearing rights given to participants/tenants

OVERVIEW

Families seeking admission to the Housing Choice Voucher and public housing programs have the right to receive a review in most circumstances in which a PHA makes a decision to deny assistance. Families participating in the programs have the right for a hearing in most circumstances in which a PHA makes an adverse decision.

The purpose of a review or hearing is to resolve applicant or participant/tenant disputes with the PHA without legal action and to correct PHA errors that might have occurred in the decision-making process.

With the exception of decisions related to restrictions on non-citizens, a *review* is for applicants and a *hearing* is for program participants/tenants. Decisions related to restrictions on assistance to non-citizens always require the right to a hearing regardless of whether the family is an applicant or a participant/tenant.

Section 1 Review for Applicants

NOTIFICATION TO APPLICANTS

*24 CFR 982.554(a) HCV;
24 CFR 960.208 PH*

Although the language in the HCV and PH regulations differs slightly, the intent is the same. The HCV program contains a number of specific regulations about the informal review, and those will be covered in the next chapter.

The PHA must give an applicant prompt written notice of a decision denying assistance to the applicant. The notice must contain a brief statement of the reasons for the PHA's decision. The notice must also state that the applicant may request an informal review of the decision and must describe how to obtain the informal review.

- The notice should also state that a person with a disability has the opportunity to request consideration of reasonable accommodation.
- The notice should also state that the applicant may request competent oral interpretation in any language, free of charge.
- Note that under the Violence against Women Act (VAWA), PHAs are required to provide notice to applicants of their rights under VAWA (Form HUD-5380) and VAWA self-certification (Form HUD-5382) when a person is denied assistance.

Upon receiving the family's request, the PHA must proceed with the informal review in a reasonably expeditious manner.

INFORMAL REVIEW DUE PROCESS

*24 CFR 982.554(b)HCV;
Public Housing Occupancy
Guidebook PH*

The review may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person.

The applicant must be given an opportunity to present written or oral objections to the PHA's decision.

The PHA must notify the applicant of the PHA's final decision after the informal review, including a brief statement of the reasons for the final decision.

Section 1: Review for Applicants

DECISION TO DENY BASED ON CRIMINAL RECORDS

Citation: 24 CFR 5.903(a), 5.905(d), 982.553(d) (HCV), 960.204(c) (PH)

If you are a PHA that administers the Housing Choice Voucher and/or the public housing programs, 24 CFR 5.903 authorizes you to obtain criminal records from a law enforcement agency (as defined in 5.902).

You may use the criminal records that you obtain from a law enforcement agency under the authority of this section to screen applicants for admission to the Housing Choice Voucher or public housing program, and for lease enforcement or eviction of families residing in public housing or receiving Section 8 project-based vouchers.

While 24 CFR 5.903 addresses “criminal conviction records”, 5.905(d) specifies “a lifetime sex offender registration requirement”. Other regulations (24 CFR 982.553(d) for HCV and 24 CFR 960.204(c) for public housing) do not limit the opportunity to dispute to only conviction records, instead using the term “criminal records”.

PHA does not have the authority to run criminal background checks for HCV participants, other than those available under public records.

OPPORTUNITY TO DISPUTE ACCURACY OR RELEVANCE OF CRIMINAL RECORDS

Citation: 24 CFR. 5.903(a), 5.905(d), 982.553(d) (HCV), 960.204(c) (PH)

If a PHA obtains criminal records and/or sex offender information showing that an adult household member was involved in a crime that constitutes grounds for denial or termination in public housing, or grounds for denial in the Housing Choice Voucher program, the PHA must notify the household of the *proposed* action to be based on the information. The PHA must provide the subject of the record and the applicant or tenant a copy of such information, with the opportunity to dispute the accuracy and relevance of the criminal records, *before* notice of denial or termination is issued. Sample forms can be found at the end of Chapter 4.

Some states prohibit copying criminal records; in this case, the PHA would give the subject of record and applicant/tenant the right to view these records.

Section 2 Restrictions on Assistance to Noncitizens—Subpart E

- 24 CFR 982.554(g)* The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR part 5. Part 5 is applicable to both the Housing Choice Voucher and public housing programs.
- 24 CFR 5.514(d)(5)* The notice of denial or termination of assistance shall advise the family:
- That the family has a right to request an informal hearing with the responsible entity either upon completion of the U.S. Citizenship and Immigration Services (or USCIS) appeal or in lieu of the U.S. Citizenship and Immigration Services appeal.
 - For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the U.S. Citizenship and Immigration Services appeal process, but assistance may be delayed during the pendency of the informal hearing process.
- 24 CFR 5.514(f)(1)* Informal hearing—when request for hearing is to be made. After notification of the U.S. Citizenship and Immigration Services decision on appeal, or in lieu of request of appeal to the U.S. Citizenship and Immigration Services, the family may request that the responsible entity provide a hearing. This request must be made either within 30 days of receipt of the notice described above, or within 30 days of receipt of the U.S. Citizenship and Immigration Services appeal decision.
- 24 CFR 5.514(f)(2)* Informal hearing procedures for tenants assisted under a Section 8 covered program—the procedures for the hearing before the responsible entity are set forth in 24 CFR 982.
- 24 CFR 5.514(f)(2)(ii)* For tenants assisted in public housing, the procedures for the hearing before the responsible entity are set forth in 24 CFR part 966.

Section 2: Restrictions on Assistance to Noncitizens—Subpart E

- 24 CFR 5.514(f)(2)(iii)* For all families under housing covered programs (applicants as well as tenants already receiving assistance) and for applicants for assistance under all covered programs, the procedures for the informal hearing before the responsible entity are as follows:
- 24 CFR 5.514(f)(2)(iii)(A)*
- Hearing before an impartial individual. The family shall be provided a hearing before any person(s) designated by the responsible entity (including an officer or employee of the responsible entity), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision.
- 24 CFR 5.514(f)(2)(iii)(B)*
- Examination of evidence. The family shall be provided the opportunity to examine and copy at the individual's expense, at a reasonable time in advance of the hearing, any documents in the possession of the responsible entity pertaining to the family's eligibility status, or in the possession of the U.S. Citizenship and Immigration Services (as permitted by U.S. Citizenship and Immigration Services requirements), including any records and regulations that may be relevant to the hearing.
- 24 CFR 5.514(f)(2)(iii)(C)*
- Presentation of evidence and arguments in support of eligible status. The family shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.
- 24 CFR 5.514(f)(2)(iii)(D)*
- Controverting evidence of the responsible entity. The family shall be provided the opportunity to controvert evidence relied upon by the responsible entity and to confront and cross-examine all witnesses on whose testimony or information the responsible entity relies.
- 24 CFR 5.514(f)(2)(iii)(E)*
- Representation. The family shall be entitled to be represented by an attorney, or other designee, at the family's expense, and to have such person make statements on the family's behalf.

Section 2: Restrictions on Assistance to Noncitizens—Subpart E

- 24 CFR 5.514(f)(2)(iii)(F)*

 - Interpretive services. The family shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or responsible entity, as may be agreed upon by the two parties to the proceeding.

- Final LEP Guidance 1/27/07*

 - **Note:** This provision has been superseded by the Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons; Notice published January 22, 2007.

- 24 CFR 5.514(f)(2)(iii)(G)*

 - Hearing to be recorded. The family shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to, be provided by the responsible entity).

- 24 CFR 5.514(f)(3)*

 - Hearing decision. The responsible entity shall provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 days of the date of the informal hearing. The decision shall state the basis for the decision.

- 24 CFR 5.514(g)*

 - Judicial relief. A decision against a family member, issued in accordance with paragraphs (e) or (f) above, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

RETENTION OF DOCUMENTS

24 CFR 5.514(h)

The PHA must retain for a minimum of 5 years the following documents that may have been submitted to the PHA by the family, or provided to the PHA as part of the USCIS appeal or the PHA informal hearing process:

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form
- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision

24 CFR 5.514(h)(2)

In the Section 8 Housing Choice Voucher (HCV) and moderate rehabilitation programs, assisted occupancy is terminated by terminating assistance payments. The PHA shall not make any additional assistance payments to the owner after the required procedures specified in this section have been completed. In addition, the PHA shall not approve a lease, enter into an assistance contract, or process a portability move for the family after those procedures have been completed.

With good cause, PHAs may extend the period to request an informal hearing related to immigration status.

Section 3 Hearings for Participants/Tenants

Although the regulations for hearings (“informal hearings” in HCV, “grievance hearing” in PH) differ in particulars, the content and intent are similar for both programs. Here are the similarities:

DUE PROCESS REQUIREMENTS

*HCV: 24 CFR 982.555
PH: 24 CFR 966.50.54 and
955.56-57*

NOTICE TO FAMILY

Both programs require that the family receive notification of any adverse action and be given the opportunity to request a hearing. The PHA must give the family prompt written notice that the family may request a hearing.

Where a hearing for a participant family is required, the PHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

HEARING OFFICER

*Streamlining Administrative
Regulations Final Rule*

Both the HCV and PH regulations require the hearing officer to be an impartial person or persons designated by the PHA, other than a person who made or approved the PHA decision under review or a subordinate of such person.

In both programs, it is the hearing officer who conducts the hearing and regulates the conduct of the hearing in accordance with the PHA’s hearing/grievance procedure.

Section 3: Hearings for Participants/Tenants

HEARING PROCEDURES

The actual hearing procedures are different for each program, so we'll cover those in their respective chapters. However, the following is true for both programs:

- The family must be given the opportunity to examine, before the hearing, any PHA documents, records, and regulations relevant to the hearing.
- The family must be allowed to copy any such document at the family's expense.
- If the PHA does not make the document available for examination on request of the family, the PHA may not rely on the document at the hearing.
- The family has a right to be represented by counsel or other representative, at the family's expense.
- The family must be given the opportunity to present evidence and arguments, and to confront and cross-examine all witnesses upon whose testimony or information the PHA relies.
- Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.
 - The decision is made based on preponderance of the evidence, which will be discussed in a later chapter.
- The decision is based solely and exclusively on the facts presented at the hearing.
- The person who conducts the hearing must issue a written decision within a reasonable time, as specified in the PHA's hearing/grievance procedure.

Section 3: Hearings for Participants/Tenants

BURDEN OF PROOF

Generally, the law follows the rule that “ordinarily the party seeking a change in the status quo has the burden of proof.” The same is true for hearings. If the PHA is seeking a change in status for a participant or tenant, the burden of proof would be on the PHA, with the standard of proof preponderance of the evidence.

EX PARTE COMMUNICATIONS

The hearing officer must avoid, and avoid even the appearance of, *ex parte communications* before, during, and even after the hearing.

Ex parte communications means a contact between the decision-maker and a party, or other individual on behalf of that party, regarding the merits of a matter under review, without notice and opportunity for all parties to participate. The purposes of the prohibition are to ensure that:

- No person has a special influence over, or opportunity to persuade, a decision-maker
- All parties to a proceeding have an opportunity to rebut any facts considered by the decision-maker
- All facts considered by the decision-maker are on the record

Section 3: Hearings for Participants/Tenants

EFFECT OF DECISION

The PHA is not bound by a hearing decision:

- Concerning a matter for which the PHA is not required to provide an opportunity for an informal hearing under this section, or that otherwise exceeds the authority of the person conducting the hearing under the PHA hearing procedures.
- Contrary to HUD regulations or requirements, or otherwise contrary to federal, state, or local law.
- Public housing regulations state that the PHA board of commissioners makes this determination. In HCV, the determination would be the authority stated in the administrative plan, such as the executive director.

If the PHA determines that it is not bound by a hearing decision, the PHA must promptly notify the family of the determination, and of the reasons for the determination.

Both programs' regulations are very clear that a decision by the hearing officer does not constitute a waiver of, nor affect in any manner, any rights the complainant may have to a subsequent trial or judicial review in court.

Learning Activity 2-1: Burden of Proof

Scenario

- Johnson Rojo was a participant in the Section 8 program of the West Hills Housing Authority (WHHA). He received Section 8 assistance for leasing a house in which only he, his wife and 5 minor children were to reside per the lease. Rojo received a termination notice after a neighbor reported that an undisclosed person had also been living in the house. The termination notice was based upon HUD regulations which prohibit an unauthorized tenant in assisted units, but do not prohibit a participant from having house guests. 24 C.F.R. §982.551(h)(2). WHHA policies consider an individual to be unauthorized if residing in the unit more than 15 consecutive days without authority approval, or a total of 30 days in a 12 month period.
- The PHA's case was based on a police report indicating that Winona Rojo, Mr. Rojo's mother, was in the unit when the family called 911 for a suspected health emergency of Winona Rojo's. One week after the police report, the WHHA inspector, performing an annual inspection, noted the presence of Mr. Rojo's mother in the unit.
- An informal hearing requested by Rojo was held by WHHA. After an adverse decision, and unsuccessful efforts to have the hearing officer's decision overturned, the Rojos filed a lawsuit alleging deprivations of their rights to procedural due process under 24 C.F.R. §982.555(e)(5)&(6), and 42 U.S.C. §1983. Specifically, the Rojos claimed that the PHA improperly placed the burden of proof on them rather than on the PHA seeking to terminate their housing assistance. The District Court granted summary judgment against the Rojos, finding no violation of due process, and this appeal was taken.
- The inquiry on appeal was whether WHHA or the Section 8 participant bore the burden of persuasion in an administrative hearing held under HUD regulations to determine whether a participant's housing subsidy should be terminated. If the public housing authority had that burden, the question was then whether due process allowed the burden to be met in this case by the submission of copies of the police report and inspector's report on which the authority relied.

Section 3: Hearings for Participants/Tenants

Your decision?

- How would you have decided this case if you were the appeal court judge?

Section 4 Summary of Hearing Rights for Applicants and Participants/Tenants

Following is a summary of rights under the public housing and voucher programs, as well as the multifamily programs.

Applicants - Determination of Eligibility					
	Public Housing	Vouchers (HCV and PB)	Multifamily-PHA Owner (PB Section 8)	PB Section 8 Private Owner	Other Multifamily Private Owner
Written notice of reason for denial	Applicant must be provided with prompt notice stating basis for ineligibility determination and informing applicant of opportunity to request informal hearing	Prompt written notice with brief statement of reasons required	PHA must provide prompt notice stating the reason for the rejection and afford applicant an opportunity for informal hearing	Owner must promptly notify the applicant in writing of reason for its determination of ineligibility, and must inform applicant of the right to a meeting with the owner or managing agent	Yes. Written rejection notice must include specific reasons for rejection
Time to request hearing or meeting	Must be within a "reasonable time." PHA must provide applicant with the time period	PHA must inform applicant of deadline to request informal review but time period is not prescribed by regulation or HUD guidance	14 days	14 days	14 days
Independent officer (not person who made decision or subordinate)	Yes	Yes	Yes	Yes	Yes
Right to inspect documents supporting denial in advance of meeting/hearing	If denial is for criminal activity	Not required. Must be established in PHA administrative plan	Not specified	Not specified	Not specified
Right to present oral evidence	Yes	Yes	Not specified	Not specified	Not specified
Right to bring representative	Not specified	Not specified	Not specified	Not specified	Not specified
Written decision specifying outcome and grounds	No	No	No	No	No
Further appeal right	No	No	No	No	No

Participants/Tenants - Eviction/Termination of Assistance						
	Public Housing	Vouchers (HCV and PB)	Multifamily-PHA Owner (PB Section 8)	PB Section 8 Private Owner	Other Multifamily Private Owner	
Written notice of reason for denial	Yes	Yes	Yes	Yes	Yes	
Time to request hearing or meeting	PHA has discretion to set timeframe in grievance procedures, but must give tenants notice of procedures	Notice must contain deadlines to request hearing, but timeframe is not prescribed	10 days to discuss termination with owner	10 days to discuss termination with owner	10 days to discuss termination with owner	
Independent officer (not person who made decision or subordinate)	Yes	Yes	No	No	No	
Right to inspect documents to be presented in advance of meeting/hearing	Yes	Yes	Not specified	Not specified	Not specified	
Right to present oral evidence	Yes	Yes	Not specified	Not specified	Not specified	
Right to bring representative	Yes	Yes	No	No	No	
Written decision specifying outcome and grounds	Yes	Yes	No	No	No	
Further appeal right	State court eviction process	State court eviction process	State court eviction process	State court eviction process	State court eviction process	

Section 5 Post-Test

There may be more than one correct answer.

1. The PHA notice to the family denying assistance need not reference reason(s) for the PHA's denial.
 - a. True
 - b. False
2. Per the HUD regulations, the timeframe in which the PHA must give the family written notice of a decision denying assistance is:
 - a. Prompt
 - b. 5 days
 - c. 10 working days
 - d. Established in PHA policy
 - e. a and d
 - f. c and d
3. Whenever the PHA makes a determination to deny based on ineligible immigration status, the PHA must offer the applicant family the opportunity to request:
 - a. A review
 - b. A meeting with the person who made the decision
 - c. A judicial hearing
 - d. A hearing
 - e. A meeting with the person who approved the decision
4. The family must be given the opportunity to examine, before the hearing, any PHA documents directly relevant to the hearing.
 - a. True
 - b. False
5. A person other than the person who conducts the hearing may issue a written decision on the case.
 - a. True
 - b. False

Section 5: Post-Test

6. Determinations related to the circumstances of the case under hearing must be based on (select all that apply):
 - a. Indisputable proof
 - b. Written documents and not oral testimony
 - c. Hearsay
 - d. Whether the PHA followed all due process steps
 - e. Preponderance of the evidence
7. The PHA is always bound by a hearing decision.
 - a. True
 - b. False
8. If a PHA obtains criminal record information from a state or local agency under 5.903, showing that an applicant's household member has been involved in a crime relevant to applicant screening, the PHA must do all of the following except:
 - a. Notify the household of the intention to deny admission based on criminal history
 - b. Immediately notify the family of denial of admission
 - c. Provide the subject of record and the applicant a copy of (or opportunity to view) the criminal record information
 - d. Provide an opportunity, before denial, to dispute the accuracy and/or relevancy of the criminal record information
9. Applicants are provided the right to the full hearing when the case involves:
 - a. Termination of assistance for criminal or drug-related activity
 - b. Denial based on restrictions to noncitizens
 - c. Nonpayment of rent
 - d. Discrimination complaints
 - e. Due process
10. It is reasonable for the PHA to set policy to deny admission for criminal activity that indicates a demonstrable risk or threat to safety and/or property.
 - a. True
 - b. False

CHAPTER 3 **HUD Regulations for the Housing Choice Voucher Program**

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Recognize HUD Housing Choice Voucher regulations for informal reviews for applicants
- Identify when the informal review is not required for applicants
- Identify HUD Housing Choice Voucher regulations for informal hearings for participants
- Discern under what circumstances the PHA is required and not required to offer participants the right to an informal hearing
- Recognize the processes and terms used in the Housing Choice Voucher regulations with regard to informal reviews and hearings

TERMINOLOGY

With the exception of decisions related to restrictions on non-citizens, an informal review is for voucher program applicants and an informal hearing is for program participants. Decisions related to restrictions on assistance to non-citizens always require an informal hearing regardless of whether the family is an applicant or a participant.

Section 1 Informal Review for Applicants

HCV Occupancy Guidebook

The PHA has latitude in establishing reasonable time frames for families to request a review.

INFORMAL REVIEW PROCESS

24 CFR 982.554(b)

A PHA's administrative plan must clearly state the policies for informal reviews for applicants and informal hearings for participants. In addition, the PHA's briefing packet, provided to all voucher holders, must include a description of the procedures for requesting informal reviews and informal hearings.

The PHA must give an applicant an opportunity for an informal review of the PHA's decision denying assistance to the applicant. The administrative plan must state the PHA procedures for conducting an informal review. The PHA review procedures must comply with the following:

- The review may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person.
- The applicant must be given an opportunity to present written or oral objections to the PHA decision.
- The PHA must notify the applicant of the PHA final decision after the informal review, including a brief statement of the reasons for the final decision.

Section 1: Informal Review for Applicants

WHAT DENIAL OF ASSISTANCE MAY INCLUDE

24 CFR 982.552(a)(2)

Denial of assistance may include any or all of the following:

- Denying listing on the PHA waiting list
- Denying or withdrawing a voucher
- Refusing to enter into a HAP contract or approve a lease
- Refusing to process or provide assistance under portability procedures

For PHAs with 50 or more employees, the ADA also requires some form of review or “hearing” for applicants denied a reasonable accommodation or making any kind of disability discrimination complaint. These issues could be addressed in the informal review procedures or could be conducted by the PHA’s 504/ADA/fair housing coordinator, or other PHA official.

OPPORTUNITY TO DISPUTE FOR CRIMINAL HISTORY

24 CFR 5.903(f)

If a PHA determines to deny based on criminal records, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the applicant or tenant a copy of such information (or opportunity to view the record) and an opportunity to dispute accuracy and relevance. This opportunity must be provided before the PHA issues the notice of denial of admission.

WHEN INFORMAL REVIEW IS NOT REQUIRED

24 CFR 982.554(b)

The appeal should first be reviewed to ensure that the matter is not excluded from the informal review process. If not excluded, the PHA's administrative plan or hearing policies should stipulate which department or office is responsible for the activity being appealed. The applicant should be contacted by the appropriate party and a meeting arranged at a mutually agreeable time.

24 CFR 982.554(c)

The PHA is not required to provide the applicant an opportunity for an informal review for any of the following:

- Discretionary administrative determinations by the PHA.
- General policy issues or class grievances.
- A determination of the family unit size under the PHA subsidy standards.
- A PHA determination not to approve an extension of the voucher term.
- A PHA determination not to grant approval of the tenancy.
- A PHA determination that a unit selected by the applicant is not in compliance with HQS.

Section 2 Informal Hearing for Participants

WHEN HEARING IS REQUIRED

24 CFR 982.555

A PHA must give a participant family an opportunity for an informal hearing to consider whether the following PHA decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations and PHA policies:

1. A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment.
2. A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the PHA utility allowance schedule.
3. A determination of the family unit size under the PHA subsidy standards.
4. A determination to terminate assistance for a participant family because of the family's action or failure to act (see § 982.552).
5. A determination to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under PHA policy and HUD rules.

In the cases of #4, and #5 above, the PHA must give the opportunity for an informal hearing before the PHA terminates housing assistance payments for the family under an outstanding HAP contract.

WHEN HEARING IS NOT REQUIRED

24 CFR 982.555(b)

The PHA is not required to provide a participant family an opportunity for an informal hearing for any of the following:

- Discretionary administrative determinations by the PHA
- General policy issues or class grievances
- Establishment of the PHA schedule of utility allowances for families in the program
- A PHA determination not to approve an extension of a voucher term
- A PHA determination not to approve a unit or tenancy
- A PHA determination that an assisted unit is not in compliance with HQS (However, the PHA must provide the opportunity for an informal hearing for a decision to terminate assistance for a breach of the HQS caused by the family as described in §982.551(c))
- A PHA determination that the unit is not in accordance with HQS because of the family size
- A determination by the PHA to exercise or not to exercise any right or remedy against the owner under a HAP contract

NOTE ON PHA POLICY

While the PHA must offer informal hearings when required by regulation, the PHA is not limited to those criteria. The PHA should consider if it will offer HCV participants the opportunity for an informal hearing for any reason or reasons other than those required by the regulations.

For example, the PHA can consider adding to the HCV administrative plan to offer informal hearings for the following:

24 CFR 8.53(b)

Denial of a Reasonable Accommodation Request

An agency that employs fifteen or more persons must adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints related to the denial of a reasonable accommodation request.

- These procedures are not required for complaints from applicants for admission.

Section 2: Informal Hearing for Participants

The PHA could either delegate this responsibility to the 504 (fair housing) coordinator or add it to the admin plan as criteria for informal hearings.

24 CFR 984.303(i)

Family Self-Sufficiency (FSS)

The PHA may withhold the coordination of supportive services or terminate the FSS family's participation in the FSS program if the PHA determines, in accordance with the FSS Action Plan hearing procedures, that the FSS family has failed to comply without good cause with the requirements of the FSS Contract of Participation.

- This hearing procedure may be articulated in the FSS Action Plan. However, if there is not a hearing procedure described in the FSS Action Plan, and the PHA has an FSS program, the PHA should consider the admin plan, affording the opportunity for an informal hearing for the above.

NOTICE TO FAMILY

24 CFR 982.555(c)

In the cases under "When Hearing is Required," #1, #2 and #3 (above), the PHA must notify the family that the family may ask for an explanation of the basis of the PHA determination, and that if the family does not agree with the determination, the family may request an informal hearing on the decision. In the cases under "When Hearing is Required," #4 and #5 (above), the PHA must give the family prompt written notice that the family may request a hearing.

The notice must:

- Contain a brief statement of reasons for the decision
- State that if the family does not agree with the decision, the family may request an informal hearing on the decision
- State the deadline for the family to request an informal hearing

Section 2: Informal Hearing for Participants

EXPEDITIOUS HEARING PROCESS

24 CFR 982.555(d)

Where a hearing for a participant family is required, the PHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

HEARING PROCEDURES

24 CFR 982.555(e)

ADMINISTRATIVE PLAN

The administrative plan must state the PHA procedures for conducting informal hearings for participants.

DISCOVERY

By family

The family must be given the opportunity to examine before the PHA hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such document at the family's expense. If the PHA does not make the document available for examination on request of the family, the PHA may not rely on the document at the hearing.

By PHA

The PHA hearing procedures may provide that the PHA must be given the opportunity to examine at PHA offices before the PHA hearing any family documents that are directly relevant to the hearing. The PHA must be allowed to copy any such document at the PHA's expense. If the family does not make the document available for examination on request of the PHA, the family may not rely on the document at the hearing.

Documents

The term "documents" includes records and regulations.

REPRESENTATION OF FAMILY

At its own expense, the family may be represented by a lawyer or other representative.

Section 2: Informal Hearing for Participants

HEARING OFFICER: APPOINTMENT AND AUTHORITY

The hearing may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person.

The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA hearing procedures.

EVIDENCE

The PHA and the family must be given the opportunity to present evidence, and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

ISSUANCE OF DECISION

The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family shall be based on a preponderance of the evidence presented at the hearing. A copy of the hearing decision shall be furnished promptly to the family.

EFFECT OF DECISION

24 CFR 982.555(f)

The PHA is not bound by a hearing decision:

- Concerning a matter for which the PHA is not required to provide an opportunity for an informal hearing under this section, or that otherwise exceeds the authority of the person conducting the hearing under the PHA hearing procedures.
- Contrary to HUD regulations or requirements, or otherwise contrary to federal, state, or local law.

If the PHA determines that it is not bound by a hearing decision, the PHA must promptly notify the family of the determination, and of the reasons for the determination.

- The PHA's administrative plan stipulates who has authority (for example, the executive director) to determine that the PHA is not bound by a hearing decision.

Learning Activity 3-1: Informal Review Scenario

Instructions:

You are conducting a voucher informal review. The following are the facts:

Scenario

Several years ago, Pamela Woods applied for housing assistance with the Green River PHA. At her request, she was placed on the waiting lists for both public housing and the voucher program. Four months ago, Ms. Woods reached the top of the public housing list. The PHA determined that the family was eligible, and they moved into a public housing development.

Two weeks ago, the PHA notified Ms. Woods that her name had reached the top of the waiting list for the voucher program. The PHA notice went on to say that since Ms. Woods had signed a one-year lease for her public housing unit, the PHA would not issue a voucher at this time. Ms. Woods appealed the PHA’s decision.

At the review, the PHA explains its policy governing public housing tenants who reach the top of the voucher waiting list; the PHA will hold the tenant’s application until the end of the 12-month public housing lease and will then issue a voucher if the family is still eligible. The public housing lease is a legally binding contract and allowing tenants to move out after only a few months is disruptive and costly for the agency. The PHA states that it is not denying Ms. Woods’ application for voucher assistance, but Ms. Woods will be required to complete the term of the public housing lease prior to voucher issuance. Most of the applicants on the voucher waiting list are not already receiving assisted housing and have a greater need for immediate assistance.

What is your decision, and why?

Section 3 **HUD Regulations Regarding Termination of Assistance**

24 CFR 982.552(b)

HUD regulations require termination of assistance in some situations. The hearing officer should be familiar with these regulations when reviewing and hearing a termination case.

For example:

24 CFR 982.552(b)(2)

The PHA must terminate program assistance for a family evicted from housing assisted under the program for serious violation of the lease. As we will discuss further, incidents of actual or threatened domestic violence, dating violence, sexual assault, stalking, or human trafficking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking.

- A family will be considered evicted if the family moves after a legal eviction order has been issued, whether or not physical enforcement of the order was necessary.
 - The participant still has a right to request an informal hearing with the PHA to appeal the voucher termination.
 - The PHA would not make a decision contrary to the court decision.

However, a judge might uphold a landlord's decision to evict for serious or repeated violations of the lease but did not address issues of disability and reasonable accommodation that were related to the eviction. In this case, if the family requests an informal hearing, the PHA should take the new reasonable accommodation issue into consideration.

HCV families may be evicted for reasons other than for serious violations of the lease, in which case 24 CFR 982.552(b)(2) wouldn't apply and termination is not mandatory. For example, a landlord might evict a family who doesn't move out because the landlord wants to sell the unit or rent to someone else.

If a family moves after the owner has given the family an eviction notice for serious or repeated lease violations but before a legal eviction order has been issued, termination of assistance is not mandatory. In such cases the PHA will consider the circumstances.

Section 3: HUD Regulations Regarding Termination of Assistance

In the two scenarios above, If the family includes a person with disabilities, the PHA decision concerning termination is subject to consideration of reasonable accommodation

24 CFR 982.552(c)(1)

HUD regulations also give PHAs *authority* to terminate assistance and list the many provisions that are grounds for termination of assistance. These are discretionary decisions of the PHA.

24 CFR 982.552(c)(2)

- *Consideration of circumstances.* In determining whether to deny or terminate assistance because of action or failure to act by members of the family, the PHA (and the hearing officer) should consider all circumstances:

24 CFR 982.552(c)(2)(i)

- The PHA may consider all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of termination of assistance on other family members who were not involved in the action or failure.

24 CFR 982.552(c)(2)(ii)

- The PHA may impose, as a condition of continued assistance for other family members, a requirement that other family members who participated in or were culpable for the action or failure will not reside in the unit. The PHA may permit the other members of a participant family to continue receiving assistance.

Section 3: HUD Regulations Regarding Termination of Assistance

24 CFR 982.552(c)(2)(iii)

- In determining whether to deny admission or terminate assistance for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the PHA may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully. For this purpose, the PHA may require the applicant or tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.
- When determining whether to deny admission or terminate assistance based on criminal activity in cases when there is a record of arrest, the PHA may obtain a copy of the police report associated with the arrest and consider the circumstances of the arrest, including:
 - Any statements made by witnesses or the applicant not included in the police report
 - Whether criminal charges were filed
 - Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal
 - Any other evidence relevant to determining whether or not the applicant engaged in disqualifying activity

24 CFR 982.552(c)(2)(iv)

- Again, if the family includes a person with disabilities, the PHA decision is subject to consideration of reasonable accommodation

24 CFR 982.552(c)(2)(v)

The PHA's termination actions must be consistent with fair housing, and with the VAWA requirements for protection of victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking.

Learning Activity 3-2: Mitigating Circumstances

Stephanie Stewart was a disabled Section 8 participant in the Oakville Housing Authority's (OHA) HCV program. Her adult son, Ray, was charged with murder and assault and battery by means of a dangerous weapon. The criminal conduct occurred approximately 1.7 miles from the Section 8 apartment. Ms. Stewart had no knowledge of her son's criminal activity. With the exception of one delay in reporting her income, Ms. Stewart had always complied with HCV program requirements.

OHA terminated the participant's Section 8 assistance based on:

1. A family member engaging in violent criminal activity, and
2. A family member engaging in criminal activity that threatens the health and safety of other residents and persons in the immediate vicinity of the premises.

The OHA hearing officer upheld the termination. In her decision, the hearing officer documented that there were mitigating factors that applied to the participant: she did not participate in or know of her son's criminal activity, and she suffered from a disability and would be “greatly affected” by termination that would render her homeless. Additionally, the participant offered to remove her son from the lease.

The OHA hearing officer's decision took strong consideration of these mitigating circumstances, but ultimately determined that, when weighed against the seriousness of the violations in this case, they were not sufficient to offset termination. The hearing officer's decision stated that a hearing officer does not have the authority to consider a lesser sanction. The participant subsequently was rendered homeless. The participant sued the PHA in court.

How would you decide if you were the judge in this case?

Section 4 HCV Terminations—Review of Principles and Best Practices

DUE PROCESS PRINCIPLES

Remember, because of rights guaranteed under the U.S. Constitution, people receiving housing assistance benefits have a property interest in those benefits. Because of that property interest, terminations must comply with the fundamental principles of due process, which are:

ADEQUATE NOTICE

Best practice for PHA notices

All HCV termination notices should use the same heading to alert the family to the action the PHA is taking.

Recommended: Notice of Housing Assistance Termination and Termination of Housing Assistance Payment (HAP) Contract

- *Note: Many people do not seem to know what the HAP is, so stating up front that their housing assistance will terminate is more effective.*

The termination notice must state the reasons for the termination decision, including authority (CFR citation) for the decision and specifics regarding who did what, where, and when.

OPPORTUNITY TO DEFEND AGAINST THE GOVERNMENT ACTION

Best practice for PHA notices

Termination notice states the authority on which the PHA relies to reach its decision, so the person can prepare an adequate defense.

Authority—Cite the specific CFR section, administrative plan section and the Voucher Family Obligations section the family violated.

Use the full citation for the CFRs, for example: 24 CFR 982(c)(1)(i).

Use the full citation for Family Obligations, for example: PHA Administrative Plan, Chapter 2.3.A.1; PHA Family Obligations, #6.

Section 4: HCV Terminations—Review of Principles and Best Practices

With all termination notices, include explanation of right to invoke protections under the Violence Against Women Act (VAWA), Form HUD-5380, and VAWA self-certification Form HUD-5382.

HEARING PRIOR TO TERMINATION

The hearing must be fair, which means:

- The person must have
 - An opportunity to be heard
 - The right to confront witnesses
 - The right to representation
 - An impartial decision-maker
 - A decision based only on the evidence presented at the hearing (no contacts with the hearing officer outside the hearing about the case)
 - A decision that includes the reasons and evidence relied upon



River County Housing Authority

NOTICE OF TERMINATION AND RIGHT TO REQUEST AN INFORMAL HEARING

Sarah McMillan
2350 Sixth Avenue #4
Riverdale, STATE

September 6, 2018
Account: 02993

WHY ARE WE SENDING YOU THIS NOTICE?

We are sending you this Notice because on October 6, 2018 we intend to terminate your Housing Choice Voucher (Section 8) assistance.

WHAT ARE OUR REASONS FOR TAKING THIS ACTION?

We have reason to believe that on or about July 28, 2018 the following occurred:

Sarah McMillan violated a federal law, regulation, or River County Housing Authority (RCHA) administrative policy by:

Failing to report the removal of Lester McMillan and Susan McMillan from the assisted unit; allowing unauthorized household member Joseph Hanna to reside in the assisted unit since approximately March 2018.

You have committed serious lease and program violations.

WHAT ARE THE LEGAL GROUNDS FOR OUR ACTION?

This action is based on the following federal laws, regulations, and/or RCHA administrative policies:

Violation	Regulation or Policy
Fail to supply true and complete information	24 CFR 982.516(b)(4); 982(c)(1)(i); RCHA Section 8 Admin Plan Chapters 8.2, 11.10; Notice of Rights & Responsibilities
Fail to report household composition changes	24 CFR 982.516(c); 982.551(h)(2&3); 982.552(c)(1)(i); RCHA Section 8 Admin Plan Chapters 8.2, 8.4; Notice of Rights & Responsibilities
Committed serious violations of lease	24 CFR 982.551(c)(1)(i); RCHA Section 8 Admin Plan Chapter 11.2, 11.4, 11.6; Notice of Rights & Responsibilities

HOW TO REQUEST A HOUSING CHOICE VOUCHER INFORMAL HEARING

Turn this page over for information on how to request an informal hearing.

HOW TO REQUEST AN INFORMAL HEARING

You have the right to request a fair hearing and decision by an impartial hearing officer. You must state why you disagree with our intended action.

Your request for a hearing must be made within **10 business days** from **September 6, 2018**. If you wish to request a hearing, please send this page to: **Jana Friedman, Hearing Coordinator, River County Housing Authority, 1000 First Avenue, Riverdale STATE**. If you need any assistance in making this request, contact your Housing Specialist, who will help you.

If you make your hearing request within **10 business days** from **September 6, 2018**, your housing choice voucher benefits, if any, will continue at the current level, at least until the hearing decision is issued.

If you request a hearing within the time above, the River County Housing Authority will send you a Hearing Notification Letter, scheduling the date and time of the hearing. The family and/or family representative has the right to view, before the hearing, any documents the Riverdale County Housing Authority will rely on at the hearing. RCHA will send you a packet of the documents on which RCHA will rely at the hearing, no later than three days before the hearing.

WHAT RIGHTS DO YOU HAVE AT THE INFORMAL HEARING?

A complete list of your rights at the hearing will be sent to you when the River County Housing Authority receives your hearing request. You may review the complete housing choice voucher regulations at our office. Please call Jana Friedman at (421)801-2832 if you wish to review the complete regulations. **This is a summary of your rights at an information hearing: (1) The right to be represented by an attorney or any other person of your choice (free legal advice may be available from a variety of local agencies); (2) The right to present any evidence on your behalf, including the right to bring and question your own witnesses, and the right to cross-examine our witnesses; and (3) The right to review contents of our hearing packet before the hearing.**

Informal hearings are conducted by a staff member not involved in making or approving the decision and is not a subordinate of anyone who made or approved the decision to terminate your assistance. The staff person(s) who made the decision will attend the informal hearing.

If you request a hearing, use the last page. This will assist us in processing your case. If someone other than yourself completes and files the request for a hearing, you must complete a written statement authorizing that person to act as a representative.

You also have the right to request an interpreter, free of charge.

If you are a person with disabilities, and you believe a disability-related limitation is a mitigating factor, or if you believe a specific reasonable accommodation would allow the PHA to reconsider this decision, you may request a reasonable accommodation. You may use the form on the reverse side of this page.

You also have protections under the Violence Against Women Act (VAWA) if you are a victim of domestic violence, dating violence, sexual assault or stalking. VAWA protections are gender-neutral. A notice of VAWA rights and VAWA certification form HUD-5382 are enclosed with this notice.

Learning Activity 3-3: Evaluating Notice

***Middletown Housing Authority
2200 Town Square
Middletown STATE, ZIP***

July 12, 2019

Family	Mitchell Fabre	Owner	Crown Ridge Apts.
Address:	<u>Middletown, NV</u>	Address:	<u>Middletown, NV</u>

**Tenant Notification of Termination of Program Assistance and
Housing Assistance Payment Contract
(Tenant Noncompliance)**

HAP Contract #: VO1824
Anniversary Date: September

In compliance with federal requirements, the Middletown Housing Authority will terminate the above-referenced Housing Assistance Payments (HAP) Contract, effective September 1, 2019 because:

Specifically:

On March 2, 2019 you came into the office to turn in documentation that was requested from you. You were told, in order for your file to be completed, a statement from your landlord was needed approving the additional person to your household. That same day you came back with a signed letter of approval. That letter was not written by the apartment manager, and appears to have a forged signature.

You are the hearing officer in this case. How would you decide?

Section 5 Post-Test

1. In which documents must the PHA state its policies for informal review for applicants and informal hearing for participants?
 - a. PHA plan and administrative plan
 - b. Administrative plan and briefing packet
 - c. Tenant obligations under the voucher and the HAP contract
 - d. The ACC and administrative plan
 - e. The PHA's 5-year-plan and the grievance procedures
2. The PHA is not required to provide an applicant the opportunity for an informal review for:
 - a. A determination of the family unit size under the PHA subsidy standards
 - b. Determination of ineligibility for being over the income limits
 - c. Denial for criminal history
 - d. The PHA is required to provide the opportunity for an informal review for all of the above
3. The PHA must give a participant family an opportunity to request an informal hearing for the following:
 - a. Establishment of the PHA schedule of utility allowances
 - b. PHA determination not to approve an extension of a voucher term
 - c. PHA determination of the family's income and computation of the housing assistance payment
 - d. PHA determination that the unit is not in accordance with HQS because of the family size
 - e. The PHA must afford the family an opportunity to request an informal hearing for all of the above

Section 5: Post-Test

4. The Housing Choice Voucher hearing decision is based on what standard of proof?
 - a. Beyond a reasonable doubt
 - b. Guilty until proven innocent
 - c. Preponderance of the evidence
 - d. Innocent until proven guilty
 - e. Statistically significant
5. The PHA must pay for the family's legal counsel or other representative if requested by the family.
 - a. True
 - b. False
6. All of the PHA's policies in the administrative plan are subject to informal hearings.
 - a. True
 - b. False
7. The PHA Housing Choice Voucher hearing procedures:
 - a. Must provide that the PHA must be given the opportunity to examine, before the PHA hearing, any family documents directly relevant to the hearing
 - b. May provide that the PHA must be given the opportunity to examine, before the PHA hearing, any family documents directly relevant to the hearing
 - c. Must provide that the PHA may be given the opportunity to examine, after the PHA hearing, any family documents directly relevant to the hearing
 - d. Do not contain any provisions pertaining to the PHA examination of family documents before the hearing
8. Which statement is true?
 - a. The person who conducts the hearing must issue a written decision
 - b. An impartial person who attends the hearing must issue a written decision
 - c. Any person designated by the PHA may issue a written decision
 - d. The hearing officer may be other than the person who issues a written decision

Section 5: Post-Test

9. For what circumstances may the family first request an explanation, before an informal hearing is requested and conducted?
 - a. Determination of the family's annual or adjusted income
 - b. Determination of the appropriate utility allowance (if any) for tenant-paid utilities
 - c. Determination of the family unit size under the PHA subsidy standards
 - d. All of the above
 - e. None of the above
10. A voucher family can request a hearing for a PHA action against an owner.
 - a. True
 - b. False
11. In the voucher program, if participant is evicted from the unit for violation of the lease, the PHA must terminate the participant's assistance.
 - a. With no exceptions
 - b. Except that if the family includes a person with disabilities, the PHA decision is subject to consideration of reasonable accommodation
 - c. Except if the hearing officer believes it would be a hardship for the participant to move, and the PHA's payment standards are already set at 120 percent of FMR
 - d. b and c above

Notes

CHAPTER 4 HUD Regulations and Guidance—Public Housing

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Recognize HUD public housing regulations for informal hearings for applicants
- Explain HUD-declared due process determination and how it affects the hearing process
- Identify HUD public housing regulations regarding grievance hearings for tenants
- Describe the informal settlement conference afforded tenants as the first step in the grievance hearing
- Identify PHA options when selecting hearing officers or a hearing panel

OVERVIEW

The public housing program’s grievance procedures serve the same purpose as the Housing Choice Voucher’s informal hearing policies.

There are very few regulations for public housing informal hearings (termed “informal reviews” in HCV) for applicants. This puts more weight on the PHA’s policies. The PHA can use the old handbook 7460 and the Housing Choice Voucher regulations as guidance. We’ll integrate the guidance in this chapter.

There is an extra step in the hearing process for tenants, referred to as the informal settlement.

We’ll discuss HUD-declared due process for certain types of evictions. In addition, there may be additional requirements for a lease termination notice or notice to vacate under state or local landlord/tenant laws.

For public housing hearings, a key document is the public housing lease, which is the contract between the tenant and the PHA. In the voucher program, termination of assistance doesn't mean the family has to move out of the unit, whereas in public housing, termination of assistance is the same as eviction proceedings.

24 CFR 966.52(b)

The PHA grievance procedure must be included in, or incorporated by reference in, the lease.

STREAMLINING ADMINISTRATIVE REGULATIONS FINAL RULE

HUD published its Streamlining Administrative Regulations Final Rule on March 8, 2016. The intent in the rulemaking was to remove overly prescriptive process requirements for public housing grievances, where those requirements are not mandated by statute.

Section 1 Informal Hearings for Applicants

As mentioned previously, there are fewer HUD regulations for public housing than for the voucher program as related to the review (“informal hearing” is the term used in public housing) for applicants.

OPPORTUNITY TO DISPUTE FOR CRIMINAL RECORDS

24 CFR 5.903(f)

If a PHA decides to deny based on criminal records, the PHA must notify the household of the proposed action based on the information and must provide the subject of the record and the applicant a copy of such information (or opportunity to view the record) and an opportunity to dispute its accuracy and relevance before a denial of admission on the basis of such information.

See the sample notice at the end of this chapter.

NOTIFICATION OF DENIAL TO APPLICANTS

*24 CFR 960.208,
Public Housing Occupancy
Guidebook 4.9.*

The notice can be worded so that rejections for eligibility and for screening can be handled on the same form. The rejection letter should:

- Clearly state the reason for the rejection
- State the time period and process for requesting an informal hearing
- Provide notice to the applicant that a person with a disability has the opportunity to request consideration of reasonable accommodations
- Note that under the Violence against Women Act (VAWA), PHAs are required to notify applicants of their rights under VAWA (Form HUD-5380) when a person is denied assistance, and to provide a blank VAWA self-certification form (HUD-5382).

If the family fails to appear for their informal hearing, the denial of admission will stand, and the family will be so notified.

THE INFORMAL HEARING

In rendering a decision, the PHA will evaluate the following matters:

- Whether or not the grounds for denial were stated factually in the notice.
- The validity of grounds for denial of admission. If the grounds for denial are not specified in the regulations or in PHA policy, then the decision to deny assistance will be overturned.
- The validity of the evidence. The PHA will evaluate whether the facts presented prove the grounds for denial of admission. If the facts prove that there are grounds for denial, and the denial is required by HUD, the PHA will uphold the decision to deny admission.
- If the facts prove the grounds for denial, and the denial is discretionary, the PHA will consider the recommendation of the person conducting the informal hearing in making the final decision whether to deny admission.

A written record of the informal hearing decision should be mailed to the applicant and placed in the applicant's file. If the hearing decision overturns the rejection, processing for admission resumes.

HB 7465.1, para.4-4(a)(3)

PHAs are not required to provide an informal hearing to applicants who disagree with the position they have been given on the waiting list, the size and type of unit they will be offered, or other factors affecting their application. PHAs are also not required to provide an informal hearing when the applicant's name has been removed from the waiting list because the applicant has not provided information requested and required to establish eligibility (including responding to an update letter or appearing at an eligibility interview, when the applicant has been clearly notified in writing that failure to respond/appear will result in removal from the waiting list). In these cases, the PHA should offer the applicant the opportunity for an explanation, either by phone or in person.

Section 1: Informal Hearings for Applicants

Citation: Title II of the Americans with Disabilities Act, 28 CFR 35.107(b)

For PHAs with 50 or more employees, the ADA also requires some form of review or “hearing” for applicants denied a reasonable accommodation or making any kind of disability discrimination complaint. These issues could be addressed in the public housing informal hearing procedures or could be conducted by the PHA’s 504/ADA/fair housing coordinator, or other PHA official

Industry practice

Statements should be carefully worded to avoid unnecessary questioning of every PHA decision, and clearly stated so that the family knows which decisions they have a right to appeal and which they do not.

If the informal hearing decision overturns the denial, processing for admission will resume.

NOTICE OF INTENT TO TERMINATE BASED ON CRIMINAL RECORDS AND OPPORTUNITY TO DISPUTE

*24 CFR 5.903(f),
24 CFR 5.905(d), and
24 FR 960.204(c)*

If a PHA decides to terminate tenancy based on criminal records or sex offender records, the PHA must notify the household of the proposed action based on the information and must provide the subject of the record and the tenant a copy of such information (or opportunity to view the record), and an opportunity to dispute the record’s accuracy or relevance must be provided before a notice of termination is issued.

Section 2 **The First Step in the Grievance Process—Informal Settlement for Tenants**

As mentioned previously, in public housing there is an extra step in the grievance process for tenants.

24 CFR 966.54

The first step in the grievance process (other than an expedited grievance procedure) is the informal settlement. An informal settlement conference should have occurred before a grievance hearing can be held, unless good cause exists for the failure to have the conference.

The regulation expects that PHAs will hold an informal settlement. The PHA could establish policy to require that an informal settlement be held before the grievance hearing.

24 CFR 966.54

Any grievance shall be personally presented, either orally or in writing, to the PHA office or to the office of the project in which the tenant resides so that the grievance may be discussed informally and settled without a hearing.

Public Housing Occupancy Guidebook

Grievances always originate with a tenant. The grievance procedure must state where grievances will be accepted (central office or projects or both) and should state how long after the notice of adverse action the tenant has to file the grievance.

At the informal stage, the grievance first should be reviewed to ensure that the grievance is not a matter excluded from the grievance process. Then the grievance may be referred to the department or project responsible for the activity being grieved. At many PHAs, property managers conduct informal settlements. The tenant should be contacted and a meeting arranged at a mutually agreeable time.

The grievance procedure should state how long the PHA and the tenant have to set the meeting (commonly 10 working days). At the informal settlement, the tenant will present the grievance and the PHA staff person responsible for the area will attempt to settle the grievance.

Section 2: The First Step in the Grievance Process—Informal Settlement for Tenants

24 CFR 966.54

Within a reasonable amount of time specified in the grievance procedure (usually five working days), the PHA must provide the tenant with a written summary of the informal settlement. One copy must be given to the tenant and one retained in the PHA's tenant file.

Public Housing Occupancy Guidebook

- PHA grievance procedures usually specify five working days for the provision of the summary to the tenant.

24 CFR 966.54

The summary must specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons, and must specify the procedures by which a hearing may be obtained if the complainant is not satisfied.

Public Housing Occupancy Guidebook

Some PHAs have different methods for handling informal settlements which involve allegations of discrimination or harassment than for disputes about PHA operations.

Section 2: The First Step in the Grievance Process—Informal Settlement for Tenants

PHA
GRIEVANCE PROCESS
SUMMARY OF INFORMAL SETTLEMENT DECISION
(Insert date issuing this decision)

Dear:

The attached notice is the result of the informal settlement discussion held on (insert date) regarding your grievance filed with this agency on (insert date). If you are not satisfied with this decision, please note the procedure for obtaining a grievance hearing below.

Date Grievance Received:	
Tenant Name:	Address:
Statement of Grievance/Complaint:	
Informal Settlement Conducted By (include title):	Date:
Persons Present (identify whether present for PHA or tenant):	
Disposition of Complaint and Reasons:	

Section 2: The First Step in the Grievance Process—Informal Settlement for Tenants

Procedure to Request a Hearing:

If you, the tenant, wish to appeal this decision, you must submit a written request for a grievance hearing to the PHA within 5 business days of receipt of the summary of the informal settlement. Your request must specify the reasons for the grievance and the action or relief you seek.

If you do not request a hearing, the PHA's disposition of the grievance under the informal settlement process will become final. However, failure to request a hearing does not constitute a waiver by you of the right to contest the PHA's action in disposing of the complaint in an appropriate judicial proceeding.

Date copy given to Tenant: _____

Signed: _____

Title: _____

Section 3 Grievance Procedure for Tenants

Subpart B under 24 CFR § 966 addresses grievance procedures and requirements. What HUD considered overly prescriptive regulations regarding hearings were omitted under the Streamlining Administrative Regulations Final Rule, while some regulations were retained but moved.

PURPOSE

*Public Housing Occupancy
Guidebook*

The grievance procedure is an administrative method prescribed by HUD to deal with tenants' complaints.

24 CFR 966.50

The purpose of the HUD requirements under this subpart is to set forth the requirements, standards and criteria for a grievance procedure to be established and implemented by PHAs. The grievance procedure is to assure that a tenant is afforded an opportunity for a hearing if the tenant disputes within a reasonable time any PHA action or failure to act involving the tenant's lease with the PHA or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status.

REQUIREMENTS

24 CFR 966.52(a)

Each PHA must adopt a grievance procedure affording each tenant an opportunity for a hearing in accordance with HUD regulations.

24 CFR 966.52(b)

The PHA grievance procedure must be included in, or incorporated by reference in, all tenant dwelling leases.

24 CFR 966.52(c)

The PHA must provide at least 30 days notice to tenants and resident organizations setting forth proposed changes in the PHA grievance procedure, and providing an opportunity to present written comments.

Comments submitted must be considered by the PHA before adoption of any grievance procedure changes.

24 CFR 966.52(d)

The PHA must furnish a copy of the grievance procedure to each tenant and to resident organizations.

DEFINITIONS

There are several terms used by HUD with regard to public housing grievance procedures, which take on specific meanings different from their common usage. These terms are as follows.

24 CFR 966.53(a)

- *Grievance*—any dispute which a tenant may have with respect to PHA action or failure to act in accordance with the individual tenant's lease or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status.

24 CFR 966.53(b)

- *Complainant*—any tenant whose grievance is presented to the PHA or at the project management office.

24 CFR 966.53(f)

- *Tenant*—the adult person (or persons) (other than a live-in aide):
 - Who resides in the unit, and who executed the lease with the PHA as lessee of the dwelling unit, or, if no such person now resides in the unit,
 - Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit.

24 CFR 966.53(e)

- *Hearing officer*—an impartial person or persons selected by the PHA, other than the person who made or approved the decision under review, or a subordinate of that person. Such individual or individuals do not need legal training.
- PHAs must include their policies regarding the selection process of hearing officers and hearing panel members in the tenant lease.
 - Again, changes to the lease are subject to a 30-day comment period.

DUE PROCESS

The term *due process* means a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit.

Section 3: Grievance Procedure for Tenants

24 CFR 966.53(c)

The elements of due process, as determined by HUD, include the following safeguards:

- Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction
- The right to a private hearing unless the complainant requests a public hearing
- Right of the tenant to be represented by counsel
- Opportunity for the tenant to refute the evidence presented by the PHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense that the tenant may have
- A decision on the merits

24 CFR 966.52(e)

The PHA must not only meet the minimal procedural due process requirements, but also satisfy any additional requirements required by local, state, or federal law.

HUD-DECLARED DUE PROCESS DETERMINATION

24 CFR 966.51(a)(2)

If HUD has issued a due process determination for the state in which the PHA is located, the PHA may evict the occupants of the dwelling unit through the judicial eviction procedures relevant to the determination. In other words, in HUD-declared due process states, the PHA is not required to provide the opportunity for a hearing under the PHA's grievance procedure in some situations. A PHA may exclude from the PHA grievance procedures any grievance concerning a termination of tenancy or eviction that involves:

- Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other tenants or employees of the PHA
- Any violent or drug-related criminal activity on or off such premises
- Any criminal activity that resulted in felony conviction of a household member.

Section 3: Grievance Procedure for Tenants

HUD publishes in the *Federal Register* a notice listing the states for which HUD has issued a due process determination.

Note: HUD’s list does not always reflect state law. PHAs should check with legal counsel or Legal Aid.

*Public Housing Occupancy
Guidebook*

If a state’s due process determination is rescinded, PHAs in that state may use expedited grievance procedures to deal with the above three categories of due process lease terminations. Expedited grievance procedures typically eliminate the informal settlement and compress all dates.

*Public Housing Occupancy
Guidebook*

The grievance procedure must contain a statement of applicability in which the PHA describes the situations for which the grievance procedure is not applicable.

EXPEDITED GRIEVANCE

24 CFR 966.53(f)

If HUD has issued a due process determination, a PHA may make a policy decision not to exclude from the PHA grievance procedures grievances concerning a termination of tenancy or eviction that involves:

- Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA; or
- Any drug-related or violent criminal activity on or off such premises

If the PHA has made a policy decision to not bypass the grievance procedures for these criteria or if HUD rescinds the state’s due process determination, then the PHA may establish expedited grievance procedures. Examples of provisions under an expedited grievance procedure could include:

- Requiring the tenant to request a hearing within a shortened deadline, e.g., 5 days;
- Bypassing the informal settlement step;
- Requiring that the grievance hearing be scheduled and held within a shortened timeline, e.g., 5 days; and/or
- Requiring the hearing decision to be issued within a shortened timeline, e.g., 5 days.

WHEN A HEARING IS NOT APPLICABLE

24 CFR 966.51(b)

The PHA grievance procedure is not applicable to disputes between tenants not involving the PHA or to class grievances. The grievance procedure is not intended as a forum for initiating or negotiating policy changes between a group or groups of tenants and the PHA’s board.

PROCEDURE TO OBTAIN A HEARING

24 CFR 966.55(a)

Regulations covering procedures to obtain a hearing were removed by the Streamlining Administrative Regulations Final Rule. Therefore, PHAs should carefully review their ACOP policies and grievance procedures to ensure clarity and completeness for the following:

- Request to obtain hearing—how the complainant submits written request for a hearing, what PHA considers “reasonable time” in which to submit the request.
- Failure to request a hearing.
- How the hearing officer governs the hearing.

The regulation regarding payment into an escrow account for hearings concerning nonpayment of rent is removed.

SELECTION OF HEARING OFFICER OR HEARING PANEL

DEFINITIONS

24 CFR 966.53(e)

Hearing Officer means an impartial person or persons selected by the PHA, other than the person who made or approved the decision under review, or a subordinate of that person. Such individual or individuals do not need legal training.

- Procedures for selecting a hearing officer or panel are now determined by PHA policy. Regulations governing the process have been removed.

Public Housing Occupancy Guidebook 18.5

PHAs must avoid selecting a hearing officer or hearing panel who may be a friend of the complainant, have some personal stake in the matter under dispute, or may have an appearance of a lack of impartiality.

SCHEDULING OF HEARINGS

24 CFR 966.56(a)

The hearing must be scheduled promptly for a time and place reasonably convenient to both the complainant and the PHA and held before a hearing officer. A written notification specifying the time, place, and the procedures governing the hearing must be delivered to the complainant and the appropriate official.

PROCEDURES GOVERNING THE HEARING

24 CFR 966.56(b)

The complainant shall be afforded a fair hearing, which shall include:

- The opportunity to examine before the grievance hearing any PHA documents, including records and regulations, that are directly relevant to the hearing. The tenant shall be allowed to copy any such document at the tenant's expense. If the PHA does not make the document available for examination upon request by the complainant, the PHA may not rely on such document at the grievance hearing.
- The right to be represented by counsel or other person chosen as the tenant's representative, and to have such person make statements on the tenant's behalf;
- The right to a private hearing unless the complainant requests a public hearing;
- The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by the PHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the PHA or project management relies; and
- A decision based solely and exclusively upon the facts presented at the hearing.

Section 3: Grievance Procedure for Tenants

- 24 CFR 966.56(c)* If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for no more than 5 business days or may make a determination that the party has waived his right to a hearing. Both the complainant and the PHA must be notified of the determination by the hearing officer. A determination that the complainant has waived the complainant’s right to a hearing will not constitute a waiver of any right the complainant may have to contest the PHA’s disposition of the grievance in an appropriate judicial proceeding.
- 24 CFR 966.56(d)* At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the PHA must sustain the burden of justifying the PHA action or failure to act against which the complaint is directed.
- 24 CFR 966.56(e)* The complainant or the PHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript.
- 24 CFR 966.56(f)* *Accommodation of persons with disabilities.* The PHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.
- If the tenant is visually impaired, any notice to the tenant which is required under this subpart must be in an accessible format.
- Public Housing Occupancy Guidebook* Other examples of reasonable accommodation could include accepting grievances at alternate sites or by mail, or conducting a grievance hearing by phone or teleconference.
- 24 CFR 966.56(g)* *Limited English Proficiency.* PHAs must comply with HUD’s “Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons” issued on January 22, 2007 and available at <http://portal.hud>.

DECISION OF THE HEARING OFFICER OR HEARING PANEL

24 CFR 966.57

The hearing officer or hearing panel must prepare a written decision, with reasons, within a reasonable time after the hearing. A copy of the decision must be sent to the complainant and the PHA.

The PHA must retain a copy of the decision in the tenant's folder.

PIH 2016-05(HA)

The PHA must maintain a log of all hearing officer decisions and make that log available upon request of the hearing officer, a prospective complainant, or a prospective complainant's representative.

24 CFR 966.57(b)

The decision of the hearing officer or panel is binding on the PHA unless the PHA Board of Commissioners determines within a reasonable time, and promptly notifies the complainant of its determination, that:

- The grievance does not concern PHA action or failure to act in accordance with or involving the complainant's lease or PHA regulations, which adversely affect the complainant's rights, duties, welfare or status; or
- The decision of the hearing officer or panel is contrary to federal, state or local law, HUD regulations or requirements of the annual contributions contract between HUD and the PHA

Again, a decision by the hearing officer or panel does not constitute a waiver of, nor affect in any manner, any rights the complainant may have to a subsequent trial or judicial review in court.

NOTIFICATION TO POST OFFICE

24 CFR 966.4(l)(5)(iii)(B)

When the PHA evicts an individual or family for criminal activity, including drug-related criminal activity, the PHA must notify the local post office serving the dwelling unit that the individual or family is no longer residing in the unit.

Section 4 Notice of Lease Termination for Nonpayment of Rent

PHAs must give written notice of lease termination of at least 30 calendar days in the case of failure to pay rent.

All notices of lease termination due to a tenant's failure to pay rent must also include:

- Instructions on how the tenant can cure the nonpayment of rent violation, which should cover:
 - An itemized amount separated by month of alleged rent owed by the tenant;
 - Any other arrearages allowed by HUD and outlined in the lease separated by month; and
 - The date by which the tenant must pay the amount of rent owed before an eviction for nonpayment of rent can be filed
- Information on how the tenant may recertify their income, request a minimum rent hardship exemption, or a request to switch from flat rent to income-based rent; and
- In the event of a Presidential declaration of a national emergency, information as required by HUD.

The PHA must not proceed with filing an eviction if the tenant pays the alleged amount of rent owed within the 30-day notification period [24 CFR 966.4(r)].

If the tenant pays the full amount of the alleged rent owed but not the arrearages, the nonpayment will still be considered cured, and an eviction for nonpayment of rent cannot be filed. However, HUD emphasizes that the protections in this rule do not apply to other types of evictions that result from non-rent lease violations, such as nonpayment of arrearages if allowed under the lease.

TERMINATION AND EVICTION PROCESS

Nonpayment of Rent

**Other Causes not Excluded from
Hearing by Due Process Determination**

Issue 30-Day Notice
(Notice to terminate tenancy is combined with
or runs consecutive to notice to vacate,
pursuant to state laws)

Issue 30-Day Notice
(Notice to terminate combined with notice to
vacate, pursuant to state laws)

Grievance Procedure Applies

Grievance Procedure Applies

Informal Settlement

Informal Settlement

Grievance Hearing

Grievance Hearing

Determination Issued

Determination Issued

Notice to Vacate
(If required)

Notice to Vacate
(If required)

Court Appearance

Court Appearance

Trial, if Requested

Trial, if Requested

Vacate Order Issued by Judge

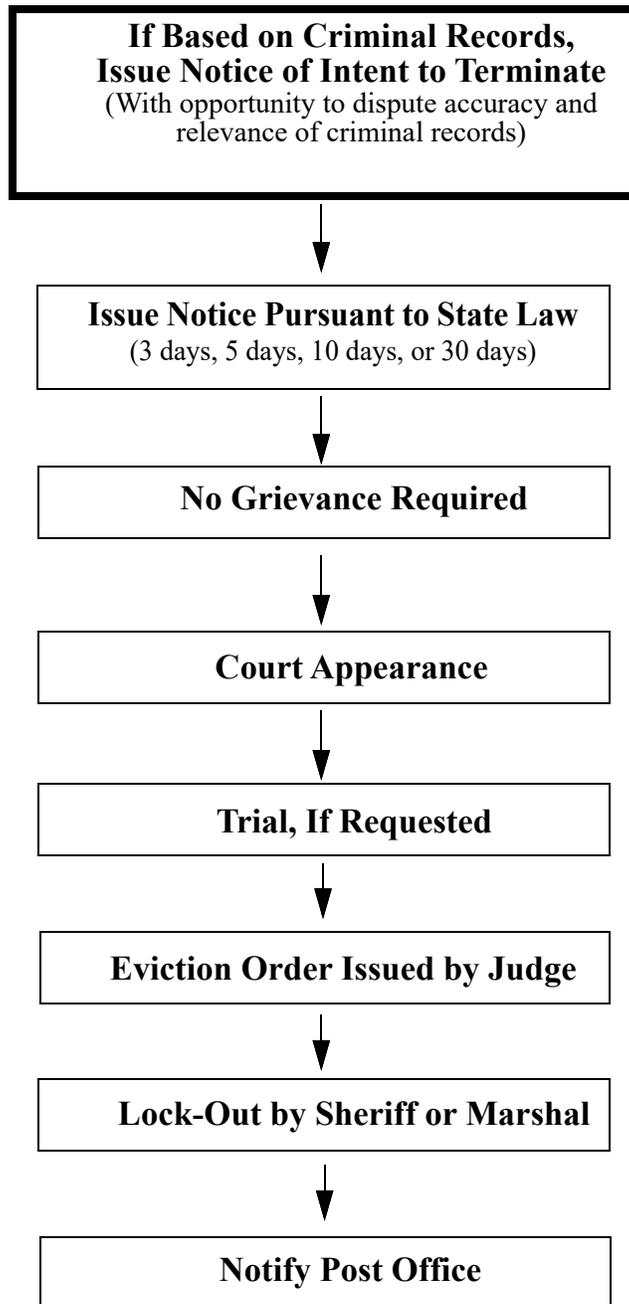
Vacate Order Issued by Judge

Sheriff's Eviction

Sheriff's Eviction

TERMINATION AND EVICTION PROCESS

**Causes Not Requiring Hearing Because of HUD-Declared
Due Process Determination**



Learning Activity 4-1: Due Process

As important as the facts in the case is whether the PHA followed *due process*. Read the following scenario. Did the PHA follow due process? How do you think the court ruled?

Scenario

The Northwest Housing Authority served an eviction notice on Gloria Mata, a public housing tenant, this year. A few years earlier, Mata—an immigrant with three kids—had told the agency that her husband had moved out of their apartment. In response, the agency reduced her rent for almost two years.

But recently, housing officials became convinced that Mata had lied to them. They said her husband had been living with her during her time of reduced rent. They accused her of claiming that her husband was her brother. And they demanded that she pay \$5,900 in back rent, or move.

At Mata’s request, the agency scheduled a grievance hearing, but on a day when her lawyer was unavailable. When Mata, who spoke limited English, asked to hold it on another day, the hearing officer refused, saying he didn’t have the authority to do so. He talked with a housing official about this outside of her presence. Then the hearing officer upheld the eviction.

How would you rule if you were the judge hearing the case?

Section 5 Post-Test

1. Who may grieve in public housing?
 - a. Any adult in the household
 - b. Anyone in the household
 - c. A tenant
 - d. Anyone on behalf of the household
 - e. None of the above
2. In public housing, grievance rights are more extensive than in the Housing Choice Voucher program.
 - a. True
 - b. False
3. If HUD has issued a due process determination, the PHA may exclude from its public housing grievance procedures any grievance concerning termination of tenancy that involves:
 - a. Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants
 - b. Any criminal activity that threatens the health or safety of employees of the PHA
 - c. Any violent or drug-related criminal activity on or off the premises
 - d. Any criminal activity that resulted in felony conviction of a household member
 - e. All of the above
4. A “tenant” in public housing may be all of the following except:
 - a. The adult person or persons who reside in the unit who executed the lease
 - b. The PHA-approved live in aide residing in the unit
 - c. If there is no adult residing in the unit who executed the lease, the remaining head of household living in the unit

Section 5: Post-Test

5. The public housing grievance procedure is applicable to the following:
 - a. Disputes between tenants not involving the PHA
 - b. Class grievances involving HUD regulations awaiting adjudication by the courts
 - c. Any dispute which a tenant may have with respect to PHA action or failure to act in accordance with the individual tenant's lease
 - d. As a forum for negotiating PHA policy changes in consideration of comments by the Resident Advisory Board (RAB)
 - e. All of the above
6. Which statement is **not** true of the informal settlement for tenants?
 - a. The right to informal settlement is the first step in the grievance process afforded public housing tenants
 - b. The decision, or summary, of the informal hearing must be in writing
 - c. The informal settlement may be conducted by the property manager of the project in which the tenant resides
 - d. The decision, or summary, of the informal settlement need not be in writing
 - e. The purpose of the informal settlement is to resolve the matter without a hearing
7. If the complainant does not request a grievance hearing within the timeframe specified in the PHA's grievance procedure, the complainant waives the right to a court hearing on the matter.
 - a. True
 - b. False

Section 5: Post-Test

8. Which statement is **not** true about the grievance hearing?
 - a. Must be conducted by an impartial person
 - b. PHA is required to consult with resident organizations before PHA appointment of each hearing officer or panel member
 - c. Must be conducted by a person other than a person who made or approved the PHA action under a review or a subordinate of such person
 - d. Method of selection of hearing officer(s) must be stated in the lease
9. The tenant's right to a fair hearing includes:
 - a. The right to a public hearing unless a private hearing is requested
 - b. A decision based on any documentation received before, during, or after the hearing
 - c. The right to be represented only by a person approved by the PHA
 - d. The right to examine and copy, before the hearing, any PHA documents relevant to the hearing
 - e. All of the above
10. The PHA must maintain a log of all hearing decisions.
 - a. True
 - b. False
11. Tenants no longer have the right to request, in advance, a transcript of the hearing.
 - a. True
 - b. False
12. For public housing hearings, the complainant has a right to arrange for a transcript of the hearing at the complainant's expense.
 - a. True
 - b. False
13. Hearings are applicable to a PHA's adverse actions but are not applicable to a PHA's failure to act regarding the individual's or family's tenancy.
 - a. True
 - b. False

Sample Notice of Intent to Terminate Lease Based on Criminal Records

Sky County Housing Authority

Sky County Housing Authority
1234 Main Street
Hillville, NY 00293
Phone
TDD or TTY

Date:

Mary Jo Conner
Address
City, State, Zip

Notice Of Intent To Terminate Lease Based On Criminal Records

Head of Household: Mary Jo Conner

Subject of Record: Henry Conner

The Sky County Housing Authority (SCHA) intends to terminate your public housing lease and tenancy based on criminal record database(s) and/or sex offender information. This notice is being sent to the head of household and the subject of record, if the subject of record is other than the head of household.

You signed a consent form authorizing the release of criminal records to SCHA. A copy of that consent form is enclosed.

SCHA has obtained criminal records and/or sex offender information showing that the adult household member named above was involved in a crime that constitutes grounds for termination of tenancy. This is SCHA's notification of its intention to terminate your lease and tenancy based on this information.

Enclosed is a copy of the criminal record(s) and/or sex offender information upon which SCHA is basing this decision. In compliance with 24 CFR §5.903, §5.905(d) and §960.204(c), you have the right to dispute the accuracy and relevance of these records used to make the determination to terminate your lease. If you do not dispute the accuracy and relevance of these records within 10 business days, or if SCHA upholds its determination that the records are accurate and relevant, SCHA will send you a notice of termination. You will then be informed of your right to appeal our decision, with instructions on how to do so at that time.

If you have any questions, please call: Brenda Manville Phone:

Sincerely,

Signature of SCHA Official

Date

CHAPTER 5 RAD Hearing Requirements

OVERVIEW

The Rental Assistance Demonstration (RAD) program was created by HUD in order to give PHAs a tool to preserve and improve public housing properties and address the \$26 billion dollar nationwide backlog of deferred maintenance.

RAD allows PHAs to leverage public and private debt and equity in order to reinvest in the public housing stock. In RAD, units move to either project-based vouchers (PBV) under Public and Indian Housing (PIH) or project-based rental assistance (PBRA) under HUD's Office of Multifamily Housing with long-term HAP contracts that, by law, must be renewed.

Residents continue to pay an income-based rent and they maintain the same basic rights, including due process rights regarding hearings, as they possess in the public housing program.

However, there are some hearing-specific requirements for RAD units. The PHA is often no longer the owner, or no longer the sole owner, of the RAD development, so the hearing requirements refer to "owner" instead of "PHA." PHAs should see Notice PIH 2019-23, published September 5, 2019, and the RAD Quick Reference Guides for PBV and PBRA for more information. Owners must include the resident's rights and participation requirements found in PIH 2019-23 in the house rules for properties converting under PBRA (see Attachment 1E for a sample) and in the owner's lease for properties converting under PBV.

This chapter is for your reference.

Following is a synopsis of the hearing requirements for both PBV and PBRA conversions under RAD.

PUBLIC HOUSING LEASE TERMINATION

Public housing lease terminations that occur as part of a RAD conversion under either program do not qualify as an adverse action, provided that the tenants are provided with a notice of termination in accordance with 24 CFR 966.4(1)(3) as well as information on when and how they will receive their new Section 8 lease, which must be effective the same date the HAP contract becomes effective. Grievance procedure requirements do not apply to these lease terminations.

PROJECT-BASED VOUCHERS (PBV)

RESIDENT PROCEDURAL RIGHTS

Notice PIH 2019-23

Resident procedural rights as listed in Notice PIH 2019-23, which cover RAD PBV termination notification and grievance rights, must be incorporated both in the PHA's administrative plan and the project owner's lease.

TERMINATION NOTIFICATION

Notice PIH 2019-23
Notice PIH 2021-29

In addition to the regulations at 24 CFR 983.257, the termination procedure for RAD conversions require PHAs to provide adequate written notice of termination of the lease, which is:

- A reasonable period of time, but not to exceed 30 days if the health or safety of other tenants, project owner employees, or persons residing in the immediate vicinity of the premises is threatened; or, in the event of any drug-related or violent criminal activity or any felony conviction;
- Not less than 14 days in the case of nonpayment of rent (30 days when HUD determines that there is a national emergency); and
- Not less than 30 days in any other case, except that if a state or local law provides for a shorter period of time, such shorter period will apply.

INFORMAL HEARINGS

PBV mostly follows the Housing Choice Voucher (HCV) regulations. However, per the RAD statute, 24 CFR §982.555(b) (when informal hearings are not required) is waived in part, and additional procedural rights are established for RAD PBV.

24 CFR § 982.555

For issues related to the termination of assistance and several other PHA determinations, PBV program rules require the PHA to provide an opportunity for an informal hearing, as outlined in the HCV regulations.

- RAD specifies alternative requirements for when informal hearings are not required, to require that:
 - In addition to reasons that require an opportunity for an informal hearing in the HCV regulations, an opportunity for an informal hearing must be given to residents for any dispute that a resident may have with respect to an owner action in accordance with the individual's lease or the contract administrator in accordance with RAD PBV requirements that adversely affect the resident's rights, obligations, welfare, or status.

24 CFR § 982.555(a)(1)(i)-(vi)

For any hearing required under the voucher regulations (who is likely the PHA), the contract administrator will perform the hearing, as is the current standard in the program.

24 CFR § 982.555(e)(4)(i).

The hearing officer must be selected in accordance with HCV regulations and stated in the administrative plan.

For any additional hearings required under RAD, the owner will perform the hearing.

There is no right to an informal hearing for class grievances or disputes between residents not involving the owner or contract administrator.

24 CFR § 982.555(c)(1)

The owner gives residents notice of their ability to request an informal hearing as outlined in HCV regulations for informal hearings that will address circumstances that fall outside of the scope of the HCV regulations.

The owner provides opportunity for an informal hearing before an eviction.

Current PBV program rules require that hearing procedures must be outlined in the PHA's administrative plan.

Notice PIH 2019-23

To facilitate the uniform treatment of residents and units at the project, any non-RAD PBV units located in the same project are subject to the same requirements under the RAD notice.

PROJECT-BASED RENTAL ASSISTANCE (PBRA) (MULTIFAMILY)

RESIDENT PROCEDURAL RIGHTS

Notice PIH 2019-23

Resident procedural rights in Attachment 1E of Notice PIH 2019-23 must be incorporated as part of the House Rules for the project and must be submitted to HUD for review prior to closing. This includes a description of termination notification, the grievance process, and information on Choice-Mobility.

TERMINATION NOTIFICATION

Notice PIH 2019-23

In addition to the regulations at 24 CFR 880.607 and the Model Multifamily Lease, the termination notification requirements for RAD conversions require PHAs to provide adequate written notice of termination of the lease, which is:

- A reasonable period of time, but not to exceed 30 days if the health or safety of other tenants, project owner employees, or persons residing in the immediate vicinity of the premises is threatened; or in the event of any drug-related or violent criminal activity or any felony conviction;
- Not less than 14 days in the case of nonpayment of rent; and
- Not less than 30 days in any other case, except that if a state or local law provides for a shorter period of time, such shorter period will apply.

In all other cases, the requirements of 24 CFR 880.607, the Model Multifamily Lease, and any other HUD multifamily administrative guidance, applies.

GRIEVANCE PROCESS

Due to requirements in the RAD statute, HUD is incorporating additional resident procedural rights.

Current rules require that tenants are given notice of covered actions under 24 CFR Part 245 (including increases in rent, conversions of a project from project-paid utilities to tenant-paid utilities, or a reduction in tenant paid utility allowances).

In addition, HUD requires that:

- Residents be provided with notice of the specific grounds of the owner's proposed adverse action, as well as their right to an informal hearing with the owner;
- Residents have an opportunity for an informal hearing with an impartial member of the owner's staff within a reasonable period of time;
- Residents have the opportunity to be represented by another person of their choice, to ask questions of witnesses, have others make statements at the hearing, and to examine any regulations and any evidence relied upon by the owner as the basis for the adverse action. With reasonable notice to the owner, prior to hearing and at the residents' own cost, residents may copy any documents or records related to the proposed adverse action; and
- Owners provide the resident with a written decision within a reasonable period of time stating the grounds for the adverse action and the evidence the owner relied on as the basis for the adverse action.
- The owner will be bound by decisions from these hearings, except if the:
 - Hearing concerns a matter that exceeds the authority of the impartial party conducting the hearing, or
 - Decision is contrary to HUD regulations or requirements, or otherwise contrary to federal, state, or local law.
- If the owner determines that it is not bound by a hearing decision, the owner must promptly notify the resident of this determination and of the reasons for the determination.

Notes

CHAPTER 6 The PHA Administrative Plan and ACOP

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Recognize how PHA discretionary policies expand on HUD regulations to provide more clarity to applicants, participants and tenants, staff, and the public regarding the administration of PHA reviews and hearings
- Evaluate policy decisions in the administrative plan related to informal reviews and hearings
- Evaluate policy decisions in the ACOP related to informal hearings, informal settlements, and grievance hearings
- Discuss the importance of the public housing lease and its relevance in making hearing decisions

INTRODUCTION

The hearing officer must make their decision based not only on laws, HUD regulations, and HUD guidance, but must also take into account PHA policies.

- HUD's Streamlining Administrative Regulations Final Rule, published March 8, 2016, eliminated many of the prescriptive procedural regulations regarding public housing hearings. Therefore, PHAs must ensure their policies are clear and comprehensive.
- HUD regulations may give the PHA the option for a policy decision in certain areas, or may be silent. For example, the PHA has the policy option to grant reviews for all appeals of determination of ineligibility, or to grant reviews only for appeals of denial of admission.
- In addition, HUD policies do not stipulate the process, or how the PHA will administer reviews and hearings. The PHA administrative plan, ACOP, and lease, in addition to the PHA's grievance procedures, are necessary for the articulation of the full grievance policies, processes, and protocols.

HUD regulations require that voucher hearing procedures be contained in the administrative plan.

In public housing, the grievance procedure is a part of the PHA's lease, by reference. Most PHAs include their grievance procedure in the ACOP and reference the procedure in the lease.

At times, there is a "fine line" between what will be in policy and what will be day-to-day operational processes. Anything that affects applicants or participants/tenants should be in policy. PHAs may want to describe internal processes in an internal procedures document that can be revised more quickly than a policy. Policy revision requires board approval and, in the case of public housing, also requires the opportunity for resident comment.

This chapter will first cover policies common to the voucher and public housing programs. Then we'll cover issues specific to the voucher program in the administrative plan, and then will cover provisions specific to public housing.

Section 1 **Hearing Policy Decisions Common to Housing Choice Voucher and Public Housing**

OPPORTUNITY TO DISPUTE IF BASED ON CRIMINAL RECORDS



Decision Point: Who coordinates between the person/team who conducts criminal background checks and providing the applicant and subject of record the opportunity to dispute the accuracy and/or relevance of the criminal records?

Things to Consider

This notice of *intent* to deny must be sent before the notice of denial. The person who talks with/meets with the family, if they choose to dispute the accuracy/relevance of the criminal records must ensure that her or her recommendation is forwarded to the appropriate party.

REVIEWS



Decision Point: Who will conduct the reviews?

Things to Consider

The review may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person. The PHA could simply make this statement in its grievance procedures. However, some PHAs want more transparent procedures. It's not advised to specify staff names; rather, the positions could be identified.

Who conducts reviews is significantly different depending on the size and complexity of the PHA. In a smaller PHA, where the eligibility supervisor is a one-person shop, that person would not conduct reviews for denial of admission. In a very small PHA, it may be the executive director, or neighboring PHA directors or managers, who conduct reviews.

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In larger PHAs, there is a greater pool of impartial positions that could conduct reviews or serve as hearing officers. For example, the eligibility supervisor overseeing a fairly large department could conduct reviews for denial of admission. Managers of non-involved departments could conduct reviews. Human resources managers, 504 coordinators and policy analysts are positions that could be identified.

In addition, the PHA could designate some positions to hear certain types of reviews. Designating the 504 coordinator to review any case involving disability or reasonable accommodation is a best practice.



Decision Point: How does the PHA define “prompt”?

Things to Consider

The PHA must give an applicant prompt notice of a decision denying assistance and the notice must contain certain information. For administrative ease and consistency, the standard of 10 business days could be used throughout.



Decision Point: What factors will the PHA consider in rendering its decision and how will the applicant be notified of the decision?

Things to Consider

Identifying the factors the PHA will consider when making an informal review decision helps to ensure consistency in the way decisions are made and makes the decision process transparent to all involved.

The policy should clarify that the PHA will maintain proof of mailing for all informal review decision notices. A proof or affidavit of mailing is a sworn statement that a person mailed something. Maintaining a proof of mailing will ensure that the applicant family receives the PHA’s decision. Many examples of a proof of mailing are available online and can easily be found using any search engine.

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Option:

- In rendering a decision, the PHA will evaluate the following matters:
 - Whether or not the grounds for denial were stated factually in the Notice.
 - The validity of grounds for denial of assistance. If the grounds for denial are not specified in the regulations, then the decision to deny assistance will be overturned.
 - The validity of the evidence. The PHA will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are grounds for denial, and the denial is required by HUD, the PHA will uphold the decision to deny assistance.
 - If the facts prove the grounds for denial, and the denial is discretionary, the PHA will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.
- The PHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 10 business days of the informal review, to the applicant and his or her representative, if any, along with proof of mailing.
- If the decision to deny is overturned as a result of the informal review, processing for admission will resume.
 - If the family fails to appear for their informal review, the denial of admission will stand and the family will be so notified.

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Decision Point: What information will be contained in the notice of the right to request a review?

Things to Consider

24 CFR 982.554(a)HCV;
24 CFR 960.208 PH

We learned that in both the voucher and public housing programs, the notice of denial to an applicant must contain a brief statement of the reasons for the PHA decision. The notice must also state that the applicant may request a review of the decision and must describe how to obtain the informal review.

Option:

- In cases where the PHA makes a decision for which a review must be offered, the denial or ineligibility notice to the family will include all of the following:
 - The proposed action or decision of the PHA
 - A brief statement of the reasons for the decision including the regulatory reference
 - A statement of the family’s right to an explanation of the basis for the PHA’s decision
 - A deadline for the family to request the review
 - To whom the request for review should be addressed.



Decision Point: Who will ensure that the PHA’s notices of denial also contain explanation of rights under VAWA (Form HUD-5380) and VAWA self-certification Form HUD-5382, right to request a reasonable accommodation, and right to request competent oral interpretation, free of charge?

Things to Consider

The notice of denial could include a statement of these rights, or these statements could be enclosed in the notice packet.

HEARINGS



Decision Point: How will the PHA choose its hearing officers?

Things to Consider

24 CFR 982.55

The regulations for the voucher program are quite simple. The hearing may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person.

24 CFR 966.55(b)

In public housing, there are two options. The grievance hearing must be conducted by an impartial person or persons appointed by the PHA, other than a person who made or approved the PHA action under review or a subordinate of such person. HUD clarified that a hearing officer does not need legal training.

The method for selection of hearing officers must be stated in the lease, subject to a 30-day comment period.

Any revision to the hearing/grievance procedure could be part of the PHA plan process. Often there are Housing Choice Voucher participants on the Resident Advisory Board who would have an interest in these issues as they want to have certain fundamental procedural protections.

A major consideration is whether the PHA will use “inside” hearing officers (PHA managers or staff) or “outside” hearing officers (professionals recruited from the community). There are significant “pros” and “cons” on each side.

- The PHA’s hearing/grievance procedures could stipulate that hearing officers are employees of the PHA. The advantage of this procedure is that employees are knowledgeable about the HUD regulations, the HCV and/or PH program, and PHA policies.
 - The disadvantage of appointing “inside” hearing officers is that their decisions may not be viewed as entirely impartial by the court, should the case go that far.
- The PHA’s hearing/grievance procedure could stipulate that hearing officers are professionals from the community. These professionals could be volunteers or could be compensated through a contract.

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- Many PHAs reach out to retired or active attorneys and judges to volunteer as hearing officers. Lawyers have a professional obligation to do pro bono work and law firms have an obligation to encourage their lawyers to do such work. This duty is reflected in the Code of Professional Responsibility: “A lawyer has an obligation to render public interest and pro bono legal service.”
- Other community leaders and professionals want to “give back”, and may see volunteer work as a hearing officer a way to fulfill their commitment to service.
- The use of mediators (who are, generally speaking, non-attorneys trained in non-legal dispute resolution techniques) tends to have several advantages: lower cost (than attorneys), greater independence from the PHA, and some modicum of training in “legal” subjects.
- Some PHAs contract with one or more professionals to be a committed hearing officer. The hearing officer is paid per hearing and makes a commitment to learn HUD regulations and PHA policies. By putting out a Request for Qualifications (RFQ) or Request for Proposals (RFP) under its procurement policy, the PHA will weigh proposals to award the contract. Mediators, attorneys, retired judges, ombudsmen, and others who hear cases serve as hearing officers.
- The advantage of using “outside” hearing officers is often the caliber of their education and prestige. Their hearing decisions may be viewed with a higher regard by the court, should the case go that far.
- The disadvantage, of course, in using outside hearing officers is that the PHA must have a firm and ongoing commitment to educating these hearing officers.
 - For example, mediators are trained to let both sides tell “their sides of the story,” using a facilitative model. The mediator serving as a hearing officer needs to be able to keep the issues properly narrowed, and make a decision in what is essentially an adversarial tribunal.

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- And, as we know, HUD regulations can be very dense; interpreting the facts of the case with regulations and PHA policies is not always an easy task. If the PHA uses outside hearing officers, the PHA should establish orientations for new hearing officers, and ongoing educational forums.

A PHA's grievance procedure could, as an alternative, designate hearing panels made up of program staff, a tenant-appointed representative, and a neutral third party.



Decision Point: Will the PHA use a hearing officer or a hearing panel?

Things to Consider

Scheduling one hearing officer, of course, is less time-consuming than scheduling members of a panel. If the PHA decides to use one hearing officer to preside over public housing hearings, the expertise and judgment of the hearing officers should be exemplary.

A hearing panel often includes a Housing Choice Voucher or public housing tenant. A panel could be comprised of one "inside" hearing officer who is familiar with HUD regulations, an "outside" hearing officer with community standing and expertise, and a participant/tenant. The PHA needs to weigh the perception of fairness of a panel with considerations of time spent educating and scheduling panel members.

Option:

- The hearing panel is comprised of three members. One panel member will be a Housing Choice Voucher participant (for HCV informal hearings), a tenant of the PHA's public housing (for PH hearings), one panel member will be a PHA staff member other than a person who made or approved the decision under review or a subordinate of that person, and one panel member will be a volunteer from the community.
- The complainant may refuse up to two potential members total (from all groups, not from each group).

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- **Decision Point:** Does the PHA want to establish a policy that the hearing officer may render a decision without proceeding with the hearing, if it is determined that the issue was previously decided in another proceeding?

Things to Consider

- For example, a family has already received a hearing decision covering the same issue.



- **Decision Point:** How many days does a family have to request a hearing, and how quickly must the PHA schedule it?

Things to Consider

For administrative ease and consistency, the PHA should use a consistent standard throughout much of its policies and procedures.

Regulations state that the PHA must proceed with the hearing in a “reasonably expeditious” manner upon the request of the family.

Option:

- A request for a hearing must be made in writing and delivered to the PHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of the PHA's decision or notice to terminate assistance.
- The PHA must schedule and send the notification of the hearing to the family within 10 business days of the family's request.



Decision Point: What information will be contained in the hearing notice to the family?

Things to Consider

It is important to identify to whom the review or hearing request should be addressed, due to the time-sensitive nature of the request. The family has a finite period of time (e.g., 10 business days) to request the review or hearing, and the PHA only has a certain number of days (e.g., 10 business days) to schedule and notify the family of the review or hearing date. Including specific information will ensure that the request is received by the appropriate person in a timely manner.

It is imperative that the PHA include a copy of the PHA's hearing procedures with the notice. Without this information, the family will be unable to properly prepare for the review or hearing. Providing this information as a matter of policy provides assurance that the PHA has done all it can to inform the family of their rights and responsibilities in the hearing process.

Option:

- In cases where the PHA makes a decision for which a hearing must be offered, the notice to the family will include all of the following:
 - The proposed action or decision of the PHA
 - A brief statement of the reasons for the decision including the regulatory reference
 - The date the proposed action will take place
 - A statement of the family's right to an explanation of the basis for the PHA's decision
 - A statement that if the family does not agree with the decision the family may request a hearing of the decision (remember, in public housing there is the additional interim step, usually meeting with the property manager)
 - A deadline for the family to request the hearing
 - To whom the hearing request should be addressed
 - A copy of the PHA's hearing/grievance procedure.

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- The PHA will also send, in addition to the notice of the PHA's decision, a statement of the family's rights under VAWA, (Form HUD-5380), VAWA self-certification Form HUD-5382, the right to request a reasonable accommodation to participate in the hearing process, and the right to request competent oral interpretation, free of charge, in accordance with federal laws.



Decision Point: Will a briefer explanation, along with the entire grievance procedure, be included in the notice to family?

Things to Consider

The PHA's hearing/grievance procedure may be a whole chapter of the administrative plan or ACOP. Sending the family a briefer (and clearer) explanation of their hearing rights and what to expect, along with the full procedure, may be helpful. There is a sample document in the "Sample Forms" section of this chapter.

Option:

- A brief explanation of hearing rights and responsibilities will be sent with the notice to family, with a copy of the PHA's full hearing/grievance procedure.



Decision Point: How much will the PHA charge the family for copies of documents related to the hearing, and what is the deadline for the family to request discovery of the documents?

Things to Consider

Whatever cost the PHA uses, it should be reasonable for both the PHA and the family.

The procedure could require the family to request discovery of the documents no later than noon on the business day prior to the hearing. This procedure clearly sets expectations, and prevents the family from making any last-minute requests that could cause a delay in the hearing.

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Decision Point: Will the PHA provide a hearing packet to the family, the PHA representative, and the hearing officer before the hearing?

Things to Consider

A best practice would be for the PHA to provide a hearing packet to the family, the PHA, and the hearing officer a certain number of days before the hearing.

If the PHA hearing/grievance procedure requires the PHA to be given an opportunity to examine any of the family's documents before the hearing, the timing by which the family documents are due could synchronize with the PHA's compilation and delivery of the hearing packet, or the family may have a deadline past when the hearing packet is delivered.

Option:

- The hearing packet, containing all documents the PHA and the family intends to present at the hearing, will be sent to the family, the PHA representative, and the hearing officer(s) (or panel) at least three (3) workdays before the date of the hearing.



Decision Point: Under what circumstances can a family request to have a hearing rescheduled and how must the request be made?

Things to Consider

The PHA could establish policy that allows the family to request to reschedule a hearing only for good cause. This type of policy reduces the number of hearings that have to be rescheduled, which can be particularly important when the PHA is relying on hearing officers who do not work for the PHA.

The procedure could allow the family to make the request orally or in writing. This gives the family flexibility if the timing or nature of their conflict makes it difficult for the family to complete and submit a written request.

The procedure could also allow the PHA to request documentation from the family, if the PHA determines it is necessary in order to determine good cause.

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Option:

- The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, the PHA may request documentation of the “good cause” prior to rescheduling the hearing.
- If the PHA determines that documentation of inability to appear at the hearing is required, the family must provide such documentation within five working days after the PHA’s request. The time period may be extended an additional five days on a case-by-case basis as determined by the PHA.



Decision Point: How will PHA policies clarify that the hearing is conducted informally by the hearing officer?

Things to Consider

The rules of a judicial proceeding do not apply to the hearing. The PHA policies should describe the hearing process.

- For example, oral or documentary evidence pertinent to the facts and issues raised by the complainant may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings.



Decision Point: What will the PHA include in the hearing/grievance procedure regarding the protocol of the hearing?

Things to Consider

The PHA should include the basics of how the hearing will be conducted: the hearing officer’s role and protocol of the hearing, and what will be considered.

As we know, the “dynamics” of the hearing, and how the hearing officer actually navigates to maintain order, cannot be adequately detailed in writing. The art of navigating through a hearing will be explored in a later chapter.

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Option:

- The hearing officer responsibility:
 - In conducting the hearing, the hearing officer shall be responsible for:
 - Explaining the hearing is informal, but that the decision is binding, subject to judicial review.
 - Ensuring a full inquiry into all relevant issues.
 - Regulating the conduct of the hearing consistent with due process and in accordance with this grievance procedure to ensure an impartial, orderly hearing.
 - Preparing an official hearing record, which shall contain the substance of the oral testimony presented at the hearing; all papers, documents, records, etc., submitted for the hearing and/or considered by the hearing officer; and the written decision of the hearing officer.
- Evidence
 - The PHA and the family must be given the opportunity to present evidence in accordance with this grievance procedure and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.
- Definition of preponderance of evidence
 - Preponderance of evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.
 - With respect to burden of proof in civil actions, this means the greater weight of evidence, or evidence which is more credible and convincing to the mind; that which best accords with reason and probability.

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- Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence, the opportunity for knowledge and the information possessed.
- *Note:* The word “preponderance” means something more than “weight”; it denotes a superiority of weight, or outweighing.
- Credible evidence
 - Credible evidence can be provided by such sources as police, the court system, and PHA staff. Testimony from neighbors, when combined with other credible evidence, can be used to determine whether a preponderance of evidence is established.



Decision Point: What are the types and standards of evidence that can be used in the hearing?

Things to Consider

Defining the types of evidence that can be presented, and reiterating the admissibility rules provides transparency and helps those involved in the hearing to better understand the rules and process.

Option:

- Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.
 - **Oral evidence:** the testimony of witnesses
 - **Documentary evidence:** a writing which is relevant to the case, for example, a letter written to the PHA. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.
 - **Demonstrative evidence:** Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.
 - **Real evidence:** A tangible item relating directly to the case.

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- *Hearsay Evidence* is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.
- If either the PHA or the family fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence.
- Other than the failure of a party to comply with discovery, the hearing officer has the authority to overrule any objections to evidence.



Decision Point: How do PHA policies describe how the hearing officer governs the hearing and what are the standards of conduct?

Things to Consider

This policy is important because it clarifies that the hearing officer, not the PHA representative involved in presenting the case, is responsible for managing the conduct of the hearing.

It also emphasizes the requirement for all hearing participants (PHA staff and participants) to behave appropriately at the hearing. PHA policy should clarify that the hearing officer or panel ensures that the PHA, the complainant, counsel, and other participants or spectators conduct themselves in an orderly fashion.

Failure to comply with the directions of the hearing officer or panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly persons.

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Option:

- The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner.
- All discussion will be directed by and facilitated by the hearing officer. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct. Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer.



Decision Point: Will the PHA's hearing/grievance procedure describe the process and/or sequence of the hearing?

Things to Consider

As we know, the hearing is informal, i.e., not bound by the protocols of a court. However, knowing what to expect helps the family and helps the hearing officer preside.

Option:

- Testimony shall be given under oath. The hearing officer will administer oaths.
- The PHA shall have the burden of proving that the tenant violated the lease, PHA policies, or other applicable rule or agreement and the proposed action is justified and in compliance with PHA policies and HUD regulations.
- The PHA shall first present its case, providing details of the tenancy, the events leading to the action taken, and any supporting documentation or testimony.
- Following the PHA, the participant/tenant presents his/her grievance, and reasons for contesting the PHA's action or inaction, and may provide additional information, testimony and supporting documentation.

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- The hearing officer may question witnesses and may take notice of matters of common knowledge and applicable laws, regulations and PHA rules and policies. The hearing officer may request the PHA or the grievant to produce additional information which is relevant to the issues or which is necessary for a decision to be made provided that the other party is provided an opportunity to respond to such additional information.
- The hearing officer may limit or otherwise restrict the testimony of witnesses based on the relevance of their testimony, and the number of witnesses present. The hearing officer may exclude witnesses whose testimony is or will be duplicative.



Decision Point: Who is authorized to attend hearings?

Things to Consider

Including a listing of who is authorized to attend the hearing in the informal hearing procedures makes the process more transparent to all involved, and ensures that participants are aware that they have the right to bring counsel or other representation, as well as witnesses.

Option:

- Hearings may be attended by a hearing officer and the following applicable persons:
 - A PHA representative(s) and any witnesses for the PHA
 - The participant and any witnesses for the participant
 - The participant’s counsel or other representative
 - Any other person approved by the PHA as a reasonable accommodation for a person with a disability

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Decision Point: Will the PHA allow the family to reschedule a hearing before the scheduled hearing takes place?

Things to Consider

The procedure could state that the PHA will reschedule one time only if the family contacts the PHA within two days of the scheduled hearing date.

- The procedure could also add that hearings will only be considered for good cause, and will allow the PHA to request documentation from the family, if the PHA determines it is necessary in order to determine good cause.

Option 1:

- After a hearing date has been scheduled, the family may request to reschedule if the request is made at least two days in advance of the scheduled hearing. The hearing will only be rescheduled one time unless necessary to reschedule a third time due to an unavoidable conflict that seriously affects the health, safety or welfare of the family, or if needed as a reasonable accommodation for a person with disabilities.

Option 2:

- After a hearing date has been scheduled, the family may request to reschedule, only one time, upon showing "good cause," which is defined as an unavoidable conflict that seriously affects the health, safety or welfare of the family, or if it is needed as a reasonable accommodation for a person with disabilities.

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Decision Point: Will the PHA reschedule a hearing if a family does not appear at the scheduled hearing and has not made previous arrangements to reschedule?

Things to Consider

If a family does not appear at a scheduled hearing, and did not make previous arrangements to reschedule it, the procedure could state that the PHA will only reschedule the hearing if the family contacts the PHA within 24 hours of the scheduled hearing date, and the family can show good cause.

- The procedure could also allow the PHA to request documentation from the family, if the PHA determines it is necessary in order to determine good cause.
- This type of procedure reduces the number of no-shows and the number of hearings that have to be rescheduled, while still allowing families who face last minute legitimate emergencies to have a second chance to have a hearing.

Option 1:

- If the family was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact the PHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The PHA will reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

Option 2:

- After a hearing date has been scheduled, the family may request to reschedule, only one time, upon showing “good cause,” which is defined as an unavoidable conflict that seriously affects the health, safety or welfare of the family.

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Decision Point: How late can the family be for the hearing, after which it is considered a no-show?

Things to Consider

Hearings are a time and administrative cost commitment and, if the PHA contracts with outside hearing officers, hearings may be a budget consideration. Therefore, the PHA should consider establishing time limits, after which the hearing officer would consider the hearing vacated. The rescheduling procedures would then apply.

Option:

- A hearing is deemed abandoned if the participant fails to appear within 20 minutes of the scheduled hearing.
- Should the PHA determine the hearing “abandoned,” a letter will be sent to the participant stating the hearing was abandoned. The participant has five workdays to demonstrate, in writing, good cause that the hearing should not be considered abandoned and request another hearing. “Good cause” is defined as an unavoidable conflict, which seriously affects the health, safety or welfare of the family.
- Should the participant fail to contact the PHA within five workdays, the PHA will follow through with the intended action.



Decision Point: Under what circumstances does the family waive its right to a hearing?

Things to Consider

The PHA should stipulate other reasons, not mentioned above, which would enable the PHA to move forward with the intended action.

Option:

- Should the participant submit a request for a hearing on an untimely basis (later than 10 work days from the date of mailing of the Notice by the PHA), staff will inform the participant by mail within ten calendar days of such receipt that the participant is not entitled to a hearing.

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- In the event the PHA receives a clear, written statement signed by the participant that he/she no longer wishes to participate in the program; or if mail directed to the participant has been returned by the post office indicating no forwarding address and/or participant's whereabouts are unknown, it is understood that the PHA may proceed with the intended action immediately.



Decision Point: What factors will the hearing officer consider when making his or her decision?

Things to Consider

Clearly identifying the factors the hearing officer will use when making his or her decision and including this information in policy, makes the process transparent to the hearing officer, the PHA, and the participant, and also helps to ensure consistency in how decisions are made. This is particularly important when the PHA relies on multiple hearing officers.

Option:

- In rendering a decision, the hearing officer will consider the following matters:
 - **PHA Notice to the Family:** The hearing officer will determine if the reasons for the PHA's decision are factually stated in the Notice.
 - **Discovery:** The hearing officer will determine if the PHA and the family were given the opportunity to examine any relevant documents in accordance with PHA policy.
 - **PHA Evidence to Support the PHA Decision:** The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support the PHA's conclusion.

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- **Validity of Grounds for Termination of Assistance (when applicable):** The hearing officer will determine if the termination of assistance is for one of the grounds specified in the HUD regulations and PHA policies. If the grounds for termination are not specified in the regulations or in compliance with PHA policies, then the decision of the PHA will be overturned.



Decision Point: Under what circumstances will a rehearing or further hearing be conducted?

Things to Consider

There may be circumstances in which a hearing officer determines it is necessary to allow the family to provide additional information, or to reconvene at a later date. The policy could allow for this circumstance and explain what will happen if a family does not comply with the hearing officer's requests.

The policy could also allow the PHA or the participant to request a rehearing or further hearing for good cause. This type of policy is not required, but does allow for errors to be corrected, or for important information that was not known at the time of the hearing to be considered.

The policy could state that it is at the sole discretion of the PHA to grant a rehearing or further hearing. This language allows the PHA to deny a rehearing in cases where it is unwarranted.

The policy could require the request to be made in writing.

Option:

- The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of the PHA will take effect and another hearing will not be granted.
- A rehearing or a further hearing may be requested for the purpose of rectifying any obvious mistake of law made during the hearing or any obvious injustice not known at the time of the hearing.

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- It shall be within the sole discretion of the PHA to grant or deny the request for further hearing or rehearing. A further hearing may be limited to written submissions by the parties, in the manner specified by the hearing officer.



Decision Point: What is the policy for sending the notice of the final hearing decision?

Things to Consider

The policy should clarify what will be sent with the notice, and ensure that the PHA includes proof of mailing. A proof or affidavit of mailing is a sworn statement that a person mailed something. Many examples can be found online using any search engine. It is important for the PHA to provide proof of mailing to the family, as well as maintaining proof within the PHA files. This policy requires both.

Option:

- The PHA will mail a “Notice of Final Decision” including the hearing officer’s report, to the participant and their representative. This Notice will be sent by first-class mail, postage pre-paid with an affidavit of mailing enclosed. The participant will be mailed the original “Notice of Final Decision” and a copy of the proof of mailing. A copy of the “Notice of Final Decision” along with the original proof mailing will be maintained in the PHA’s file.



Decision Point: What will the final decision notice contain?

Things to Consider

Describing in detail the contents of the hearing report ensures that all hearing decisions contain the same information. Again, this information is helpful to all involved in the hearing. It sets a standard for the hearing officer to follow, and informs participants of what information they can expect to receive in the hearing report.

Option:

- The written decision will contain the following information:
 - Hearing information:
 - Name of the participant
 - Date, time and place of the hearing
 - Name of the hearing officer
 - Name of the PHA representative
 - Name of family representative (if any)
 - **Background or Issues:** A brief, impartial statement of the reason for the hearing.
 - **Procedural History:** A brief history of the notices served to document if the PHA has met due process requirements.
 - **Summary of the Evidence:** The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

Section 1: Hearing Policy Decisions Common to Housing Choice Voucher and Public Housing

- **Findings of Fact:** The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.
- **Conclusions:** The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold the PHA's decision.
- **Decision:** The hearing report will include a statement of whether the PHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the PHA to change the decision in accordance with the hearing officer's determination. In the case of termination of assistance, the hearing officer will instruct the PHA to restore the participant's program status.

Section 2 **Hearing Policies Specific to the Housing Choice Voucher Program**

INFORMAL REVIEWS FOR APPLICANTS



Decision Point: Will the PHA offer applicants the opportunity for an informal review for any reasons other than those required by the regulations?

Things to Consider

Offering informal reviews takes time and resources. Therefore, to reduce the administrative burden on PHAs, the policy could state that the PHA will only offer informal reviews when required by the regulations.

PHAs may want to offer informal reviews for other PHA decisions, or may want to offer applicants the option of meeting with the PHA to resolve specific concerns. For example, if an applicant is denied a preference, a PHA may want to offer them an opportunity for an informal review, or an opportunity to meet with PHA staff to resolve their concern.

Informal meetings are a matter of courtesy and good customer service but do not need to be structured with policy requirements.

If a PHA wants to offer informal reviews for reasons other than denial of assistance, the policy should state this and include a listing of the reasons or circumstances under which an applicant family will be offered an informal review.

Option:

- The PHA will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying listing on the PHA waiting list; denying or withdrawing a voucher; refusing to enter into a HAP contract or approve a lease; refusing to process or provide assistance under portability procedures.

INFORMAL HEARINGS FOR PARTICIPANTS – 24 CFR 982.555



Decision Point: Will the PHA offer participants the opportunity for an informal hearing for any reasons other than those required by the regulations?

Things to Consider:

Offering informal hearings takes considerable time and resources. Therefore, to reduce the administrative burden on PHAs, the policy could state that the PHA will only offer informal hearings when required to by the regulations.

If a PHA wants to offer informal hearings for reasons in addition to those required by the regulation, the policy should include a listing of those reasons or circumstances.

Option:

- The PHA will only offer participants the opportunity for an informal hearing when required to by the regulations.



Decision Point: Will the PHA record the informal hearing and provide the participant a copy of the tape recording upon request?

Industry Practice

Things to Consider

HUD regulations do not require that an HCV informal hearing be recorded but it is a good practice to do so to preserve an adequate hearing record.

Learning Activity 6-1: Administrative Plan Policies

Read the case below. Do you agree with the hearing decision? Why or why not?

Regarding: Hank Low

Participant

INFORMAL HEARING DECISION HOUSING CHOICE VOUCHER PROGRAM

INTRODUCTION

Iris Impartial, Hearing Officer, conducted an informal hearing on June 20, 2011, pursuant to the provisions of 24 CFR 982.555 and the Foothills County Housing Authority's Section 8 Administrative Plan (hereinafter FCHA Plan), Chapter 16-III, *Informal Hearings for Participants*, pp. 10-16. Participant appeared, representing himself. Penny Lipscomb, Rental Assistance Program Manager, appeared on behalf of the Housing Authority. The Hearing Officer did not make or approve the decision under review and is not a subordinate of the person who did make the decision.

PROCEDURAL HISTORY

On May 5, 2011, the Housing Authority sent Participant a *Tenant Notification of Termination of Program Assistance and Housing Assistance Payment Contract* effective June 30, 2011. The issue involved in this notice was scheduled for May 23, 2011; however, Participant requested that the hearing be rescheduled so he could request time off from his work. The hearing was rescheduled and heard on June 20, 2011.

HEARING ISSUES

The Housing Authority notified Participant that pursuant to 24 CFR 982.405, 24 CFR 982.552, and FCHA Plan, Exhibit 12-1 *Statement of Family Obligations*, Participant's housing assistance would be terminated effective June 30, 2011 because:

Specifically:

There have been two (2) attempts made to inspect the unit with no success. Therefore, the unit has failed HQS because you have failed to meet both dates scheduled by the Housing Authority with sufficient notice to complete the annual inspection.

It is a HUD requirement that the Housing Authority complete Annual Inspections for all federally assisted units. You are in violation of U.S. Department of Housing and Urban Development (HUD) regulations and your Family Obligations; therefore, your Section 8 assistance will be terminated.

This type of conduct or failure to perform a family obligation violates HUD regulations, Foothill County Housing Authority (FCHA) policies, and the Family Obligations.

Having fully considered the entire record, the undersigned Hearing Officer enters the following Findings of Fact, Conclusions of Law, and Decision:

FINDINGS OF FACT

1. On April 4, 2011, the Housing Authority sent Participant written notice of an annual inspection scheduled for April 19, 2011. Participant was not home. On April 19, 2011, the Housing Authority sent Participant written notice of the missed annual inspection. The letter indicates that a final inspection was scheduled for May 2, 2011. The letter advised that “failure to keep this appointment may result in the withdrawal of your housing assistance.”
2. At hearing, Participant denied that he received the April 19, 2011 notice. In any case, he did not respond to the notices because he had already been sent a Warning Notice and Dept Repayment Agreement for \$11,124.
3. Participant acknowledged having signed the FCHA Family Obligations on November 17, 2009 and March 29, 2011.

CONCLUSIONS OF LAW

The undersigned Hearing Officer makes the following conclusions:

1. 24 CFR 982.552 *PHA denial or termination of assistance for family.*
 - (a) *Action or inaction by family.* (1) a PHA may deny assistance for an applicant or terminate assistance for a participant under the programs because of the family’s action or failure to act as described in this section or §982.553.
 - (c) *Authority to deny admission or terminate assistance:* (1) *Grounds for denial or termination of assistance.* The PHA may at any time deny program assistance for an applicant, or terminate program assistance for a participant, for any of the following grounds:
 - (i) If the family violates any family obligations under the program (see §982.551).

See also FCHA Plan Chapter 12-IE. *Mandatory Policies and Other Authorized Terminations*, p.5.

2. 24 CFR 982.551 *Obligations of Participant*
 - (d) *Allowing PHA inspection.* The family must allow the PHA to inspect the unit at reasonable times and after reasonable notice.
3. 24 CFR 982.405 *PHA Initial and Periodic Unit Inspection.*
 - (a) The PHA must inspect the unit leased to a family prior to the initial term of the lease, at least annually during assisted occupancy, and at other times as needed, to determine if the unit meets the HQS. *See also FCHA Plan, Chapter 8-II.A. Annual Inspections, p.7.*

Section 2: Hearing Policies Specific to the Housing Choice Voucher Program

4. FCHA Plan, Chapter 8.II.C. *Annual HQS Inspections*, pg. 9.

PHA Policy:

If the family misses the first scheduled appointment without requesting a new inspection date, the family must request that the PHA schedule a second inspection. If the family misses two scheduled inspections without PHA approval, the PHA 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. See also 24 CFR 982.405(a).

5. *FCHA Family Obligations*.

The Family MUST:

8. Allow the Housing Authority to inspect the unit at reasonable times and after reasonable notice (48-hour minimum).
6. Based on a preponderance of evidence, the undersigned concludes that Participant failed to allow the Housing Authority to inspect the assisted unit at reasonable times and after reasonable notice. By doing so, he violated the Family Obligations in 24 CFR 982.552(d); and FCHA Family Obligations, No. 8.
7. The Housing Authority's decision to terminate housing assistance was in accordance with the law, HUD regulations and the Housing Authority's policies.

DECISION

The Housing Authority's decision to terminate Participant Hank Low's housing assistance is **UPHELD**. Participant's Housing Assistance Payments will terminate effective June 30, 2011.

Date of Decision: June 22, 2011

Iris Impartial

Hearing Officer

This decision shall not constitute a waiver of, nor affect in any manner whatever, any rights you may have to judicial review through the court system in this matter.

Date of Mailing: _____

A copy of the hearing decision was sent by first class mail, postage prepaid, to the following:

Learning Activity 6-2: Case Study

THE PROBLEM:

Several years ago, a PHA (we'll refer to this PHA as Cedartown PHA) was conducting about 12-20 voucher termination hearings per month—almost 200 per year. The PHA administered over 8,000 vouchers. Out of all those hearings, only seven participants prevailed—termination was upheld in all the other cases. Another PHA in the area, that administered almost 8,000 vouchers, held fewer than 20 voucher termination hearings per year.

Cedartown PHA basically relied on a single hearing officer to preside over all cases. The hearing officer had no training specific to the hearing officer function. Basic procedural rights were frequently disregarded, such as the right to cross examination or the right to a continuance for good cause. More significantly, Cedartown's hearing officer refused to consider or make rulings on the basis of legal authorities he was not accustomed to, such as case law, statutes, briefs, etc.; typically, he would rely exclusively on HUD regulations or provisions of the PHA's administrative plan. Over time, the PHA officially sanctioned this approach and decided that such "legal arguments and defenses" were impermissible at informal hearings, on the grounds that such arguments exceeded the skills of its hearing officers.

YOUR SOLUTIONS:

What best practices and steps should Cedartown PHA take in order to address these problems?

Section 3 Grievance Policies Specific to Public Housing

GRIEVANCE PROCEDURES AND HEARING OFFICERS/PANEL



Decision Point: What will be the method used for selecting hearing officers/panel members?

Things to Consider

The person could be appointed directly by the PHA.

Industry practice

PHA policy could stipulate that participants/tenants will not serve as panel members for hearings concerning a family in the development in which the panel member resides.

It is important in the selection of a hearing officer or panel member that the impartiality of the person selected is assured. The hearing/grievance procedure language should reflect this concern for impartiality.

INFORMAL SETTLEMENT OF GRIEVANCE – 24 CFR 966.54



Decision Point: Who will conduct the informal settlements for the PHA?

Things to Consider

Many PHAs designate the property manager to conduct the informal settlement, since this is the person who knows most about the situation. Some PHAs designate property managers from a development other than the development in which the complainant resides to conduct the informal settlement.



Decision Point: What will be the PHA's requirements for submitting a request for an informal settlement and for scheduling the meeting?

Things to Consider

The ACOP could stipulate that requests for informal settlement may be accepted at the central office or project office or elsewhere.

Section 3: Grievance Policies Specific to Public Housing

It is reasonable for a PHA to set a time limit for the family to initiate a grievance. This will prevent families from filing a grievance weeks, months or years after the grievable event occurs. For administrative ease and consistency, the policy should use the same standard throughout much of the ACOP.

The ACOP should also place a time limitation on the PHA for scheduling the informal settlement. The policy should be consistent except where federal or state law differs.

Option:

- The PHA will accept requests for an informal settlement of a grievance either orally or in writing, to the PHA central office or to the project in which the family resides, within 10 business days of the grievable event. Within 10 business days of receipt of the request, the PHA will arrange a meeting with the tenant at a mutually agreeable time and confirm such meeting in writing to the tenant.
- If a tenant fails to attend the scheduled meeting without prior notice, the PHA will reschedule the appointment only if the tenant can show good cause for failing to appear, or if it is needed as a reasonable accommodation for a person with disabilities.
- Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.

HEARINGS



Decision Point: Is the PHA located in a due process state? If so, will the PHA offer grievance hearings if eviction is for a criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the PHA, or for a drug-related criminal activity on or off the premises?

Things to Consider

If the PHA is in a HUD-declared due process state, the PHA is not required to afford the family the opportunity for a grievance hearing if eviction is for the above mentioned criminal activities.

If PHAs in HUD-declared due process states choose to offer grievance hearings for all proposed lease terminations or if HUD has rescinded the state's due process determination, the PHA should consider using expedited grievance procedures for the above mentioned criminal activities.



Decision Point: Will the PHA adopt expedited grievance procedures and if so, what are the conditions of such procedures?

24 CFR 966.55(g)

Things to Consider

The concept of an expedited grievance procedure is to provide a shorter process for those cases where termination or eviction involves criminal activity that threatens health, safety, or peaceful enjoyment, or is based on drug-related criminal activity. In such cases the PHA will want to move as quickly through the grievance process as possible.

If the PHA is in a state where a due process determination has been made and the PHA exercises its option to skip the grievance process and move directly to the court hearing when the termination or eviction is for the reasons mentioned above, the PHA does not need an expedited grievance procedure because they would have an even shorter process than the expedited grievance process would provide.

Section 3: Grievance Policies Specific to Public Housing

In the expedited grievance procedure, an informal settlement conference is not required (24 CFR 966.55(g)(2)). In the expedited grievance procedure the length of time given for each step in the process can be shortened. For those PHAs who can and do adopt expedited grievance procedures, the Public Housing Occupancy Guidebook suggests that the PHA compress all deadlines to 3 business days.



Decision Point: What will be the conditions for requesting a transcript of the grievance hearing proceedings?

Things to Consider

24 CFR 966.56(g) states: “The complainant or the PHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript.”

This means that the family may arrange (and pay for) for audio taping and/or making a transcript. Or an advocate for the family (for example, Legal Aid), may want a tape or transcription. This doesn't mean that the PHA has to be the one audio taping or transcribing. The PHA has no obligation to audiotape or transcribe, although of course it may do so for documentary and educational purposes, or in certain cases.

Option:

- The complainant or the PHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript.
- The PHA audio tapes all grievance hearings. If the complainant wishes to arrange for a transcript, the complainant must make the request to the PHA 12:00 p.m. on the business day prior to the hearing. The PHA will consider that an audio tape recording of the proceedings is a transcript. The arrangements to transcribe from the audio tape is the responsibility of the complainant.

Section 4 Sample Forms

Following are two sample templates. These templates are online at HearingOfficerResources.nanmckay.com. Your PHA may edit and use if you wish.

The first form is a “Tenant Request for a Grievance Hearing”. This form is applicable to public housing but can be easily edited for the voucher program.

The second form is the “Notification of Rights and Responsibilities Regarding the Grievance Hearing”. This form is also worded for public housing but can be easily edited for the voucher program.



TENANT REQUEST FOR A PUBLIC HOUSING GRIEVANCE HEARING

(This information is available in an alternative format upon request.)

Tenant's Name: _____ Client #: _____

Mailing Address: _____

Phone: _____ E-mail (if any): _____

Tenant's Signature: _____ Date: _____

In accordance with the grievance policy of Anytown Housing Authority, I am requesting a grievance hearing for:

REASON (Check appropriate box):

- Nonpayment of rent
- Lease violation (eviction)
- My denied request for a reasonable accommodation
- My denied request to add a family member
- My denied request to add a full-time live-in aide
- Pet policy
- Remaining member of family
- Denied my transfer request
- PHA is requiring me to transfer
- Other (describe): _____

An informal settlement conference with my property manager took place on: _____, and I want to appeal (dispute) the decision of my property manager.

Please list attorney, service agency, or medical provider(s) that will be representing you at the grievance hearing. Please include a mailing address and daytime telephone number for each: _____

If you have a disability that could affect your ability to participate at the grievance hearing, you have the right to request a reasonable accommodation. Please list the specific type of assistance you need: _____

The hearing coordinator will notify you that the requested accommodation is granted and will be provided, that more information is required, or that the request is denied.

PLEASE MAIL REQUEST TO: Anytown Housing Authority
Sue McDivit, Hearing Coordinator
155 Maple Street
Anytown, Any State, Zip

This is an important document. If you require interpretation, please call the telephone number below or come to our offices.

Este es un documento importante. Si necesita interpretación, por favor llame al número de teléfono que aparece abajo o visite nuestras oficinas.

這是一份非常重要的文件。如果您需要翻譯服務，請撥下面的電話或前往我們的辦公室

Isto é um documento importante. Se exige interpretação, por favor chama o número de telefone embaixo ou vem a nossos escritórios.

Это важный документ. Если Вам требуется перевод, пожалуйста позвоните нам (телефонный номер ниже). Или придите в наш офис.

Đây là một tài liệu quan trọng. Nếu quý vị cần phiên dịch, vui lòng hãy gọi cho số điện thoại bên dưới hoặc đến các văn phòng của chúng tôi.

ខ្ញុំ: គឺជាឯកសារសំខាន់មួយ។ ប្រសិនបើលោកអ្នក ចាំបាច់ត្រូវបានការបកប្រែ សូមទូរស័ព្ទលេខខាងក្រោមនេះមកកាន់ ឬ អញ្ជើញមកទាក់មងដោយផ្ទាល់នៅការិយាល័យយើងផង។

Sa a se yon dokiman enpòtan. Si ou bezwen entèpretasyon, tanpri rele nimewo telefòn ki anba la a oswa vini nan biwo nou.

Tani waa dhokomentii muhiim ah. Haddii aad rabto tarjumaad, fadlan wac lambarka hoos ku qoran ama imow xafiisyadayada.

هذه وثيقة مهمة، وإذا كنت في حاجة إلى ترجمة فورية، يرجى الاتصال على رقم الهاتف المذكور أدناه أو أن تتفضل بالمجيء إلى مكتبنا.

این یک سند بسیار مهم است. اگر به ترجمه آن نیاز دارید، لطفاً با شماره تلفن زیر تماس بگیرید یا به دفتر ما مراجعه کنید.

Telephone No. _____





**NOTIFICATION OF RIGHTS and
RESPONSIBILITIES
REGARDING the PUBLIC HOUSING HEARING**

This is an important document. If you require interpretation, please call the telephone number below or come to our offices.

Este es un documento importante. Si necesita interpretación, por favor llame al número de teléfono que aparece abajo o visite nuestras oficinas.

這是一份非常重要的文件。如果您需要翻譯服務，請撥下面的電話或前往我們的辦公室

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Đây là một tài liệu quan trọng. Nếu quý vị cần phiên dịch, vui lòng hãy gọi cho số điện thoại bên dưới hoặc đến các văn phòng của chúng tôi.

នេះ គឺជាឯកសារសំខាន់មួយ។ ក្នុងករណីលោកអ្នក ចាំបាច់ត្រូវចង់បានការបកប្រែ

សូមទូរស័ព្ទលេខខាងក្រោមនេះមកកាន់ ឬ

អញ្ជើញមកទាក់ទងដោយផ្ទាល់នៅការិយាល័យយើងផង។

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Tani waa dhokomentu muhiim ah. Haddii aad rabto tarjumad, fadlan wac lambarka hoos ku qoran ama imow xafiisyadayada.

هذه وثيقة مهمة، وإذا كنت في حاجة إلى ترجمة فورية، يرجى الاتصال على رقم الهاتف المذكور أدناه أو أن تتفضل بالمجيء إلى مكتبنا.

این یک سند بسیار مهم است. اگر به ترجمه آن نیاز دارید، لطفاً با شماره تلفن زیر تماس بگیرید یا به دفتر ما مراجعه کنید.

Telephone No.

You have requested a grievance hearing to decide whether the action taken against you was justified. You have the right to a fair hearing, which will be decided by a duly appointed, independent hearing officer. The hearing will be less formal than a court trial, but is an official proceeding where both sides present evidence. Please be aware of your rights and responsibilities.

The housing authority shall present the facts supporting the action proposed in the notice of intended action. The housing authority bears the overall burden of proving the allegations by a preponderance of evidence. The housing authority must establish that the tenant committed serious or repeated violations of the public housing lease or violated one or more public housing program rules, regulations, or policies.

YOUR RIGHTS

1. **Types of Evidence:**
 - a. **Your testimony:** What you have to say about your side of the case.
 - b. **Documents:** You may present letter(s), doctors' reports, receipts, official notices, etc.
 - c. **Witnesses:** You may bring witnesses who have personal knowledge of the facts of the case to give their testimony. A list of witnesses should be submitted to [identify PHA position, office location, and phone number] at least three (3) workdays before the date of the hearing.
2. **Representation:** You may have an attorney or other appropriate person represent you at a hearing. If you obtain representation, please notify [identify PHA position, office location, and phone number] at least five (5) workdays prior to the hearing.
3. **Hearing packet:** We will send you a copy of our hearing packet, with all documents the PHA intends to produce at the hearing, at least five (5) workdays before the date of the hearing.
4. The opportunity to receive a **reasonable continuance for “good cause”** is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.
5. You have a right to a private hearing, unless you request a public hearing.
6. **Taped proceedings:** If you wish to have a recorded copy of the proceedings, you must supply a 120-minute blank tape to the housing authority after the final decision has been made.

7. **Questions:** You may ask questions of any witnesses who testify against you.
8. **Reasonable Accommodation:** As you have already been notified, if you have a disability that could affect your ability to participate at the grievance hearing, you have the right to request a reasonable accommodation. You must specify the request before the hearing by contacting [indicate PHA hearing coordinator or 504 coordinator, with phone number].
9. You may **withdraw** your hearing request at any time by informing the housing authority, in writing, of your request.
10. **Judicial review:** Hearing decisions shall be final and binding upon all parties unless either party seeks timely judicial review. Where the hearing decision is unfavorable to the participant, the participant may obtain judicial review of the decision under [cite state law or civil code].
11. If you are a victim or threatened victim of domestic violence, dating violence, sexual assault, or stalking, you have certain protections under the Violence Against Women Act (VAWA).

YOUR RESPONSIBILITIES

1. You have the legal duty to tell the truth at all stages of the proceedings just as if it were a court case.
2. You have the obligation to prepare your case and be ready on the date of the hearing.
3. If you need to delay the hearing, you must request and show good cause prior to the hearing date. If you fail to appear, the hearing will be considered abandoned and the housing authority shall follow through with the intended action.
4. If necessary, you may request in advance of the hearing authority an interpreter or mechanical facility to overcome language or other communication disabilities.



Section 5 Post-Test

1. PHA policies play a minor role in making hearing decisions.
 - a. True
 - b. False
2. When a HUD regulation states, “The PHA *may*...” it means that:
 - a. The PHA can do or not do something on a case-by-case basis
 - b. The PHA needs to make a policy decision
 - c. The PHA must ask HUD's permission before taking any action
 - d. The PHA is not required to follow the regulation
 - e. None of the above
3. HUD regulations stipulate the details of how the PHA administers its reviews and hearings.
 - a. True
 - b. False
4. In the Housing Choice Voucher program, the PHA may make a policy decision to offer applicants the opportunity for an informal review for reasons other than those required by the regulations.
 - a. True
 - b. False
5. Some of the persons authorized to attend a hearing could be:
 - a. A PHA representative
 - b. Any witnesses for the PHA
 - c. The participant and any witnesses for the participant
 - d. The participant’s counsel or other representative
 - e. Any other person approved by the PHA as a reasonable accommodation for a person with a disability
 - f. All of the above

Section 5: Post-Test

6. The PHA's policies must be approved by:
 - a. PHA legal counsel
 - b. HUD Office of Inspector General
 - c. A majority of participants and tenants
 - d. The PHA's board of commissioners
 - e. None of the above
7. Which statement is true about the PHA plan, the program policies, and hearing/grievance policies?
 - a. They all must be approved by HUD
 - b. They all must be approved by the PHA's board
 - c. The policies must be consistent
 - d. a and c
 - e. b and c
 - f. None of the above
8. The public housing grievance procedure can be either included in the lease or incorporated by reference in the tenant lease.
 - a. True
 - b. False

Notes

CHAPTER 7 **Hearing/Grievance Internal Processes and Coordination**

LEARNING OUTCOMES

Upon completion of this chapter, you should be able to:

- Identify potential information that may be included in an internal PHA memo for hearing coordination
- Evaluate alternative hearing processes
- Evaluate alternatives for coordinating reviews and hearings
- Describe the steps, tasks, and issues around the scheduling and coordination of hearings

INTRODUCTION

Because the right to the hearing due process is so important, the PHA must have more than just policies that contain HUD regulations and PHA policy decisions. The PHA's grievance/hearing procedures specify *how* the regulations and PHA policies will be carried out.

First, even though HUD uses the term "hearing procedures" for the voucher program and "grievance procedures" for the public housing program, these procedures really have the same weight as policies. Here are the requirements:

- For the Housing Choice Voucher program, the administrative plan must state the PHA procedures for conducting informal hearings for participants. As we know, the board approves PHA policies.
- For public housing, the PHA grievance procedure must be included in, or incorporated by reference, in all tenant dwelling leases.
 - In addition, the PHA must provide at least 30 days notice to tenants and resident organizations setting forth proposed changes in the grievance procedure, with opportunity to present written comment.
 - And, the PHA method of selection of hearing officers must also be described in the lease.
 - The grievance procedure is a policy which must be approved by the board.

An important point to always keep in mind is that PHA policies and documents must be consistent. The PHA 5-year and annual plan, the program policies, the lease, and grievance procedures must synthesize. When the PHA revises one policy, there may be considerations and effects in others.

- When policies are revised, procedures and forms need to be analyzed, and managers must ensure staff is trained on any changes.

The PHA should include all important provisions, certainly those that affect participants and tenants in any way, in its formal grievance procedures. The PHA could also have a less formal, “how-to” document, that doesn’t have to meet the rigor of formal consultation, comment, and board approval. The advantage of having the complete grievance procedure in the official document is transparency.

The advantage of having some internal “process” instructions is ease of revision. The PHA has to make the best decision here based on how problematic hearings have been in the past, trust of the PHA among applicants, participants, tenants, and advocate groups, and the importance of transparency vs. the need for day-to-day operational change.

- When we discuss processes that might be outside of the formal hearing/grievance procedures, you will see the citation “Internal Process”.

You will see that PHA options change in various provisions in this chapter. The different options illustrate that there is no one, firm best practice. The PHA makes these decisions based on its internal operations and relationships with customers and the community.

The person at the PHA who schedules reviews and hearings might be the same person who coordinates the hearings. The important thing is that PHA expectations must be very clear and in writing as to roles and responsibilities, tasks, and time lines; in other words, who, what, when, where, and how.

Section 1 Processes Common to the Voucher and Public Housing Programs

REVIEWS



Process: Who conducts the reviews?

Things to Consider

Although the hearing/grievance procedures must state that reviews will be conducted by someone other than the person who made or approved the decision, or subordinate of such person, the hearing coordinator (if he or she oversees or tracks reviews) needs specifics. This could be in a PHA internal process document.

Internal Process

Option:

- Reviews involving complaints related to discrimination, harassment, or disability rights will be referred to the PHA 504 coordinator.
- As soon as the request for review is received, it will be reviewed by the designated position to be certain that the situation is subject to the grievance procedures (cite). Should one of the exclusions apply, the complainant will be notified in writing that the matter raised is not subject to the PHA's grievance procedure, with the reason.

HEARINGS



Process: Will the PHA's hearing/grievance procedure or internal process memo describe the process and/or sequence of the hearing?

Things to Consider

Internal description of the choreography of the hearing can help both the hearing coordinator and the hearing officer, and make the process more seamless for the family.

Section 1: Processes Common to the Voucher and Public Housing Programs

Internal Process

Option:

- The hearing coordinator provides the day's schedule of hearings to the hearing officer and to the receptionist in the area where the hearing will be held. Staff and witnesses who will be presenting at the hearing for the PHA will check in with the receptionist and wait in the lobby area until called by the hearing officer. The receptionist will inform the hearing officer when a tenant comes for their hearing.
- The hearing officer will call the parties to the hearing and arranges the seating for the hearing, giving consideration to any issues of disability, i.e., making appropriate space available for persons in wheelchairs, and safety concerns.



Decision Point: Will safety concerns be addressed?

Things to Consider

The hearing coordinator and hearing officer should have some protocols in order to keep the proceedings orderly and safe.

Internal Process

Option:

- If personal safety concerns are expressed by staff, the hearing coordinator may arrange for the presence of a contracted city police officer, provide staff or witnesses the option of appearing at the hearing by speaker phone or other arrangements to address the safety concerns.
- If, during the hearing, the hearing officer believes that a threat exists, the hearing officer has the right to immediately end the hearing. It will be the decision of the hearing officer to make the decision based on evidence presented at the hearing, or to reconvene the hearing at a later date, when the threat has been resolved.

Section 2 Process Points for Public Housing

Internal Process



Decision Point: Will tenants serving on a hearing panel receive a resident service stipend?

Things to Consider

Clearly, compensating tenants for participation on the hearing panel by providing a resident service stipend (no more than \$200 per month) will increase resident interest. The PHA will make this decision based on resident commitment and the PHA budget.

Section 3 Coordination Principles

Coordination is the management of appeal and hearing processes and resources to move cases in a timely way from filing to conclusion. Many PHAs get in trouble just for having a large backlog of hearing cases.

The hearing coordinator (again, a generic title) needs to understand effective caseload management. Effective caseload management aims to minimize delays and make the best use of time and resources.

Managing and coordinating appeal and hearing cases can help to:

- Ensure equal treatment of all applicants, participants, and tenants by the PHA
- Ensure timely conclusion of cases consistent with the circumstances of the case
- Improve the quality of the process
- Maintain public confidence in the PHA as an institution, housing assistance provider, and community partner.

PRINCIPLES OF HEARING CASEFLOW MANAGEMENT

PRINCIPLE 1—COMMITMENT

Ongoing PHA commitment and leadership is essential for the caseload management system to work. The hearing coordinator has a central role. Initial and ongoing leadership is required to initiate and sustain the integrity of the PHA's hearing procedures.

PRINCIPLE 2—CONTROL OF CASES

The PHA should take control of cases to continuously monitor progress and direct them towards finalization. To ensure that the pace of appeals is not controlled by participants, tenants, lawyers or advocacy groups, and that cases are finalized in an efficient and timely manner, the PHA should try to ensure that events are scheduled within short and well-defined time limits.

Section 3: Coordination Principles

Events should occur when they are scheduled to occur, with a clear enforcement process. Parties need to be certain that hearings will occur when scheduled so that they are prepared to run their case. Exceptions should be generally only allowed in a scheduled hearing where something unforeseen or exceptional has happened. This ensures that parties are prepared for hearings and know that they will go ahead. The aim is for the PHA to deal with as many cases as it can in the time available, without over-scheduling.

PRINCIPLE 3—GOALS, STANDARDS AND MONITORING FOR PERFORMANCE

A case management system requires clear qualitative and quantitative standards and goals and an effective monitoring and information system. The hearing process performance can be judged by reference to a range of standards and goals. These include how long it should take to complete a case, and how many cases should be dealt with over a year.

PHAs need systems that help the hearing coordinator, hearing officers, and managers to monitor cases as they progress through the hearing process. Information systems should produce reports that help hearing coordinators manage the caseflow to see whether they are meeting the PHA's time standards.

PRINCIPLE 4—PLANNING

A PHA needs to plan when implementing new hearing processes and systems. This would include any new electronic tracking systems. Good planning ensures that the system better manages the progress of cases from filing to completion.

PRINCIPLE 5—ADAPTING TO CHANGE

A PHA should continually monitor and adapt to change. Hearing coordinators need to monitor appeal and hearing practices to ensure they continue to work well, and make changes where necessary. What was once innovative and highly effective may not work indefinitely because of changes in technology, changes in government funding or policy, organizational change or national health or other crisis.

Section 3: Coordination Principles

PRINCIPLE 6—CONSULTATION, EDUCATION AND TRAINING OF STAKEHOLDERS

Implementing change in the hearing system requires consultation, education and training of hearing officers, PHA representatives, managers, and other stakeholders in the PHA's hearing processes. Hearing officers and PHA representatives should be consulted to ensure they support and understand any new system.

PRINCIPLE 7—DAY-TO-DAY COMMUNICATION

Managing the day-to-day flow of appeal and hearing cases from original request to final decision requires good communication between the hearing coordinator, hearing officers, managers, PHA representatives, and staff. This helps to identify problems and difficulties, and also to provide feedback to staff about the importance of their contribution to meeting the performance targets of the hearing process such as time standards for completion of cases. For the same reasons and in the same way, there also needs to be good communication with the hearing officers.

Section 4 Communications Among Parties

Taking into consideration the prohibition on ex parte communications (discussed earlier), the hearing coordinator should make communication between the parties, and between the parties and the hearing officer, as easy as possible. The hearing coordinator should encourage the use of fax, e-mail, telephone conferencing, and other modern modes of communication.

Parties frequently forget the necessity to copy the opposing parties with communications with the hearing officer. The hearing coordinator and hearing officer should be diligent to ensure that each communication received has been copied to opposing parties.

The hearing coordinator and hearing officer should keep in mind that the purpose of discovery is to exchange information legitimately needed by the parties to prepare for hearing. The goal should be to do so in an expeditious and efficient way rather than to make the process as formal as possible. The hearing coordinator and hearing officer should act to deter “hide-the-ball” tactics or unreasonably burdensome requests.

Section 5 Tasks and Responsibilities in Hearing Coordination

The person at the PHA who schedules reviews and hearings may not be the same person who coordinates the hearings. The important thing is that PHA expectations must be very clear—and in writing—as to roles and responsibilities, tasks, and timelines—in other words, who, what, when, where, and how.

In a later chapter, “Preparing for the Hearing,” there are checklists that should start with the hearing coordinator and be checked off by the hearing officer as you go over your hearing documents before the hearing.

Section 6 Other Areas of Responsibility

A hearing packet should be compiled, well before the hearing, with time standards articulated in the hearing/grievance procedures. The hearing packet should contain a summary of the case to be presented, and all documentary evidence from both parties intended to be presented at the hearing. Compiling the hearing packet may be the hearing coordinator's responsibility.

- Well-written hearing packets (called "briefs" in the legal world) can assist the hearing officer to absorb the hearing evidence in complex cases by showing the parties' views of how the evidence will work together to prove their case.
- The hearing packet may also present any research the hearing officer may need on particular legal or technical questions.

The hearing coordinator's job duties may also include holding educational briefings for PHA staff who conduct reviews, property managers who conduct informal settlements in public housing, and/or PHA staff representing the PHA's case in hearings.

The hearing coordinator may be the liaison to the 504 coordinator, to ensure that policies, procedures and day-to-day operations consider requests for reasonable accommodation, oral interpretation if requested for persons who do not write, read, speak, or understand English well, and requests for protections under the Violence Against Women Act (VAWA). These issues will be explored in the next chapter.

In addition, the hearing coordinator may be the liaison to advocacy groups in the community. Working with advocacy groups will be explored in a later chapter.

The hearing coordinator may also recruit, orient, and educate new hearing officers; this effort may be ongoing or may be focused when the need arises. The hearing coordinator may work with resident groups and resident councils to recruit hearing panel members. Hearing officers' ongoing education will be explored in a later chapter.

Section 7 Post-Test

1. All of the PHA's internal processes related to hearings must be in the PHA's hearing or grievance policies.
 - a. True
 - b. False
2. PHA procedures must be approved by the PHA's board of commissioners.
 - a. True
 - b. False
3. Which of the procedures below could be addressed in an internal process document rather than the hearing/grievance policies?
 - a. How late a participant/tenant may be before the right to a hearing is waived
 - b. Reasons for which and how many times a hearing may be rescheduled
 - c. How the hearing coordinator sets up the hearing room
 - d. The format of the hearing officer's final decision
 - e. The right of the family to examine any documents before the hearing that the PHA intends to present at the hearing
4. The hearing coordinator duties are:
 - a. Dictated by law
 - b. Specified in HUD regulations
 - c. Described in PHA policies and procedures
 - d. Identical in all housing authorities
5. If a PHA has an experienced hearing coordinator, there is no need for a hearing tracking system.
 - a. True
 - b. False

Section 7: Post-Test

6. The hearing coordinator must be a full-time position per HUD regulations.
 - a. True
 - b. False
7. The important benefit(s) of a hearing tracking system:
 - a. Enables the PHA to deal with cases in a timely manner
 - b. Helps the PHA to avoid over-scheduling
 - c. Ensures equal treatment of all applicants, participants, and tenants by the PHA
 - d. Maintains public confidence in the PHA
 - e. All of the above

Notes

CHAPTER 8 Reasonable Accommodation Requests

LEARNING OUTCOMES

After completing this chapter, you should be able to:

- Discuss the PHA’s civil rights and fair housing obligations
- Identify when, why, and how requests for reasonable accommodation may enter into the appeal and hearing process
- Recognize how and when to work with the 504 coordinator when requests for reasonable accommodation arise pertaining to the appeal or hearing
- Describe the most common reasonable accommodation hearing cases

INTRODUCTION

There are seven federally protected classes under civil rights and fair housing laws. Discrimination under federal fair housing laws means any difference in treatment, exclusion of, or failure to offer a person an equal opportunity in housing because of:

- Race
- Color
- Religion
- National origin
- Sex
- “Sex” includes discrimination on the basis of sexual orientation and gender identity.
- Familial status
- Disability
- Age

Executive Order 13988

HUD enforces federal fair housing law.

In addition, HUD’s Equal Access Rule mandates that PHAs provide equal access regardless of marital status, gender identity, or sexual orientation.

- Executive Order 13988, issued January 20, 2021, provides that federal laws prohibiting discrimination on the basis of sex, including the Fair Housing Act, also apply regarding discrimination on the basis of sexual orientation and gender identity.
 - The order requires all federal agencies to review any regulations, guidance documents, policies, programs, or other agency actions that were put into effect under any statute or regulation prohibiting sex discrimination and to develop a plan to ensure their consistency with the order.

In addition, the PHA must also be in compliance with any state or local laws that have additional protections or create additional protected classes. It's important for the PHA to educate its hearing officers on federal, state, and local nondiscrimination laws, since these protections could materially affect the case.

Reasonable accommodations protect persons with disabilities from discrimination. *Reasonable accommodations eliminate or mitigate barriers* preventing people with disabilities from fully participating in housing opportunities—including the right to fully participate in the PHA's appeal and hearing processes.

It is important to be aware that sometimes the need for an accommodation first presents itself in the form of a complaint (from or about the applicant or assisted family), or through issues of noncompliance. An issue of a barrier posed by a disability could arise at any time before, during, or after a hearing.

Section 1 **Background**

“Fair housing” is part of the language incorporated in civil rights legislation. On April 11, 1968, the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968) was signed into law. Twenty years later, Congress strengthened the law’s enforcement provisions and passed the Fair Housing Amendments Act of 1988. The key provisions of the 1988 law include:

- Extending the law’s basic protection against discrimination in housing to families with children and to people with disabilities
- Imposing an affirmative duty on housing providers to provide “reasonable accommodation” to persons with disabilities
- Imposing accessibility/adaptability requirements on the new construction or rehabilitation of all residential building of four or more units first occupied after March 13, 1991
- Reforming of the enforcement and remedies of victims of discrimination under the law, including:
 - Requiring that the Department of Justice (DOJ) represent individual victims of housing discrimination after receiving referrals from HUD
 - Increasing the penalties perpetrators of discrimination face, including awards of actual damages, attorneys’ fees, injunctive relief and punitive damages; today, violations can be very costly to PHAs and private landlords
 - Extending the time for filing a fair housing complaint with HUD from 180 days to 365 days from the time the discriminatory act occurred

Section 2 **Definition of Reasonable Accommodation**

24 CFR 100.204

A change, exception, or adjustment to a rule, policy, practice, or service may be necessary for a person with a disability to have an equal opportunity to participate in the program and to use and enjoy a dwelling, including public and common use spaces.

Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to participate in a program or to use and enjoy a dwelling.

To show that a requested accommodation may be necessary, there must be an identifiable relationship (or “nexus”) between the requested accommodation and the limitation or barrier posed by the individual’s disability.

Different ways to describe reasonable accommodation include:

- Any change in the way things are customarily done that enables an individual with a disability to enjoy equal employment or housing opportunities
- Any change or adjustment to a job or housing environment that permits a qualified applicant, participant/tenant or employee with a disability to fully participate in the housing or application process, to meet tenancy requirements, or to enjoy the benefits and privileges of housing equal to those enjoyed by employees, applicants, participants or tenants without disabilities.
- A change allowed by management to how the terms and conditions of an individual’s participation in the program or tenancy are met, in consideration of a known disability, unless this would create an undue hardship and administrative burden on the agency.

FAIR HOUSING PROTECTIONS FOR HANDICAP/DISABILITY

*24 CFR 100.201 and
24 CFR 8.3*

A person with a handicap (“handicap” is the word written into the older laws) or disability is anyone who:

- Has a physical or mental impairment which substantially limits one or more of such persons’ major life activities
- Has a record of having such an impairment
- Is regarded as having such an impairment

DEFINITIONS OF THE TERM “DISABILITY”

PHA staff and hearing officers must understand two different definitions of “disabled.”

HUD DEFINITION OF A PERSON WITH A DISABILITY

24 CFR 5.403

In specific instances, HUD uses a “strict” or “narrow” definition of who qualifies as a person with a disability. The HUD definition for “disabled” is used for eligibility determination, income, and rent calculation allowances. The applicant or participant/tenant must provide third-party documentation that he or she meets one of three qualifying definitions under the HUD definition of disabled:

- The person meets the Social Security Administration definition of a person with disabilities as defined in 42 U.S.C. 423
- The person has a physical, mental or emotional impairment that:
 - Is expected to be of long, continued and indefinite duration
 - Substantially impedes their ability to live independently
 - Is of such a nature that the ability to live independently could be improved by more suitable housing conditions
- The person has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000.

Section 2: Definition of Reasonable Accommodation

**FAIR HOUSING ACT DEFINITION OF A PERSON WITH A
DISABILITY FOR PURPOSES OF REASONABLE
ACCOMMODATION**

24 CFR 100.201

The definition of a person with a disability for purposes of granting a reasonable accommodation request is much broader than the HUD/Social Security definition. This broader definition is to ensure that limitations posed by disabilities do not create a barrier to housing programs.

As mentioned previously, under this broader definition, the person must have a physical, mental or emotional impairment that substantially limits one or more of the person's major life activities. The impairment can include practically any condition, disease, illness, disfigurement or disorder, as long as the impairment substantially limits one or more major life activities.

- Major life activities include, but are not limited to: Caring for oneself, walking, seeing, hearing, breathing, learning, working, concentrating, thinking.

Section 3 The Reasonable Accommodation Process

*PIH Notice 2010-26,
24 CFR 966.7*

First, the PHA has an obligation to inform applicants and assisted families of the right for any person with disabilities to request a reasonable accommodation. The PHA should review forms, letters, posters and signs for inclusion of this information. Such a statement should be on applications for assistance, annual reexamination paperwork, warning or termination letters, and posted in PHA offices in an obvious and well-marked place.

24 CFR 100.201

Qualifying as a person eligible to request an accommodation is the first step in the reasonable accommodation process. It is the establishment of the person's right to make a request of the program (including the appeal/hearing process).

- When a reasonable accommodation is requested, the disability needs to meet the Fair Housing Act/ADA/504 definition.
- The PHA *may not* inquire into the nature or extent of a disability.
- If the disability is obvious or otherwise known, the PHA may not verify the disability.

HUD/DOJ Memo 2004

HUD/DOJ Memo 2004

However, the person must also show that they are limited by the program due to their disability, and that the requested accommodation will remove that limitation so that they can completely fulfill the program's requirements (including participating in the appeal or hearing). To say it another way, there must be a barrier to housing presented by the person's disability that causes this person, without removal of the barrier, not to have equal access to programming.

Section 3: The Reasonable Accommodation Process

- PHA staff does not decide whether there is a “nexus” between the disability and the requested accommodation. This burden is placed on “knowledgeable professionals” as defined in PHA policy unless the requestor presents an obvious disability and obvious barrier in which case the PHA makes the accommodation without any need for further inquiry.

“If you or anyone in your family is a person with disabilities, and you require a specific accommodation in order to fully utilize our programs and services, please contact (name and phone number).”

“If you are a person with a disability who may need a special accommodation in order to participate in the hearing, please contact [hearing coordinator, with telephone number] no later than [date (a date in advance of the first proceeding)] to make any necessary arrangements.”

An applicant/participant/tenant’s request *triggers* the PHA’s consideration of the need for an accommodation.

- The reasonable accommodation process may include fluid negotiations on a case-by-case basis. What is reasonable in one situation may not be reasonable in another. The PHA may not be able to exactly meet the specific request, but may offer alternative options.
- The essential intent of federal antidiscrimination laws is that each case should be treated on its individual merits.

Here is the process:

1. Was an accommodation requested?
2. Is this a person with disabilities?
3. Is there a nexus between the disability and the specific request?
4. Is the request reasonable?

CONSIDERATION OF REASONABLENESS OF REQUEST

*Notice PIH 2010-26
HUD/DOJ Joint Statement
5/17/04*

A PHA can deny a request for reasonable accommodation if:

- The request was not made by or on behalf of a person with a disability
- There is no disability-related need (nexus) for the accommodation
- The accommodation will result in an undue financial and administrative burden for the PHA.

Notice PIH 2010-26

- Whether an undue financial and administrative burden results is determined on a case-by-case basis reviewing factors such as the overall size of the PHA's program with respect to the number of employees, type of facilities, and size of budget; the type of operation, including the composition and structure of workforce, the nature and cost of the requested accommodation, and the availability of alternative accommodations.

- The request would pose a fundamental alteration to the program.

*(Citation HUD/DOJ Joint
Memo)*

- An example of a fundamental alteration would be waiving statutory requirements under the program

- If, even with an accommodation, there is a "direct threat" to the health or safety of other individuals, or threat of substantial physical damage to the property of others.

Section 4 Working with the 504 Coordinator

24 CFR 8.53

If a housing authority employs fifteen or more people, it must have a designated employee to coordinate compliance with Section 504.

Section 504 regulations also require that the PHA adopt grievance procedures that incorporate due process standards to provide for resolution of complaints.

Depending on the size of the PHA, the 504 coordinator may have other roles at the PHA. For example, in a small PHA, the executive director may be designated as the 504 coordinator. As a manager or supervisor in a small to medium PHA, a hearing coordinator may be given the role of 504 coordinator in addition to other duties.

Whether a full- or part-time role, the 504 coordinator will be responsible for reviewing reasonable accommodation and modification requests by PHA employment applicants, employees, housing applicants, and tenants.

Because issues of fair housing and reasonable accommodation are so common in termination cases, the hearing coordinator must work closely with the 504 coordinator at any time such an issue arises before, during, or even after an appeal or hearing. Hearing officers must be fully knowledgeable about reasonable accommodation in order to alert the hearing coordinator or 504 coordinator, and to take such these issues into account in the hearing decision.

ESSENTIAL DUTIES OF THE 504 COORDINATOR

It is helpful for the hearing officer to understand the duties of the 504 coordinator:

NOTIFICATION

The 504 coordinator must ensure that notification procedures are defined and implemented.

- Must ensure thorough documentation at every step and for every interaction regarding a request for reasonable accommodation, and for any fair housing issue.
- Applicants for employment, employees, applicants for housing, and HCV participants and public housing tenants who identify themselves as individuals with disabilities may be entitled to reasonable accommodations.
 1. *Applicants for employment*—the PHA shall conduct job interviews in wheelchair accessible locations. Applicants will be notified of the availability of reasonable accommodations when an interview is being scheduled.
 2. *Employees*—all employees of the PHA shall be given a copy of the reasonable accommodation policy.
 3. *Applicants*—all application forms for housing used by the PHA shall contain language which states that accommodations for persons with disabilities may be requested.
 4. *HCV participants and public housing tenants*—all PHA participants/tenants are notified that accommodations for persons with disabilities may be requested. Public housing tenants are notified of their right to request modifications to their unit to ensure accessibility. Participant/tenant handbooks include this language as well.

CONFIDENTIALITY

All requests for modifications and/or accommodations and related information must be kept confidential.

REVIEW

The PHA should define which requests the 504 coordinator should review. It may be that the PHA decides that the 504 coordinator reviews:

- All requests
- All requests before a hearing is granted and scheduled
- Requests for which additional information is requested
- A request which requires a meeting with the person requesting
- Any request which is not considered reasonable by the manager or property manager, and for which reasonable alternatives will be explored
- Any denial of a request for an accommodation

The PHA needs to establish:

- Timelines in which the PHA will respond, after receipt of the request.
- Forms adequate to establish a reasonable accommodation process and to document good-faith consideration of PHA to the individual request
- Written notices of the PHA's decision

MONITORING

The PHA should define the 504 coordinator's role in:

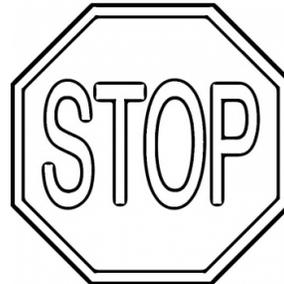
- Developing protocol for receiving requests for and responding to complaints, requests for reasonable accommodation, appeals, and hearings
- Tracking and monitoring requests for reasonable accommodation
- Preparing for hearings in cases where reasonable accommodation has arisen or does arise before or during a hearing
- Record-keeping for all requests for reasonable accommodation, complaints, appeals, and hearing/grievance procedures
- Dissemination and implementation of new regulations and guidance
- Regular training of staff

Section 4: Working with the 504 Coordinator

The PHA should be very specific regarding the 504 coordinator's role in appeals and hearings where there are issues of reasonable accommodation or modification.

If you as the hearing officer have any questions or concerns about an issue of reasonable accommodation, you should contact the 504 coordinator. The 504 coordinator must be responsible and responsive to the hearing officer if there are any questions regarding reasonable accommodation or modification of a unit.

Here's the bottom line: If an issue of reasonable accommodation or modification is an issue in the case of a hearing for termination:



Do not ignore, bypass, or barrel past a request for reasonable accommodation that arose and has not been fully resolved. Make sure the issue is fully resolved. If the PHA has denied a request for reasonable accommodation, make sure every alternative has been explored and the PHA has denied for the reasons listed in this chapter.

Section 5 Common Reasonable Accommodation Requests

HOME VISIT FOR THE ANNUAL REEXAMINATION

It may be reasonable for disabled individuals to request that PHA staff travel to their homes for the reexamination meeting, if their disability makes it extremely difficult to get to the office.

- The request might be made by an individual with limited mobility, an individual who has a fear of going to crowded public places, or by a participant with environmental illnesses who is allergic to products used in the PHA office. With the last example, the PHA could ask the participant to meet somewhere close to the PHA (a public library private room, for example).

MAKING EXCEPTIONS TO ADMIN PLAN OR ACOP REQUIREMENTS FOR ABSENCES

Exceptions to absence policies are often reasonable. For example, a PHA that prohibits absences from the unit for more than 30 days in a row may grant an exception so a person with a disability can undergo a 45-day medical treatment at an out-of-town clinic.

Remember that the PHA may reasonably have a need to know how long it's expected that the person is going to be absent and who to contact during the person's absence.

Section 5: Common Reasonable Accommodation Requests

PHYSICAL MODIFICATIONS

HUD/DOJ Joint Statement on Reasonable Modifications, March 5, 2008, Q:31

PHAs are required to make and pay for structural modifications to public housing dwelling units and common areas when needed as a reasonable accommodation for tenants or applicants with disabilities.

- For example, a PHA may be required to install a ramp to allow a tenant in a wheelchair access to a dwelling unit, or transfer a family to an available accessible unit or one that can be modified without causing an undue financial and administrative burden.

In the voucher program, most owners must permit a family that contains a person with a disability to make reasonable modifications to the unit at the family's expense.

- If the owner is going to require an escrow account or otherwise require the family to restore the unit when the family moves out, HUD requires the owner and family to have a restoration agreement that is separate from the security deposit.

LIVE-IN AIDES

24 CFR 5.403

WHO IS A LIVE-IN AIDE?

A live-in aide is a person who resides with one or more elderly persons, or persons with disabilities, and who:

1. Is determined to be essential to the care and well-being of the person(s)
2. Is not obligated for the support of the person(s)
3. Would not be living in the unit except to provide the necessary supportive services.

A live-in aide, by HUD's definition, is one whose primary residence is in the subsidized unit of a participant/tenant whose disability requires the presence of the aide.

Notice PIH 2009-22

Occasional, intermittent, multiple or rotating care givers typically do not reside in the unit and therefore would not qualify as live-in aides. However, a recent notice suggests that exceptions could be made as a reasonable accommodation.

Section 5: Common Reasonable Accommodation Requests

The aide does not become a permanent member of the household and has no claim to stay if the participant/tenant dies or otherwise leaves the subsidized unit.

Because the PHA is not qualified to determine whether the disabled person requires the assistance of a live-in aide, it is necessary to obtain reliable third-party verification that this accommodation is required.

- As this may be a costly (extra bedroom subsidy), the PHA should have a standardized process.

Notice PIH 2010-26

If a family qualifies for a live-in aide, depending on the PHA's occupancy standards, the PHA should grant the family an additional room, or in the case of the voucher program a larger subsidy standard to include a bedroom for the live-in aide.

The PHA should run its standard criminal background checks for requested live-in aides.

ADDITIONAL BEDROOM FOR MEDICAL EQUIPMENT

The procedure for considering this request should be similar to the process for considering any reasonable accommodation. First the PHA should verify that a household member qualifies as a person with a disability. Then the PHA should obtain third-party verification that the extra room is medically necessary. When considering the necessity of a larger bedroom size, and hence a larger subsidy size for the family, all living and sleeping rooms in the current unit must be insufficient to meet the family member's need. The PHA may suggest an equally effective alternative.

Notice PIH 2009-22

While PHAs may approve an additional bedroom for medical equipment if the need is documented by a health care provider, the actual equipment in the extra bedroom should be verified by the PHA during the annual inspection of the unit.

Section 5: Common Reasonable Accommodation Requests

Notice PIH 2009-22

Additionally, if the extra bedroom is not being used for the intended purpose, the PHA must reduce the subsidy standard and corresponding payment standard (or, for a public housing tenant, require the family to transfer to a smaller unit) at the family's next annual recertification. However, the PHA may take further action if it believes any family obligations under the voucher or public housing lease were violated.

- For example, the PHA could require at annual recertification a renewal certification that the disability still exists and the accommodation is still necessary. Inspectors should verify how the room is being used (e.g., for medical equipment) at least annually.

ASSISTANCE ANIMALS

*HUD/DOJ Joint Statement
5/17/04, Notice FHEO 2013-
01; Notice FHEO 2020-01*

Notice FHEO 2020-01, published January 28, 2020, provides guidance to help PHAs and other housing providers distinguish between a person with a non-obvious disability who has a legitimate need for an assistance animal and a person without a disability who simply wants to have a pet or avoid the costs and limitations imposed by the PHA's pet policies.

FHEO 2020-01 makes clear that the notice is guidance and provides a set of best practices for addressing requests for assistance animals.

TWO TYPES OF ASSISTANCE ANIMALS

There are two types of assistance animals: (1) service animals, and (2) other animals that do work, perform tasks, provide assistance, and/or provide therapeutic emotional support for individuals with disabilities (referred to in the FHEO guidance as "support animal")

Assistance animals (service animals and support animals) are not pets. An animal that does not qualify as a service animal or support animal is a pet for purposes of the FHA.

While most requests for reasonable accommodations involve one animal, requests sometimes involve more than one animal (for example, a person has a disability-related need for both animals, or two people living together each have a disability-related need for a separate assistance animal).

Section 5: Common Reasonable Accommodation Requests

SERVICE ANIMALS

PHAs should initially follow the DOJ analysis to assessing whether an animal is a service animal under the Americans with Disabilities Act (ADA).

Under the ADA, “service animal” means any dog or miniature horse that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual’s disability.

As a best practice, housing providers may use the following questions to help them determine if an animal is a service animal under the ADA:

- Is the animal a dog or miniature horse?
 - If “yes”, proceed to the next question.
 - If “no”, the animal is not a service animal but may be another type of support animal for which a reasonable accommodation is needed.
- Is it readily apparent that the animal is trained to do work or perform tasks for the benefit of an individual with a disability?
 - If “yes”, further inquiries are unnecessary and inappropriate because the animal is a service animal.
 - If “no”, proceed to the next question.
- It is advisable for the PHA to limit its inquiries to the following two questions: (1) “Is the animal required because of a disability?” and (2) “What work or task has the animal been trained to perform?”
- The PHA cannot require proof of training or certification

SUPPORT ANIMALS (ASSISTANCE ANIMALS OTHER THAN SERVICE ANIMALS)

When the animal is not a dog or miniature horse and does not meet the definition of service animal, the PHA should assess if this is a support animal.

- If the individual has requested a support animal as a reasonable accommodation, if the disability is readily apparent or otherwise known to the PHA, and if the disability-related need for the animal is also readily apparent or otherwise known to the PHA, then no further documentation or verification is necessary or appropriate, if the request is otherwise reasonable.
- If the disability is not readily apparent or otherwise known and/or if the disability-related need for the support animal is not readily apparent or otherwise known, then the PHA may require supporting documentation from a health care professional.

GENERAL CONSIDERATIONS

As we have seen, the FHA does not require a dwelling to be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others.

A PHA or other housing provider may, therefore, refuse a reasonable accommodation for an assistance animal if the specific animal poses a direct threat that cannot be eliminated or reduced to an acceptable level through actions the individual takes to maintain or control the animal (e.g., keeping the animal in a security enclosure).

A person with a disability is responsible for feeding, maintaining, providing veterinary care, cleaning up after, and controlling his or her assistance animal. The individual may do this on his or her own or with the assistance of family, friends, volunteers, or service providers.

Learning Activity 8-1:

Simon Lessing is substantially limited in his ability to walk and uses a motorized scooter for mobility purposes. He applies to live in public housing, and accepts a unit in a nice building that has just had the flooring replaced. The manager is sympathetic to the assisted individual's need for his motorized scooter, but lets Simon know that the weight of the scooter will wear on the floor. Plus, the manager has had past experience with a tenant whose scooter not only wore down the hallway carpet but also left marks on the corner of walls when the tenant turned corners too sharply and quickly.

Can the manager refuse to allow the scooter?

If the manager does allow the scooter, could he require Simon (and all users of motorized scooters in the future) to pay a deposit?

Can the manager require that tenants with motorized scooters carry liability insurance?

Section 6 Post-Test

1. All requests for accommodations made by persons with disabilities must be granted.
 - a. True
 - b. False
2. It is best if the hearing coordinator or hearing officer offers specific accommodations for a hearing before a participant/tenant with disabilities asks for assistance.
 - a. True
 - b. False
3. Requested accommodations for hearings may include:
 - a. A sign language interpreter
 - b. The hearing officer requiring everyone to speak slowly
 - c. Ensuring that the hearing location is accessible
 - d. Allowing a service animal or support animal to be present
 - e. Any of the above
4. Which of the following is not an example of a reasonable accommodation?
 - a. Allowing rent to be paid after the “grace period” without late fees
 - b. Allowing an extra bedroom for a live-in aide
 - c. Moving a family to a first floor unit
 - d. Exempting a family from paying rent
5. A reasonable accommodation is not considered reasonable if:
 - a. It would fundamentally alter the nature of the program
 - b. It is expensive or would cause the PHA more work
 - c. There is a disability-related need for the accommodation
 - d. The request for accommodation is made on behalf of a person with disabilities

Section 6: Post-Test

6. Before a specific live-in aide is approved for a family, the PHA has the right to ensure that the live-in aide:
 - a. Is duly trained and certified by a healthcare agency
 - b. Is not a relative of the participant/tenant being cared for
 - c. Passes criminal background screening
 - d. Meets PHA income eligibility criteria
 - e. Will not work full-time outside the home
7. Some of the issues going to hearing may be affected by the following reasonable accommodation issues:
 - a. Denial of transfer (PH) or denial of move during initial lease term (HCV)
 - b. Terminations where the PHA has not responded to participant/tenant's request to add a live-in aide
 - c. Termination for threat to health and safety
 - d. All of the above

CHAPTER 9 Working with Advocacy Groups

LEARNING OUTCOMES

After completing this chapter, you should be able to:

- Discuss the role of advocacy groups in your community and how best to work with these groups
- Discuss the role various advocacy groups may play in appeals and hearings, and applicants' and participants' rights to seek the assistance of advocates
- Recognize protections for applicants and participants under the Violence Against Women Act (VAWA)
- Recognize the PHA's obligations under Limited English Proficiency (LEP)

INTRODUCTION

The increased need for transparency and accountability in government, as well as evolving civil rights protections, have given rise to a wide variety of advocacy groups. Advocacy groups and agencies are regional, state-wide, or even local.

An advocacy group is an independent body that acts as a catalyst to make changes for its customers. Influencing elected officials, the media, and the public at large is a strategy to make changes.

Changes in civil rights laws and HUD regulations, including Limited English Proficiency (LEP) and Violence Against Women Act (VAWA) protections, as well as increased awareness of systemic injustices rights awareness, have created networks of advocate groups. There are advocate groups for the homeless, elderly persons, persons with disabilities, ex-felons, women and children, veterans, LGBTQ persons, transgender persons, and racial justice groups. All these groups are very interested in housing programs and ensuring our programs are fair and transparent. These groups often recommend specific PHA goals and policies addressing issues related to particular populations in need.

Behind all the advocacy groups lays the firm belief that people who are currently devalued and excluded by society are of equal worth. Each provides invaluable resources for our common customer: the applicants and participants/tenants.

Advocacy groups understand that influence is also about trust and reliability. Advocates are often experts in their fields, delivering the most comprehensive and reliable information and analysis that can greatly benefit PHAs.

Section 1 Principles of Working Well with Advocacy Groups

Keeping in mind the principles of working well with community advocates will help you keep focused on what's important. You are not representing the PHA; you are representing the principle of fair hearings.

None of these principles exists in a vacuum; each relates to and depends on the other factors. For instance, without identity and reputation, there can be no trust. In many cases, each principle stems from the previous principles.

PURPOSE: HAVE A SHARED GOAL OR INTEREST

The specific and identified core interest of the PHA and advocates is our common clients, the families we serve. It's vital to tap into this shared purpose, rather than focusing on the individual goals of the PHA or advocate group alone. A practical example of shared purpose could be tying communication and tracking tools together.

IDENTITY: KNOW WHO'S WHO

Hearing officers, hearing coordinators, and other PHA representatives know the advocates in the community, and build appropriate relationships. The likelihood is that a hearing officer will interact with the same advocates many times in hearings.

Advocacy groups sometimes have more turnover than PHAs. The PHA should stay abreast of new and emerging community-based advocates, and develop a way for new advocates to introduce and identify themselves to the PHA.

REPUTATION: RECOGNIZE AND BUILD STATUS BASED ON ACTIONS

The hearing officer's character and reliability is a crucial factor in how cooperative vs. adversarial advocates view the PHA, and thus how they perceive their roles in the hearing process. Advocates' knowledge of how reliable or knowledgeable the hearing officer is allows them to act with some expectation of quality, without the advocate acting as the police.

Reputation gives community advocates, hearing officers, and PHA staff involved in hearings a way to evaluate each other, so they know whom to trust, or whom not to trust. It helps people form the best alliances to get the desired information; the desire to have a good reputation discourages bad behavior and encourages members to request feedback from others to build their reputation.

GOVERNANCE: BEHAVIOR CAN BE REGULATED ACCORDING TO SHARED OR STATED VALUES

Advocates (and all attendees at a hearing) need a clear sense of what they can and cannot do: who calls the shots, who makes the rules, how problems are handled, and who does the handling.

It is important that advocates, hearing officers, and PHA representatives take responsibility for their own behavior during the hearing; clear hearing/grievance procedures, once again, establish expectations. The hearing officer should open the hearing with an explanation of these expectations, sequence, and protocol.

COMMUNICATION: HAVE WAYS TO SHARE INFORMATION AND IDEAS

Pioneering sociologist MacIver (1937), in his study of real world communities, stated that, “Without communication there can be no community, and the life of the community revolves around the points where communication is most intense.”

Hearings can get intense. We know that the hearing officer cannot hear evidence after the hearing is over. Open channels of communication in policy proposals, best-practice strategies for underserved groups, occasional debriefs, and open ongoing informal communication with advocates can fulfill advocates’ need to share information and ideas without sidetracking or disrupting a hearing.

GROUPS: RELATE TO ADVOCATES IN SMALLER NUMBERS

Forming groups is a necessary and organic process - it's what humans do. All communities have groups within them that focus on some subset of the community. It's how we get things done. The PHA should have a track record of delving into particular areas of advocacy when needed to understand an issue better, establish policy, or form strategic partnerships. For example, a best-practice VAWA strategy is to refer victims or threatened victims to a women's domestic violence advocacy group, who can help keep the victim safe and can work with the PHA on appropriate protections.

BOUNDARIES: SET AND RESPECT LIMITS

Professional boundaries are important because they define the limits and responsibilities of the people involved in the hearing process. Boundaries mean that there is no conflict of interest, or perceived conflict of interest, among the hearing officer, complainant, PHA, and/or advocate.

Setting and maintaining boundaries includes the tone people use with each other, the ability to focus on the purpose of the hearing even with people you don’t like or who are being difficult, the ability to set limits with others who have poor boundaries, and clearly defining the consequences when a boundary is violated, and sticking to it.

TRUST: KNOW WITH WHOM YOU'RE DEALING AND THAT IT'S SAFE TO DO SO

Over time, the PHA must be able to build trust with advocacy groups. The integrity of the hearing process, maintaining confidentiality, and mutually keeping the families' interests in mind will gain and build trust. Building trust increases efficiency and enables conflict resolution.

EXCHANGE: SHARE KNOWLEDGE, SUPPORT, SERVICES, AND IDEAS

An essential value of collaboration is that it can be an attitude and relationship in which both tangible and intangible benefits are shared. Tangible benefits may be help with VAWA protections afforded families or when an advocacy group helps the PHA write best-practice policy in a particular area. Intangible benefits include a seamless sense of service and help for low-income families.

EXPRESSION: INDICATE PREFERENCES AND OPINIONS

Participating in the high-stakes experience of a hearing requires a mature emotional bandwidth within and among the hearing officer, PHA representative, and advocates. Strong professional bonds can be formed through "working through" those high-stakes experiences. Again, the PHA can assist the hearing officer and caliber of hearings by establishing and maintaining relationships where communication is open and often.

HISTORY: HAVE A TRACK RECORD

There is a collective wisdom that builds with long-term relationships. Because key personnel come and go from advocacy groups and from the PHA, history and accomplishments should be documented.

Individual mistakes should have a “statute of limitations.” Successfully collaborating with community partners means the PHA learns from its mistakes and from others.



Section 2 **The Role of Advocacy Groups in Appeals and Hearings**

Here's the bottom line: You will be facing advocates across the hearing room and the courtroom. Work with them! We're serving the same people!

A track record of collaboration will serve you well in the hearing. The PHA's responsibility is to build long-term relationships with community partners, including advocacy groups. Building and maintaining these relationships will take some time and commitment, but the benefits in the long run are exponential. Working well together should include:

- Involving advocacy groups in public hearings; receiving input to proposed changes that will affect applicants and participants/tenants
- Working with advocacy groups to establish policies and implement policies concerning:
 - Domestic violence issues
 - Reasonable accommodation issues
 - Language interpretation and translation
 - Families with children
 - Child abuse and senior abuse issues
 - Literacy
 - Community service opportunities and strategies for public housing
 - Re-entry prisoners
 - LGBTQ and transgender persons
- Getting input on proposed changes to the PHA's hearing/grievance procedures.

Regarding the hearing process, there are some key practical considerations:

- Cooperate with advocates when they ask for discovery documents.
- Apply the same procedures and protocol to advocates as to other parties. In other words, it's okay to set limits.

Section 2: The Role of Advocacy Groups in Appeals and Hearings

- If an advocate brings up an issue of reasonable accommodation, domestic violence, or language interpretation, make sure the issue has been addressed. Work with the 504 coordinator or compliance officer to assess.
- It will be essential to explain the process to everyone at the beginning of the hearing. Conducting the hearing will be covered in the next chapter. A very clear explanation of the process and sequence of the hearing makes it clear to the PHA representative, advocates, the family, and any other attendees what is expected.

CONFIDENTIALITY AND RESPECT

Adhering absolutely to confidentiality will help keep your interaction with advocates productive. You must absolutely avoid gossip, side conversations or sharing information with some parties and not others, and/or forming factions.

VIOLENCE AGAINST WOMEN ACT

24 CFR 5.2001-2005

The purpose of the Violence Against Women Act (VAWA) is to protect victims and threatened victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking who apply for and reside in the Housing Choice Voucher and public housing program. Local advocacy groups are experts in domestic violence laws and can be of tremendous assistance in helping to formulate policy, taking referrals, and certifying that a situation is a bona fide domestic violence, dating violence, sexual assault, stalking, or human trafficking issue.

- Although the VAWA 2022 statute does not specifically do so, HUD has recently begun including human trafficking as part of the list of victims protected under VAWA, as seen in Notices PIH 2022-06, PIH 2022-22, and PIH 2022-24. In the absence of a final rule implementing VAWA 2022 and to mirror HUD's recent usage, we have opted to include human trafficking in this text in addition to domestic violence, dating violence, sexual assault, and stalking anywhere such a list appears.
- VAWA, despite its title, is a gender-neutral law. Women, men, people who identify as transgender, and children can claim victim status.

DENIALS

24 CFR 5.2005(b)

VAWA prohibits PHAs from denying assistance to an otherwise qualified applicant on the basis of or as a direct result of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking.

All notices of denial must include notice of occupancy rights under VAWA (form HUD-5380) and VAWA certification (form HUD-5382).

TERMINATIONS

VAWA states that an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, stalking, or human trafficking:

- Will not be construed as a serious or repeated violation of the lease by the victim or threatened victim. This includes property damage and noise complaints due to abuse.
- Will not be good cause for terminating the tenancy or occupancy rights of the victim

VAWA also states that criminal activity directly relating to domestic violence, dating violence, stalking, or human trafficking engaged in by a member of the tenant's household, guest, or other person under the tenant's control shall not be cause for termination of tenancy or assistance if the tenant or affiliated person is a victim of that violence, stalking, or human trafficking.

- Notice PIH 2017-08 states that the PHA is prohibited from denying assistance or admission, terminating participation, or evicting a tenant based on adverse factors, if the adverse factor is determined to be a direct result of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.
 - Adverse factors refers to any factor that can be used as a basis for denying admission, terminating assistance, or evicting a tenant.
 - Adverse factors could include poor credit history, poor rental history, criminal record, or failure to pay rent, among others.

Section 2: The Role of Advocacy Groups in Appeals and Hearings

- A PHA may bifurcate a lease to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant, and who engages in criminal acts of physical violence against family members or others, without evicting or otherwise penalizing the victim of such violence.
 - To *bifurcate* a lease means to split it into two leases.
 - In lease bifurcations for mixed families where the eligible individual is the perpetrator, the PHA must provide any remaining tenant or tenants that were not already eligible a period of 30 calendar days from the date of bifurcation of the lease to establish eligibility in the same or another housing program or find alternative housing. The 90-day time period does not apply to HCV or public housing.

Notice PIH 2017-08

FR Notice 1/4/23

- PHAs and owners may not coerce, intimidate, threaten, interfere with, or retaliate against any person who exercises or assists or encourages a person to exercise any rights or protections under VAWA.
- VAWA does not limit the authority of the PHA to honor court orders addressing rights of access to or control of property, including civil protection orders issued to protect victims.
- Housing Assistance Payments Contract (form HUD-52641) and Tenancy Addendum (form HUD-52641A) contain wording to reflect the requirements of VAWA, specifying the protections for victims of abuse.

The law does not limit the PHA's authority to terminate tenancy or assistance when the PHA is able to demonstrate there is an actual and imminent threat to other tenants, employees or others providing services to the property. Termination should only be undertaken as a last resort when there are no other actions that could be taken to reduce or eliminate the threat.

- Notice PIH 2017-08 provides several considerations for reducing "actual and imminent" threats.

MOVES

Prior to VAWA, a PHA was prohibited from providing portability to a family that moved out of its assisted unit in violation of the lease.

VAWA creates an exception to this prohibition for families who are otherwise in compliance with all other program obligations but have moved out of their assisted unit to protect the health or safety of an individual who is a victim.

PHAs must implement VAWA emergency transfer plans for both the public housing and HCV programs.

NOTIFICATION

PHAs must provide notice to all applicants, as well as assisted families of their rights under this law, including the right to confidentiality at the time an applicant is denied, at the time the individual is provided assistance or admission, and as part of the termination or eviction notification.

- All PHA notices of denial and notices of termination must include explanation of rights under VAWA (Form HUD-5380), and VAWA self-certification (Form HUD-5382.)

Notice PIH 2017-08 encourages PHAs to also provide notification and/or training to HCV owners of their rights and obligations under VAWA. This leads to greater owner compliance and increased victim safety.

- PHAs are encouraged to attach the PHA's Emergency Transfer Plan (ETP) and Form HUD-5382 to the notice they provide to owners.
- An optional template for this purpose that can be revised to reflect local needs is attached to Notice PIH 2017-08.

LIMITED ENGLISH PROFICIENT (LEP) PERSONS

*Federal Register Notice: LEP
Guidance, December 19, 2003*

Persons with limited English proficiency (LEP) may include people who are unable to understand or communicate in English, or whose ability to understand or communicate in English is limited. Usually a person self-identifies as an LEP individual.

PHAs must provide meaningful access to programs and services to persons with limited English proficiency.

WRITTEN TRANSLATION

PHAs are required to take reasonable steps in providing LEP services. The PHA should have a language assistance plan (LAP) taking the following four factors into account:

1. The number or proportion of LEP persons eligible to be served
2. The frequency with which LEP persons come into contact with the program
3. The nature and importance of the program, activity, or service provided by the program to people's lives
4. The resources available to the PHA and costs

HUD has translated a number of important documents into many languages. See HUD's LEP Website at:

- http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/promotingfh/lep

ORAL INTERPRETATION

The PHA must provide competent interpretation, free of charge, upon request.

This obligation, of course, applies to understanding hearing rights and participation in the hearing.

Using HUD “I Speak” cards and a language line is an excellent way to fulfill this obligation.

The use of family members or friends as interpreters is a sensitive area. Where LEP persons desire, they should 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 the PHA.

- However, special circumstances may raise additional serious concerns regarding the voluntary nature, conflicts of interest, and privacy issues surrounding the use of family members and friends as interpreters. This is particularly true in a grievance situation, where access to important benefits and services are at stake.

INTERPRETERS

The hearing officer should explain the role of the interpreter to all parties before the hearing. The explanation should be provided in English and the client’s first language. The PHA’s hearing/grievance procedures or protocols may require the hearing officer to make a statement such as:

Best Practice

- “Interpreters must limit themselves to interpreting or translating documents and must not give advice, express opinions, explain, edit or in any way insert comments in the hearing.”

A PHA must also provide a qualified sign language interpreter for a person who is hearing impaired and requests the service.

Section 2: The Role of Advocacy Groups in Appeals and Hearings

Some PHAs' hearing/grievance procedures require that interpreters take the interpreter's oath. Some state laws specify who may administer oaths. The following are examples of interpreter oaths:

Best Practice

- Do you swear or affirm that you will to the best of your ability truthfully and impartially interpret and/or translate completely and accurately from English into (state language) the questions about to be asked, and from (state language) into English the answers about to be given in this case?
- Do you solemnly swear (or affirm) that you will truthfully interpret or translate from English into (state the other language) the questions about to be asked and from (state the other language) into English the answers about to be given in the case to the best of your ability?
- Do you solemnly swear (or affirm) that you justly, truly and impartially will interpret to (witness' name) the oath, the questions that are asked and the answers that (he/she) gives?

The interpreter must respond "I do," "I swear," or "I affirm."

The hearing officer should always establish on the record if an interpreter was present and, if applicable, took the interpreter's oath in the presence of all parties.

FAMILIES WITH CHILDREN

24 CFR 100.5

The Fair Housing Act makes it unlawful for a housing provider to refuse to rent to families because they have children or impose different terms or conditions on families with children.

Except in special developments that meet HUD's specific qualification for housing for older persons in the private market, it is illegal for HCV private landlords to discriminate against families with children.

Familial status means that a landlord may not discriminate against families in which one or more children under 18 live with:

- A parent
- A person who has legal custody of the child or children
- The designee of the parent or legal custodian, with the parent or custodian's written permission

24 CFR 100.20

In the public housing program, discriminatory conduct includes forbidding children to reside with grandparents or older adults in a designated, disabled or mixed-population (elderly and disabled) development.

MULTIPLE ADVOCATES

When there are multiple advocates involved in the hearing, the hearing coordinator or hearing officer could send a letter that includes suggested hearing dates for the advocates to agree on, and a time limit for notifying the hearing officer of a mutually-agreed-upon date. If the advocates cannot agree upon a date, the hearing officer should set a date and time that is timely.

- The letter should also clearly instruct the parties to exchange evidentiary documents and provide copies to the hearing officer by a certain date.

If a continuance is requested by an advocacy group, the hearing officer should consult the PHA's hearing/grievance procedure, and if there is not clear policy, should consult the hearing coordinator or other high-level executive. Continuances should not lead to postponing a hearing for an unreasonably long period of time.

Section 3 Learning Activities

Learning Activity 9-1:

You are reviewing a case before the hearing.

The PHA has issued an eviction notice for Josephine Hernandez. Ms. Hernandez lives in a one-bedroom unit in a mixed-population (elderly and disabled families) public housing development. Ms. Hernandez recently was given legal guardianship of her 2-year-old grandson, Javier.

The PHA required Ms. Hernandez to transfer to a two-bedroom unit in a family development. Because Ms. Hernandez refused to transfer (her clinic and a daycare are very close), the PHA issued a 30-day notice to terminate, based on the fact that she lives in an elderly/disabled development and children are not allowed to reside in the development.

What does it appear your decision will be?

DISCUSSION:

Learning Activity 9-2:

You are reviewing a case before a hearing. The Seward family is under eviction action for unauthorized persons. The PHA has determined that Lettie Seward has allowed her ex-husband, Gerald, to reside in the unit.

In the hearing, Ms. Seward states, “He has been living with me. I did not tell the PHA—he threatened to harm me and my kids if I told. He’s been giving me money that I have not been reporting but then he stole money out of my account and now I can’t pay my rent...but I am a victim of domestic violence.”

A domestic violence advocate is present at the hearing.

What are some considerations?

DISCUSSION:

Learning Activity 9-3:

You are reviewing a case before the hearing.

The PHA has issued a termination notice for the Byron family for failure to meet family obligations under the voucher (“The family must not commit any serious or repeated violation of the lease.”) Maria Byron is head of house and Joe Byron is the spouse.

At the hearing, both partners state that they are victims of domestic violence. What if both partners in an assisted family point fingers at each other?

What will you look for in the hearing documents?

DISCUSSION:

Learning Activity 9-4: VAWA

Kevin Randall and Susan Long moved into their public housing unit on March 28, 2018. On April 3, 2018, Kevin physically abused Susan in their new unit. Susan escaped to a neighbor's unit and the police were called. Kevin was arrested and charged with assault and battery. There was a detailed police report describing the incident.

After the incident, the PHA discussed the situation with both Kevin Randall and Susan Long. The PHA had a self-described "Zero Tolerance Policy" regarding such violations. Despite this policy, the PHA decided not to evict based on the abuse occurring during the first week of tenancy.

Susan Long subsequently had at least three conversations with PHA employees in May and June of 2018 about what was needed to get Kevin off the lease ("bifurcating" the lease). Up to that point, Susan and her daughter, while legally recognized tenants on the lease, had been listed there only as "authorized" members of the household.

The PHA orally advised her what documentation she needed to provide to get Kevin off the lease. The PHA led Susan to believe that if Kevin did not voluntarily agree to take himself off the lease, she would have to marshal additional evidence to pursue bifurcation, such as a restraining order.

Susan requested a hearing, for the PHA's failure to act in bifurcating the lease. The hearing was held in August 2018. In the hearing Susan did not expressly state that her reliance on the PHA's misinformation was the reason she failed to pursue removing Kevin from the lease. However, she did testify that "on many occasions, I went to the PHA but they told me it was a court matter to have Kevin removed from the lease." The hearing officer's decision upheld the PHA's case since Susan had not met the burden of proof to demonstrate the PHA had failed to act properly. Susan had not followed through with any of the PHA's requests for documentation such as a restraining order.

In October of 2018, Kevin renewed the lease, but records later showed that he moved out shortly after that. Susan became the sole rent payer and paid her rent on time.

Six months after Kevin moved out, he was arrested for drug dealing across town. The police report reflected that he was residing at his mother's apartment at the time of the arrest. There was nothing in the record to suggest that Susan participated in or had any knowledge of Kevin's conduct. Nevertheless, because Kevin remained the head of household on the public housing lease, the PHA pursued an eviction against the household. Susan requested a hearing, which was held in May 2019. You are the hearing officer now in this hearing, reviewing the evidence and testimony in order to make your decision.

Susan argued in the hearing that she was entitled to protections under VAWA. In response, the PHA minimized Kevin's assault and pointed out Susan's failure to get a restraining order. Susan conceded that Kevin's drug dealing was not criminal activity relating to domestic violence.

Instead, she contended that the PHA's failure to comply with VAWA led to Kevin's continued presence on the lease long after he vacated.

The Hearing Decision. What are the issues in this case? What is your decision? Specify your reason(s):

Section 4 Post-Test

1. HUD's Limited English Proficiency (LEP) requirements apply to PHA hearings.
 - a. True
 - b. False
2. It is a good practice to have LEP individuals' friends or family act as interpreters at a hearing.
 - a. True
 - b. False
3. The purpose of the Violence Against Women Act (VAWA) is to protect victims or threatened victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking while being able to remove, evict, or terminate assistance to the perpetrator.
 - a. True
 - b. False
4. In a domestic violence situation, it is always clear who is the victim and who is the perpetrator.
 - a. True
 - b. False
5. VAWA is gender-neutral.
 - a. True
 - b. False
6. The benefits of working with advocacy groups include all of the following except:
 - a. Advocacy groups provide expertise to the PHA
 - b. The PHA can refer applicants, participants and tenants to advocacy groups
 - c. Advocacy groups will enforce the PHA's rules
 - d. Advocacy groups can help the PHA develop best-practice policies and strategies
 - e. Advocacy groups help represent underserved persons

Section 4: Post-Test

7. Which statement below is true regarding LEP persons?
 - a. For the hearing, the PHA must provide an interpreter, and may charge the family a reasonable amount
 - b. For the hearing, the PHA must provide an interpreter, free of charge, upon request
 - c. The PHA should automatically provide interpreters for all hearings if the PHA is aware that the family is LEP
 - d. The PHA may, if in policy, provide an interpreter, free of charge, upon request
 - e. Any of the above may be true, depending on PHA policy
8. VAWA does not limit the PHA's authority to: (two correct answers):
 - a. Honor court orders addressing rights of access to or control of property
 - b. Stipulate the number of times VAWA rights will be afforded to a participant or tenant
 - c. Terminate assistance or tenancy when the PHA is able to demonstrate there is an actual and imminent threat
 - d. Stipulate that only women can be considered victims
 - e. VAWA allows the PHA authority to establish any and all of the above
9. The following helps manage advocates' roles at a hearing:
 - a. Clear hearing/grievance procedures
 - b. The hearing officer clearly explains the protocol and process at the hearing
 - c. The hearing officer is in charge of the hearing at all times
 - d. All parties have reviewed documentary evidence before the hearing
 - e. All of the above

Section 4: Post-Test

10. The benefit of working with advocacy groups includes increased transparency and accountability.
 - a. True
 - b. False
11. Mallory Jones is an elderly resident residing in the PHA's public housing mixed population (elderly/disabled) development. She resides in a one-bedroom apartment. She notifies the PHA that she is getting custody of her 7-year-old granddaughter, Hannah. Which statement below is true?
 - a. The PHA may require Ms. Jones to transfer to a general occupancy (family) development
 - b. The PHA may require Ms. Jones to transfer to a two-bedroom unit in a general occupancy (family development)
 - c. The PHA may not require Ms. Jones to transfer to a general occupancy (family) development
 - d. The PHA may prohibit Ms. Jones from getting custody of her grandchild
 - e. a and b
12. The PHA may not require any further verification if an accommodation has been requested, and third-party verification is not necessary when:
 - a. The person's disabilities are obvious or otherwise known to the PHA
 - b. The need for the accommodation is clear or known
 - c. The request is reasonable
 - d. The accommodation is inexpensive
 - e. a. and b

CHAPTER 10 **Program Elements Most Commonly Heard**

LEARNING OUTCOMES

After completing the learning activities in this chapter, you should be able to:

- Recognize some of the programmatic issues that commonly arise in terminations and appeals for the Housing Choice Voucher and public housing programs
- Identify areas of further study to gain knowledge and expertise

INTRODUCTION

This is not a regulations seminar. Study of the program regulations are covered in many other Nan McKay & Associates seminars. This chapter will identify some of the elements about which the hearing officer should have basic knowledge through a series of scenarios and mini-case studies.

It is the responsibility of the PHA to educate its hearing officers on HUD regulations and PHA policies. A particular hearing may require that the hearing packet contain in-depth explanation of a particular issue. It is the responsibility of the hearing officer to learn and study issues presented in the hearing. This means committing the time necessary to read and study and to ask questions. It's much better for you, the hearing officer, to admit that you are confused than to try and make a decision while confused. And it's much better to admit before the hearing that you are confused, so you can study and ask questions.

Bottom line, in hearing cases, you want to make sure the PHA followed the *process* and has adequately *documented* all the steps!

Section 1 Scenarios

SCENARIO #1

INSTRUCTIONS

You are presiding over a hearing. The following are the facts, based on documentary evidence in the hearing packet.

SCENARIO

Kamala Khan and her family are public housing residents. Ms. Khan’s son is disabled due to a hearing disability. Ms. Khan notified the property manager in July 2019 that she intended to purchase a dog as a hearing assistance “service animal” for her son. Ms. Khan’s lease with the PHA prohibits dogs over 20 pounds. The Khan’s dog is 40 pounds. In August 2019, Ms. Khan purchased and began training the dog. In September, the Khans moved to another PHA property which had the same lease restriction on pets. On October 2, 2019, Ms. Khan provided the PHA with written notice of the existence of the hearing assistance dog. On December 15, 2019, she filed a waiver request with the PHA alleging that the dog was a service animal and not a pet and therefore not subject to the lease restriction.

On January 11, 2020, the PHA refused plaintiffs’ waiver request. On February 1, 2020, the PHA filed an eviction action against the Khan family. To prevent eviction from their home, Ms. Khan agreed to remove the dog from the PHA property, and on February 16, 2020, took the dog to the Humane Society.

The tenants requested a hearing, alleging that the housing authority violated the Americans with Disabilities Act, the Federal Fair Housing Amendments Act, and Section 504 of the Rehabilitation Act, by failing to reasonably accommodate their request to allow for a hearing assistance animal (service animal) in the rental unit to reasonably accommodate a hearing disability.

The housing authority argued that the dog was not a reasonable accommodation for the tenant’s specific disability because the dog was not certified as a hearing assistance animal.

What is your decision and why?

SCENARIO #2

INSTRUCTIONS:

You are presiding over a hearing. The following are the facts, based on documentary evidence in the hearing packet.

SCENARIO

Mauricio Rodriguez has been evicted by his Housing Choice Voucher landlord for nonpayment of rent. The PHA is terminating Mr. Rodriguez' voucher assistance as a result of the eviction (CFR 982.552(b)(2)): (b) Requirement to deny admission or terminate assistance. (2) The PHA must terminate program assistance for a family evicted from housing assisted under the program for serious violation of the lease.

At the hearing, Mr. Rodriguez' cousin, Adela Garcia, who is representing him, states that Mr. Rodriguez is requesting that a family member move in as a full-time live-in aide, since Mr. Rodriguez has become quite disabled. His disability is manifested in cognitive difficulties, and one of the difficulties is that he can't remember to pay his rent and other bills. He also hasn't been cooking for himself or eating properly. A live-in aide would assist Mr. Rodriguez with his financial responsibilities as well as household assistance.

What is your decision and why?

Section 1: Scenarios

SCENARIO #3

INSTRUCTIONS:

You are presiding over a hearing. The following are the facts, based on documentary evidence in the hearing packet.

SCENARIO:

Joseph Aquino, a voucher holder, requested that he be given additional medical expenses, when his rent was calculated. He had a particular mental disability and it was not safe for him to use a stove or oven. His PHA did not dispute that Joe was a person with a disability or that his disability prevented him from cooking meals in the stove or on the oven, but the PHA did not give him the requested additional medical allowance expenses.

Joseph’s advocate argues in the hearing that Joseph’s disability made it necessary for him to go out to eat meals which resulted in increased food costs. Those food costs, it was argued, should be considered medical expenses as a reasonable accommodation of his disability by the PHA.

Without the requested accommodation, Joseph was unable to afford his rent, along with his other normal expenses, adversely impacting his quality of life and his ability to use and enjoy his dwelling. Put another way, but for the accommodation, the advocate argued, Joseph “likely” will be “denied an equal opportunity” to use and enjoy his dwelling.

The PHA responded that the requested accommodation was neither necessary nor reasonable. It contended that to the extent the disability presented a difficulty in his daily meal preparation, Joseph had alternative methods of obtaining or preparing food which required no accommodation by the PHA. In the PHA’s view, Joseph’s disability did not prevent him from obtaining or preparing meals in other alternative methods such as eating cold food, using a microwave, or having someone else prepare his meals. In fact, the PHA got Joseph enrolled on a state program that allowed for a care attendant to come in several times a week (at no cost to Joseph) to make meals.

Joseph, however, preferred eating out, did not want a care attendant in his home, and had shown a nexus between the disability and the requested accommodation. Case law and HUD guidance suggest that the PHA should take into consideration the person with the disability’s preferred method of accommodation since that person is best aware of his/her own needs.

What are you going to consider and why?

SCENARIO #4

INSTRUCTIONS:

You are presiding over a hearing. The following are the facts, based on documentary evidence in the hearing packet.

SCENARIO

Audrey Green and her two children are participants in the voucher program. For the last five years, Ms. Green had reported part-time employment income working retail. No other income was reported. Last year, the PHA revised its verification policies to require that the participant provide IRS tax returns.

A housing specialist at the PHA found that Ms. Green advertised her wedding planning business, “Green Dream Weddings” on social media. During processing of Ms. Green’s annual reexamination, Ms. Green’s tax returns showed that Ms. Green had been self-employed for the last three years as a wedding planner. When asked about the unreported income at the annual reexamination, Ms. Green confirmed the existence of her business, but stated that she was not aware of any requirement to report self-employment. Her reexamination forms for the past three years indicated only the part-time retail income.

The PHA determined that due to Ms. Green’s unreported self-employment income, subsidy had been overpaid by \$1,980. In compliance with the PHA’s administrative plan, the PHA offered Ms. Green a repayment agreement. The PHA’s repayment agreement policies were as follows:

PHA Policy

Before executing a repayment agreement with a family, the PHA will generally require a down payment of 10 percent of the total amount owed. If the family can provide evidence satisfactory to the PHA that a down payment of 10 percent would impose an undue hardship, the PHA may, in its sole discretion, require a lesser percentage or waive the requirement.

The PHA has established the following thresholds for repayment of debts:

- Amounts between \$3,000 and the federal or state threshold for criminal prosecution must be repaid within 36 months.
- Amounts between \$2,000 and \$2,999 must be repaid within 30 months.
- Amounts between \$1,000 and \$1,999 must be repaid within 24 months.
- Amounts under \$1,000 must be repaid within 12 months.

Per the PHA’s administrative plan, Ms. Green requested an explanation and stated she could not afford to pay \$198 up front and \$148.50 each month. The PHA agreed to waive the 10 percent upfront payment and adjust the monthly payment to \$75 monthly.

Section 1: Scenarios

Ms. Green declined to sign the repayment agreement. The PHA then issued a notice of termination of assistance for violation of family obligations under the voucher, and for owing money to the PHA and refusing to enter into a repayment agreement. Ms. Green requested an informal hearing.

At the hearing, Ms. Green explained that she did not sign the repayment agreement because she could not afford to repay the overpayment. The PHA had increased her family share of rent, and she stated she would not have enough money to buy food and pay rent if she was required to pay \$75 per month, along with her increased rent. She requested that any repayment be postponed for at least two years

What is your decision and why?

Section 2 Post-Test

1. In order to preside over a termination hearing for the Housing Choice Voucher program, you should study and refer to:
 - a. The admissions and continued occupancy policy
 - b. The capital fund 5-year action plan
 - c. The annual contributions contract (ACC)
 - d. The voucher family obligations
 - e. The public housing lease
2. The hearing officer must be a technical expert in all areas of the Housing Choice Voucher and/or public housing program.
 - a. True
 - b. False
3. Termination in the public housing program may mean taking eviction action.
 - a. True
 - b. False
4. It may be important for the hearing officer to have access to an impartial person who is an expert in HUD regulations.
 - a. True
 - b. False

Notes

CHAPTER 11 Preparing for the Hearing

LEARNING OUTCOMES

After completing this chapter, you should be able to:

- Describe the hearing officer's duties in preparation for the hearing
- Utilize tools or checklists to ensure that the PHA has correctly followed all procedures
- Identify the usefulness of a pre-hearing checklist

INTRODUCTION

Be prepared! You must know the case. There is no such thing as being over-prepared. It's too late after the hearing to ask questions you would have asked had you been more knowledgeable about the case. In preparing for the hearing, you need to review all the documents submitted, and formulate your questions.

Before the hearing, you should study the issues, the evidence, and the hearing packet (if the PHA issues a hearing packet prior to the hearing). You should analyze any anticipated regulatory, legal, or policy problems. You should have handy copies of the pertinent regulations and procedures.

Section 1 The Physical Set-up

If possible, you should inspect the hearing room before the hearing. You should check the noise level, heating or air conditioning, lighting, furniture arrangement, and seating facilities, and sound system.

The participant/tenant's chair should be arranged so that everyone in the room can see and hear him or her. The same is true of any witnesses. The recording device (if the hearing is being taped) should be placed where it can accurately record all testimony of all witnesses and the comments of all participants.

Smoking in the hearing room should be prohibited.

Section 2 Pre-Hearing Checklist

A best practice is for the PHA to utilize a pre-hearing checklist that the hearing coordinator provides to the hearing officer before the hearing, either in the hearing packet or separately.

Following is a pre-informal hearing checklist template for the voucher program.

NOTE: This is not a HUD form or a legal form. State law may affect some of these categories; in addition, your PHA may have particular procedures that should be incorporated. Check with director or legal counsel before adopting this form.

This form can be utilized to ensure the PHA has met all due process obligations.

INFORMAL HEARING CHECKLIST–HOUSING CHOICE VOUCHER		
Applicability		
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Was this adverse action subject to the informal hearing process per the PHA's administrative plan and HUD regulations?
If "No" to the above, why not?		
Consult with hearing coordinator or legal counsel before discontinuing the hearing process.		
If PHA intends to terminate based on criminal records or sex offender records		
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Was notice of intent to terminate based on criminal records or sex offender records sent to head of household and subject of record?
Yes <input type="checkbox"/>	No <input type="checkbox"/>	With notice, was copy of criminal records sent, or notification that head of household and subject of record could view and copy such records at PHA office?
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did notice include the right to dispute accuracy and relevance of criminal record, with a deadline in which to do so?
Yes <input type="checkbox"/>	No <input type="checkbox"/>	If family disputed accuracy or relevance of criminal records, did PHA document file?
Review adequacy of and service of notice of adverse action		
Adverse action		
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did notice state the reasons for the adverse action in sufficient detail to enable the participant to prepare a defense?
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did the notice explain that the family had the right to request an informal hearing and explain how this was done?
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did the notice state the deadline for the family to request an informal hearing and was the deadline consistent with the PHA's administrative plan? (e.g., 10 business days) and reasonable?

Hearing Officer Specialist

Preparing for the Hearing

Section 2: Pre-Hearing Checklist

Proper service		
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Does the PHA have adequate proof of service or does participant admit service?
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Was notice served sufficiently in advance of effective date of adverse action as to comply with HUD regulations and the PHA's administrative plan and satisfy any due process concerns?
Did family request hearing in timely manner?		
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did the family request an informal hearing within deadline set forth in the notice of adverse action?
Yes <input type="checkbox"/>	No <input type="checkbox"/>	If not, did the family have good cause for filing a late request for the informal hearing?
PHA's acknowledgement of hearing request		
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did the PHA adequately acknowledge the family's hearing request, preferably in writing?
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did the PHA provide the family with a copy of its informal hearing procedures?
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did the PHA explain the discovery process, including the family's right to review relevant documents, including the PHA's administrative plan and HUD regulations, and the family's duty to share documents with the PHA?
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did the PHA offer to meet with the family prior to the hearing to clarify issues, resolve issues through agreement, answer questions about the hearing process and the laws and rules that apply, and to exchange documents, witness statements, and lists of witnesses?
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did the PHA advise the family of the process it would use to select the hearing officer, advise the family that neither party may have separate contacts (ex parte) with the hearing officer in the interests of one side only, remind the family that once the hearing officer is selected, both parties must provide copies of all documents intended to be used at the hearing, and assure the family that the hearing officer will decide the case solely on evidence presented during the hearing?
Selection of hearing officer		
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did the PHA select the hearing officer in accordance with its administrative plan?
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did you, the hearing officer, make or approve the decision under review or are you a subordinate of the person who did make the decision?
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Is there any evidence suggesting that you, as the hearing officer, should be disqualified for bias, prejudice, conflict of interest, or because of ex parte contacts with one of the parties?
Discovery		
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did family ask for opportunity to examine relevant documents prior to hearing; if so, were they allowed to copy such documents at their own expense?
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did PHA fail to make any documents available to the family, which should now be excluded at the hearing?
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did PHA ask family for opportunity to examine family documents relevant to the hearing?
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did the family fail to make any documents available to the PHA, which should now be excluded at the hearing?

Hearing Officer Specialist

Preparing for the Hearing

Section 2: Pre-Hearing Checklist

Preparation of the pre-hearing packet			
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did the PHA include in the pre-hearing packet only those documents the hearing officer might need to prepare for the hearing and understand the legal and procedural issues likely to be presented, such as the notice of adverse action, the hearing request, other background documents not in dispute, relevant excerpts from the PHA's administrative plan, and HUD regulations?	
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did the agency withhold documents or exhibits that contain facts in dispute or those that might create confusion or pose a danger or unfair prejudice if considered out of context of without the benefit of cross-examination or rebuttal?	
Notice of hearing and pre-hearing packet			
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did the PHA provide the family with reasonable notice of the hearing and give the family an opportunity to reschedule the hearing due to a scheduling conflict (per PHA's administrative plan)?	
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did the PHA serve a copy of the pre-hearing packet with its notice of hearing so that the family might see what documents would be provided to the hearing officer prior to the hearing?	
Pre-hearing meeting between PHA and participant			
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did the PHA and participant meet in an attempt to resolve their dispute, clarify or limit the hearing issues, and exchange witness lists and documents to be introduced at the hearing?	
	None <input type="checkbox"/>	If so, what stipulations or agreements, were made, if any? NOTES:	
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did participant request that any witnesses participate by telephone?	
Yes <input type="checkbox"/>	No <input type="checkbox"/>	If "Yes" to the above, did the PHA and participant make arrangements needed so that witnesses could participate by telephone?	
Reasonable accommodation			
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did the family receive a clear statement before the hearing that if the participant, or any family member or witness attending the hearing, is a person with disabilities, and anyone requires a specific accommodation in order to participate in the hearing process, they had the right to request such reasonable accommodation, and how to go about doing that?	
1.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	At any time before or during the hearing, did the participant indicate that a reasonable accommodation was needed for person with disabilities in order to participate in the hearing process?
2.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	If "Yes" to # 1 above, was the request for an accommodation reviewed and considered?
3.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	If "Yes" #2 to above, was the request for an accommodation granted? If "Yes", what was provided?
			If "No" to #3 the above, on what basis was the request for an accommodation denied?

Section 2: Pre-Hearing Checklist

Following is a pre-hearing checklist template for the public housing program.

NOTE: This is not a HUD form or a legal form. State law may affect some of these categories; in addition, your PHA may have particular procedures that should be incorporated. Check with director or legal counsel before adopting this form.

This form can be utilized to ensure the PHA has met all due process obligations.

GRIEVANCE HEARING CHECKLIST–PUBLIC HOUSING			
Applicability			
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Was this adverse action subject to the grievance hearing process per the PHA's ACOP and HUD regulations? If "No" to the above, why not? Consult with hearing coordinator or legal counsel before discontinuing the hearing process.	
If PHA intends to terminate based on criminal records or sex offender records			
Yes <input type="checkbox"/>	No <input type="checkbox"/>	If PHA intends to terminate based on criminal or sex offender records other than obtained through public information, was notice of <i>intent</i> to terminate sent to head of household and subject of record <i>before</i> any notice of termination?	
Yes <input type="checkbox"/>	No <input type="checkbox"/>	With notice, was copy of criminal record sent, or notification that head of household and subject of record could view and copy such record at PHA office?	
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did notice include the right of family to dispute accuracy and relevance of criminal record, with a deadline in which to do so?	
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did PHA uphold decision to terminate after family disputed accuracy or relevance, or family did not invoke their right to dispute? If "Yes", continue.	
Due Process			
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Is the PHA in a due process state? If "Yes", continue with this section. If "No", continue to "Informal Settlement"	
If the adverse action is a termination action, Is the termination action for one of the following? (check applicable)			
1	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other tenants or employees of the PHA
2	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Any violent or drug-related criminal activity on or off such premises
3	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Any criminal activity that resulted in felony conviction of a household member Any criminal activity that resulted in felony conviction of a household member
Yes <input type="checkbox"/>	No <input type="checkbox"/>	If "Yes" to #1, 2, or 3 above, did the notice of adverse action inform the tenant that the PHA is in a due process state and this issue is excluded from the PHA's grievance procedures, and how the tenant proceeds to judicial review?	

Hearing Officer Specialist

Preparing for the Hearing

Section 2: Pre-Hearing Checklist

Adequate Notice			
Yes <input type="checkbox"/>	No <input type="checkbox"/>	If the notice is for termination, were VAWA forms HUD-5382 and 5380 sent with the notice? If "No", STOP. Resend the notice with forms HUD-5382 and 5380.	
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did notice state the reasons for the adverse action in sufficient detail to enable the tenant to prepare a defense? Did the notice contain citations (CFR, ACOP, lease)? If "No", STOP. Ensure the notice is adequate before moving forward.	
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did notice explain that the tenant had the right to request a grievance hearing and how the request should be made?	
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did the notice state the deadline for the family to request a hearing and was the deadline consistent with the PHA's ACOP (e.g., 10 business days)?	
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did notice include, or was notice accompanied with, the right to request a reasonable accommodation for a person with disabilities?	
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did notice include, or was notice accompanied with, the LEP right to request oral interpretation, free of charge?	
Informal Settlement			
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Was an informal settlement held?	
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did the person who conducted the informal settlement produce a written summary within the required timeframe, per PHA policy? Did the written summary include information on how the tenant may request a grievance hearing if the tenant disagrees with the outcome of the informal settlement? If the answer to either of these questions is "No", consult director or legal counsel.	
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Was the PHA's decision upheld? If "Yes", continue.	
Did family request hearing in timely manner?			
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did the tenant request a hearing within deadline set forth in the notice of adverse action?	
Yes <input type="checkbox"/>	No <input type="checkbox"/>	If "No" to the above, did the tenant have good cause for filing a late request for the hearing?	
PHA's response to request for a hearing			
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did the PHA provide the family with a copy of its grievance procedures, explaining the family's rights and responsibilities, and the PHA's responsibilities?	
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did the PHA's grievance procedures, provided to the family, explain the discovery process, including the family's right to view and copy all documents relevant to the hearing (that the PHA intends to produce at the hearing)? If the answer is "No", STOP. Do not move forward until family is given the right to view and copy PHA documents relevant to the hearing.	
Selection of Hearing Officer			
4	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did you, the hearing officer, make or approve the decision under review or are you a subordinate of the person who did make or approve the decision?
5	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Is there any evidence suggesting that you, as the hearing officer, should be disqualified for bias, prejudice, conflict of interest, or because of ex parte contacts with one of the parties?
			If "Yes" to questions #4 or 5 above, excuse yourself from the hearing and refer the case to the hearing coordinator or PHA legal counsel.

Hearing Officer Specialist

Preparing for the Hearing

Section 2: Pre-Hearing Checklist

Discovery			
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did family ask for opportunity to examine relevant documents prior to hearing; if so, were they allowed to copy such documents (at their own expense or at no cost, as stated in ACOP)? OR, was PHA hearing packet sent to family and hearing officer before the hearing? If "No", STOP. Ensure this step has been fulfilled.	
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did PHA fail to make any documents available to the family, which should be excluded at the hearing?	
Witnesses			
Yes <input type="checkbox"/>	No <input type="checkbox"/>	Did tenant request that any household members or witnesses participate remotely (video or telephone)?	
Yes <input type="checkbox"/>	No <input type="checkbox"/>	If "Yes" to the above, did the PHA and tenant make arrangements needed so that household members or witnesses could participate remotely?	
Reasonable Accommodation			
6	Yes <input type="checkbox"/>	No <input type="checkbox"/>	At any time before the hearing, did the participant indicate that a reasonable accommodation was needed for person with disabilities in order to participate in the hearing process?
7	Yes <input type="checkbox"/>	No <input type="checkbox"/>	If "Yes" to #6 above, was the request for an accommodation reviewed and considered?
8	Yes <input type="checkbox"/>	No <input type="checkbox"/>	If "Yes" to #6 above, was the request for an accommodation granted? If "Yes", what was provided?
If "No" to #8 above, on what basis was the request for an accommodation denied?			

Section 3 Hearing Packet

If the PHA's hearing/grievance policies stipulate that a hearing packet is compiled before the hearing, you should receive the hearing packet enough in advance to study the case and formulate questions you have about the case. The PHA's hearing/grievance procedures should stipulate how many days in advance the hearing packet is distributed to the hearing officer, family, PHA representative, and advocates.

The next chapter will explore policies and procedures regarding remote hearings (via phone or teleconference).

The hearing packet should contain:

- A narrative describing the case
- What family obligations or requirements are believed to have been violated
- Documentary evidence, including, but not limited to, the PHA's notice(s) of termination or other adverse action
- PHA's notice of intended action and family's right to request a hearing
- Family's request for hearing

A best practice is for the PHA to include a pre-hearing checklist to ensure that no administrative steps were skipped and that the family has been informed of its rights and responsibilities

Include *all* documents relied on for the termination decision, such as notes from contacts with family/owner, management report, income verification, signed family obligations, lease, notices to comply, etc.

For Housing Choice Voucher cases, the following documents should be included:

- A copy of the excerpt of voucher, signed by the family, listing family obligations
- A copy of the applicable provision(s) of the PHA's administrative plan

For public housing cases, the following documents should be included:

- A copy of the public housing lease, signed by the family
- A copy of the applicable provision(s) of the PHA's admissions and continued occupancy policy (ACOP)

Essential documentation will vary greatly depending on the issues. We will practice, in the case studies, seeking the documentation we need. Below are some of the more common issues and the documentation you'll look for.

For cases involving suspected unauthorized persons, the following documents should be included:

- Most recent copy or copies of the 50058, listing household members
- Most recent copy or copies of family declarations at annual or interim reexaminations, where the family is declaring who is in the household

For cases involving nonpayment of rent in public housing, documents should include:

- Copy of the PHA's rent roll for the disputed month(s)
- 14-day notice of nonpayment of rent to family (30 days when HUD determines that there is a national emergency)
- Notice of nonpayment of rent required under state law
- Proof of service of 14-day notice and state law notice of nonpayment of rent (30 days when HUD determines that there is a national emergency)

Section 4 Post-Test

1. In hearings, essential documentation will vary depending on the issues.
 - a. True
 - b. False
2. The hearing officer needs to see documentation that the PHA has met its procedural requirements and duties. The important requirement(s) is or are:
 - a. Did the PHA's notice of adverse action state the reasons in sufficient detail to enable the participant to prepare a defense?
 - b. Did the notice of adverse action explain that the family had the right to request a hearing?
 - c. Did the notice of adverse action explain to the family how to request a hearing?
 - d. Did the PHA explain to the family their right to review and copy all documents intended to be presented at the hearing?
 - e. All of the above
3. Advance arrangements may need to be made for witnesses testifying by telephone.
 - a. True
 - b. False
4. During the hearing, the hearing officer is prohibited from having copies of pertinent regulations and procedures in the hearing room.
 - a. True
 - b. False
5. A good principle for the hearing officer, in preparing for a hearing, is:
 - a. A stitch in time saves nine
 - b. The unexamined life is not worth living
 - c. Be prepared
 - d. Caveat emptor
 - e. Do a good turn daily

Notes

CHAPTER 12 **Conducting Orderly Hearings**

LEARNING OUTCOMES

After completing this chapter, you should be able to:

- Recognize the protocols that define the process of the hearing
- Identify techniques to navigate difficulties that may arise in hearings
- Discuss the discipline and practice of presiding over a hearing

INTRODUCTION

The process and protocols of the hearing should be described in some detail in your hearing/grievance policies. There is no standard model for a hearing. It should have dignity and order similar to a judicial proceeding, but should be conducted less formally.

As important as the process and protocols, the way the hearing officer presides sets the tone of calm authority.

The hearing must be fair, which means the participant/tenant must have:

- An opportunity to be heard
- The right to confront witnesses
- The right to representation
- An impartial decision-maker
- A decision based only on the evidence presented at the hearing (no contacts with the hearing officer outside the hearing about the case)
- A decision that includes the reasons and evidence relied upon.

Section 1 Processes and Protocols to Conduct an Orderly Hearing

The hearing must be consistent with the fundamentals of fairness, impartiality, and thoroughness, but should also move fairly rapidly. The PHA hearing/grievance procedures should describe the process and sequence; however, this isn't a required provision under HUD regulations, and may vary among PHAs. If not described in detail in the hearing/grievance procedures, you may want to establish an order and sequence for yourself when you preside.

A hearing officer should remember the basic policy that hearings should be kept less complicated than judicial proceedings. Your job is to conduct an orderly hearing that clarifies the issues, not to establish complicated rules and procedures.

OPENING THE HEARING

You must make every attempt to start the hearing on time. You are responsible for being on time and beginning on time. If there is an unavoidable delay, you should, or ask the hearing coordinator to notify the parties of the anticipated start time.

You should make the introductory statement. The hearing officer should call the hearing to order, identify yourself, and briefly describe the subject of the case and the procedures to be followed.

In addition, a basic introductory statement should include the following:

- The title of case
- The date, time, and place of hearing
- The persons present at the hearing or by telephone

Section 1: Processes and Protocols to Conduct an Orderly Hearing

Explain the process at the beginning of the hearing—this is important for the family, for witnesses, and for PHA staff. You should explain the order of presentation at the beginning of the hearing, so that the parties are not taken by surprise. For example:

- The PHA states its case
- The family cross-examines
- The family (and/or representative) states the family’s case
- The PHA cross-examines
- The PHA rebuts
- The family (and/or representative) rebuts
- The hearing ends

The PHA hearing/grievance procedures may contain basic ground rules for decorum and behavior. If so, state those. If not, clearly state some basic ground rules.

- For example, a ground rule may be that no one interrupts.
 - Other ground rules may be that all questions go through you, and that no one is allowed to jump in and cross-examine a witness when they are being cross-examined by someone else.
- It may be helpful to clarify that a decision is never made on the spot. You will review the facts and the family will receive your written decision within the timeline set in the PHA’s hearing/grievance procedure.

Some PHAs’ hearing/grievance procedures contain a statement dealing with potential disruptive behavior. If so, read that statement before you proceed from the opening statements.

- If the PHA’s procedures do not contain such a statement, you may want to state that any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer. You could also state that you will terminate the review if it’s not orderly, and make your decision only on what has been presented.

Remember, you are more than the facilitator—you are in charge. Establishing the protocols, sequence, and process of the hearing establishes you as the person presiding.

HEARING OFFICER SAMPLE INTRODUCTORY SCRIPT

It is helpful to introduce yourself and the hearing in a way that everyone knows what to expect. Feel free to use sample language below. You may need to work with PHA management to agree on a sample script. Review it carefully beforehand to ensure it follows the PHA's procedures. When you use an introductory script such as the one below, become familiar with it so that you're not simply reading it.

- Introduce yourself and everyone present.
- I am the [name and title] of the housing authority. I was not involved in making or approving the housing authority's determination, nor am I a subordinate of the person who made or approved the decision.
or
I am an independent contractor, under contract by the housing authority, to hold these hearings as an impartial decision-maker. [You could state your occupation if that is helpful.] That means I am not an employee of the housing authority, not supervised by anyone here, so my decisions are independent.
- One of my responsibilities is to ensure that both parties have a full and fair hearing. I must ensure that the hearing runs smoothly and without disruptions. The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct.
- Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer. In extreme circumstances, I have the authority to end the hearing and make my decision on written evidence and testimony presented up to that time.
- We are here because you filed a timely appeal of a housing authority decision.
- The purpose of the hearing is for me to determine whether the housing authority decision was in accordance with the law, HUD regulations and housing authority policies, and whether the housing authority followed all due process requirements.
- I have the authority to uphold the decision, overturn it or send it back for more information. While these proceedings are informal, meaning this is not a trial, you still have important rights and there are procedures we must follow.
You have:
 - The right to representation-but I see you are here on your own, so I presume you choose to go forward...
 - The right to review the evidence and documents the housing authority uses at the hearing. Were you given the opportunity to review the housing authority documents before this hearing?

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- The right to present your own testimony and documents.
- The right to question housing authority witnesses.
- The right to a decision based only on the evidence I hear today, meaning I will not talk to anyone about the case without both parties present, or permission from the absent party.
- The right to a written decision, which means I will not issue an oral decision today, but will issue my written decision within [days in policy] days.

As for procedure:

- I will swear everyone in who is giving testimony, so testimony will be under oath. (If you do not put people under oath, you could say: I expect everyone to tell the truth. I will be evaluating everyone's credibility when I make my decision.)
- I will identify the documents used by the housing authority to reach my decision.

or

Alternative:

I normally identify all the documents in a packet. But because there are so many, I will not take everyone's time to do that. Instead, I will address a few items in the packet in a minute. (Confirm the family member's signature on documents describing family responsibilities and obligations, like the lease.)

- Because the housing authority made the original determination in this case, the housing authority will go first to present its case. [Name person and title of PHA representative] is presenting the case for the housing authority. You will have the opportunity to question each witness after his/her testimony. Please just ask questions at this point if you have them. You will have a full opportunity to tell me what you want me to know when it is your turn to present your case. After you do present your case, the housing authority will be able to ask you questions. I may have questions as well at any time.
- If housing authority procedure is to allow each party to make a closing statement, state this, and say something like, "Your closing statement should be no more than about two minutes."
- My decision must be based on a preponderance of the evidence, that is, the evidence which is more convincing for one position than the evidence offered for the opposite position. (or more likely to prove the facts for one party as opposed to the other party).
- I will also evaluate whether the housing authority notified you of and provided you all your rights.
- Again, I will issue a decision in writing within [state days in PHA policy].

A few ground rules:

- An important ground rule is that no one interrupts anyone.
- Only one party at a time questions another party.

Any questions before we begin?

PARTIES' OPENING STATEMENTS

Generally, the party with the burden of proof goes first.

You may suggest a reasonable time limit on opening statements if this isn't specified in the PHA policy. What constitutes a reasonable time limit depends upon the complexity of the case and the number of issues involved.

Parties often misunderstand the function of an opening statement. It may be helpful to explain to the parties that the opening statement is merely intended as an outline of the party's case, what testimony and documents that the party expects to introduce, and what facts the party intends to prove.

WITNESS ORDER

You should ask each of the parties and their representatives to introduce themselves for the record.

The party presenting its case calls witnesses. Normally, all of a party's witnesses should be called and examined before the next party begins to call witnesses.

ROLES

THE PHA REPRESENTATIVE

At the hearing, the PHA representative will identify and discuss specific evidence used to make the decision to terminate assistance. For example, she will describe the history of the case—what happened, who said what, and when.

She will point to documents supporting her narrative. She will detail the violations and identify documents showing how the participant/tenant would have known they were in violation of the rules—the lease, signed family obligations under the voucher, prior notices.

The PHA representative will provide live testimony from witnesses with first-hand knowledge of violations, if appropriate and available. Testimony by phone is allowed.

Section 1: Processes and Protocols to Conduct an Orderly Hearing

The PHA representative should be prepared to respond to questions from the family. It may be a ground rule that all questions go through the hearing officer. She should be prepared to ask the participant/tenant and/or their witnesses questions after the family's presentation.

After listening to the family's testimony, the PHA representative should be prepared to respond to questions from the hearing officer if you have questions about the PHA's position on possible options.

THE FAMILY/FAMILY REPRESENTATIVE

We'll refer to the family/family representative as "the family" here.

The family will also point to any documents supporting their narrative. They may provide live testimony from witnesses with first-hand knowledge of the issues related to the PHA's adverse action. Again, testimony by phone is allowed.

The family may need to respond to questions from the PHA representative; again, questions may go through the hearing officer. The family may ask the PHA representative and/or their witnesses questions after the PHA's presentation.

The family may need to respond to questions from you if you have questions about the family's statements or documents.

The PHA representative and family/family representative should ask the hearing officer about anything they do not understand about the hearing procedures.

CROSS EXAMINATION

Cross examination is the questioning of one party's witness by an opposing party or that party's counsel. Generally, you should not permit a party to interject with questions during cross examination by another party.

As the hearing officer, you must ensure that a family has an opportunity to confront and cross-examine all witnesses upon which the PHA relies.

KEEPING TRACK

Throughout the hearing, you should take enough notes to develop an accurate record. It is very important to develop a complete record for any further review.

It is your job to help develop the facts. You can direct the parties to discuss any points you think are germane. You may question a witness to clarify any confusing or ambiguous testimony. You may also need to assist in rephrasing questions so that they are more clearly understood.

On the other hand, you must not become the advocate for any party. You should avoid any appearance of non-neutrality.

TAKING NOTES

Some hearing officers take no notes, feeling that it distracts from the immediate task of controlling the hearing. Others take notes of the testimony of each witness, which might later be typed into the hearing decision. The hearing officer's notes are not part of the record.

IF THE HEARING IS RECORDED

As we've seen in our review of the regulations, public housing hearings may be taped, and many PHAs tape voucher informal hearings as well. To make certain that the record is complete, you should announce when the hearing is interrupted for a change in tape, or a recess, and should announce when the hearing is resumed.

If a person continues to speak after the recording stops, you should catch the speaker's attention, and ask the speaker to repeat the portion that was lost after the recording resumes.

You may frequently have to ask participants to speak louder. You should always speak in a tone audible throughout the hearing room.

BRINGING THE HEARING TO A CLOSE

CLOSING ARGUMENT

Depending on the sequence established in the hearing/grievance procedures, the parties' closing arguments may be in the rebuttal, or the policies may permit the parties to make closing statements summarizing the entire case or on specific issues.

After all testimony is given and documents received, you close the hearing and explain when the hearing decision can be expected.

Section 2 Remote Hearings

MUST SATISFY DUE PROCESS REQUIREMENTS - A FAIR HEARING

BACKGROUND

On November 20, 2020, HUD issued Notice PIH 2020-32 providing detailed guidance to PHAs on conducting remote hearings, which may be conducted over the phone, via videoconferencing, or through other virtual platforms.

For many PHAs, holding hearings by telephone is not unusual, although it might be viewed as an exception to the standard practice of in-person hearings. PHAs may be accustomed to holding remote hearings as a reasonable accommodation for a client with mental or physical disabilities, or for a client who does not have child care, or because of inclement weather or stay-at-home orders. More recently, PHAs are considering instituting telephone or videoconferencing hearings as a standard practice, most often because of budget or public health constraints.

Advocates in the past have argued against telephone hearings, asserting that the hearing officer must see the parties to judge credibility, and for their clients, to have better empathy. No court has decided unequivocally that a hearing can be fair only if it is an in-person hearing. Courts have either cited scientific reports suggesting that the reliability of visual cues for determining credibility is overrated or determined that other means can be used to assess credibility.¹

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1. A review of federal administrative case law on the due process implications of telephone hearings did not identify any involving HUD programs. There are numerous cases involving unemployment insurance, social security, and welfare benefits. See generally, Allan A. Toubman, Tim McArdle & Linda Rogers-Tomer, Due Process Implications of Telephone Hearings: The Case for an Individualized Approach to Scheduling Telephone Hearings, 29 U. MICH. J. L. REFORM 407 (1996). Available at: <https://repository.law.umich.edu/mjlr/vol29/iss1/13>

ACCESSIBILITY REQUIREMENTS FOR REMOTE HEARINGS

REQUIREMENTS FOR PERSONS WITH DISABILITIES

Under Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA), and the Fair Housing Act, PHAs are obligated to take appropriate steps to ensure effective communication with applicants, participants, members of the public, and companions with disabilities through the use of appropriate auxiliary aids and services (28 CFR 35.160(a)(1); 24 CFR 8.6). The PHA should consider the following:

- Accessible platform: A remote hearing should ensure that any information, websites, emails, digital notifications, and platforms are accessible for persons with vision, hearing, and other disabilities.
 - Helpful guidelines for ensuring the accessibility of web-based and digital materials are available through the Consortium's Web Accessibility Initiative at <https://www.w3.org/WAI/>.
- Individualized auxiliary aids or services (AA/S): To provide effective communication in a digital context, individualized AA/S may include audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts.
 - Examples of AA/S that may be necessary when conducting a remote hearing can be found at 28 CFR 35.104.
 - The PHA must give primary consideration to the auxiliary aid or service requested by the individual with a disability
 - The PHA may never request or require that the individual with disabilities provide their own auxiliary aids or services
- Reasonable accommodations: If no method of conducting a remote hearing is available that appropriately accommodates an individual's disability, the PHA should consider postponing the hearing or whether there is a suitable alternative that satisfies the participant more expeditiously.

REQUIREMENTS FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP)

A PHA will generally need to coordinate with a remote language interpretation service prior to the remote hearing. If video technology is available, remote interpretation using video is generally preferred over voice-only because of the additional visual cues. For written materials, PHAs should engage with a language translation service. PHAs cannot rely on minors to interpret.

BEST PRACTICES TO IDENTIFY AND RESOLVE TECHNOLOGY BARRIERS PRIOR TO A REMOTE HEARING

The lack of technology or inability to use technology for a remote hearing can impose a disadvantage for families that may not be apparent to the PHA. Thus, the PHA should determine if barriers exist prior to scheduling the remote hearing. If the participant does not have proper technology access, then the PHA should postpone the remote hearing or provide an in-person alternative. This includes if an individual witness for the remote hearing is unable to participate due to lack of access to technology. Below are best practices in making the determination if a remote hearing can take place:

- Survey the family: To determine if there are technology barriers, the PHA should ask the family what technology resources they have. For example, a PHA could ask if the family has a computer, phone, tablet, or laptop that has a camera, if the family has internet access or can go to a place with sufficient privacy and internet access (family, friend, or neighbor's home) or if the family can borrow technology.
- Resolve barriers: Depending on the barriers identified, the following best practices may be followed:
 - PHA-supplied devices or private PHA office space: A PHA can provide a community laptop/tablet, building Wi-Fi, mobile hot spot, or a private room in the PHA office building.

Section 2: Remote Hearings

- Smartphone apps: Many video conferencing platforms have smartphone apps, which can be used where the individual or family does not have access to computers. In addition, smartphone apps can operate on Wi-Fi, and this may be advantageous for individuals with restricted data plans.
 - The PHA should consider the family's familiarity with these type of platforms and should ensure that the family is able to access the platform on the day of the hearing. The PHA may need to provide technical support to families to ensure that they are able to fully access these platforms.
- Community resources: The PHA could research community resources, such as broadband internet providers offering free or low-cost internet access, find local charities or other resources for free or low-cost phones or computers.
- Personal resources: Assess personal resources for technology access, such as supportive services, family members, mentors, or friends who could lend the individual or family a phone or computer.
- Voice only option (telephone): Most individuals have, or can use, a telephone. However, conducting a remote hearing by telephone is the least preferred option due to the challenges of not being able to view documents being presented at the remote hearing (e.g., screen sharing) and not being able to identify who is speaking during a phone call with multiple attendees.

DUE PROCESS FOR REMOTE HEARINGS

For the courts, the essential question is whether remote hearings meet the requirements of due process. Keep in mind, **the fundamental legal principle of due process is the touchstone, the reference point, for everything that PHAs must do in their hearing process.**

CONDUCTING DISCOVERY AND PROVIDING EVIDENCE

If video or telephone conference is used for the remote hearing, HUD requires all materials being presented, whether paper or electronic, be provided to the family prior to the remote hearing.

PHAs may request and copy any of the individual's or family's documents at the PHAs' own expense in accordance with the applicable regulations.

Additionally, the individual or family must be given the opportunity to examine any PHA documents that are directly relevant to the hearing prior to the remote hearing. This may include transmitting documents electronically or by mail that would normally be exchanged at the PHA's office.

The PHA should also consider that families may prefer paper printouts over electronic documents, due to lack of access to printers, difficulty viewing detailed documents on a cell phone, or difficulty viewing screen sharing on an app. The PHA may wish to make documents available both electronically and in paper format as a standard practice.

The hearing officer must receive all documents in advance if the hearing will be conducted remotely. The PHA should provide all documents to the hearing officer when the documents are provided to the family.

PHAs may need to make reasonable accommodations and take appropriate steps to ensure effective communication with individuals with disabilities and LEP persons. This may require changes in how the individual or family seeks discovery of information held by the PHA and the manner in which evidence is made available during remote hearings.

For documents that contain personally identifiable information (PII) and are provided prior to a remote hearing, the PHA is responsible for minimizing the risk of exposure or misuse of the data collected, used, and shared.

DUE PROCESS TEST

Remote hearings must adhere to the same criteria for fair hearings as in-person hearings. Remote hearings may not increase the risk of an erroneous deprivation of benefits. In other words, remote hearings must comply with the requirements outlined in *Goldberg v. Kelly* for the minimum procedural safeguards.¹ As a reminder, those requirements are:

- Right to timely and adequate notice of the basis for termination
- Opportunity to defend
- Opportunity to be heard
- Right to confront witnesses
- Right to representation
- An impartial decision-maker
- A decision based only on evidence presented at hearing
- A decision that includes the reasons and evidence relied upon

HUD REGULATIONS

These due process requirements are incorporated in the HUD regulations covered earlier in this book.

The HUD regulations require PHAs to give applicants or participants/tenants a meaningful opportunity to be heard. As long as a PHA's process for holding remote hearings meets this test, it will satisfy due process requirements.

1. 397 U.S. 254 (1970)

POLICY AND PROCESS

Whether a PHA decides to hold remote hearings as its standard practice or as an exception to in-person hearings, the PHA must establish written procedures of all aspects of how the remote hearing or remote briefing will be conducted and the procedures should be readily available to the public. The procedures should also explain how documents will be presented prior to a remote hearing or remote briefing. For the Housing Choice Voucher program, the policy on remote hearings must be included in the administrative plan. For public housing, the policy must be included in the grievance procedure.¹ The policies, of course, must be approved by the PHA board. Having written policies ensures the process is fairly and evenly applied-eliminates ad hoc decisions about who is approved for a remote hearing. This is a critical bulwark for withstanding advocate and court challenges.

Procedures are used as a reference for day-to-day operations.

-
1. The PHA grievance procedure shall be included in, or incorporated by reference in, all tenant dwelling leases. The PHA must provide at least 30 days' notice to tenants and resident organizations setting forth proposed changes in the grievance procedure, with opportunity to present written comment.

POSSIBLE DRAWBACKS TO REMOTE HEARINGS

- An attendee may be concerned about minutes or data on their phone
- An attendee may not have reliable access to the technology or may not feel able to access the technology
 - For example, an attendee may not have a phone landline and may be in a cell carrier “dead zone”
- There may be other technology issues¹ such as issues with connectivity
- The individual may be unfamiliar with accessing conference call-in lines or online meeting platforms and the PHA may need to spend a substantial amount of time trouble shooting technology issues in order to ensure that families are able to properly log into remote systems
- If the case involves complicated issues, substantial documents, and/or numerous witnesses, conducting remote hearings will require more communication and coordination. The hearing coordinator or other PHA employee may need to provide additional instructions and/or technical assistance before the hearing.

AVAILABILITY

- Is this option available to everyone?
 - If one platform (such as videoconferencing) isn't available or accessible to an attendee, will the PHA offer an alternative (such as a telephone hearing)?
 - Again, the PHA may need to provide technical assistance before the hearing to ensure attendees can utilize the technology.
- Are remote hearings the primary way hearings are conducted (for example, during a public health crisis)?
 - If so, is this option available to everyone?
 - Or, are remote hearings the exception to in-person hearings?

1. A PHA could consider an arrangement with other agencies for hearing attendees to use to call in to hearings (remote sites close to the attendee). The space for this purpose would have to be quiet and private.

Section 2: Remote Hearings

- If remote hearings are the exception, who decides whether the exception is granted? The hearing officer or the PHA? May any party submit a “good cause” reason to have the hearing in-person rather than remotely?

PLATFORM

- Who will be responsible for identifying the technology necessary for holding hearings remotely? The choice of platform must be reliable and not interfere with the smooth conduct of the hearing. The platform must be able to accommodate all attendees.

NOTICE

Describe how the hearing officer and the parties will be notified of the time, place, and method for attending the remote hearing.

WITNESSES

Describe how witnesses will attend. The hearing coordinator or the hearing officer could call or sign in the witnesses for joining the hearing.

SUBMISSION OF DOCUMENTS

How will the hearing officer and attendees receive and exchange documents? The PHA policy should stipulate the timeframe for submitting documents, including the hearing packet.

In a process document, the steps for ensuring documents are provided timely could be specified. For example, the documents are submitted to the hearing coordinator who is responsible for passing them to the appropriate party.

RECORDING

State whether the telephonic or video conference hearing will be recorded.

ADDRESSING CREDIBILITY

Sample language to be included in hearing decisions conducted remotely:

- The hearing officer's ability to evaluate the credibility of the testimony was not affected by the fact that the testimony was conducted via (specify the platform - telephone, videoconferencing, etc.).
- Having considered all factors relevant to credibility (including, but not limited to, demeanor as detectable by (telephone and/or videoconferencing) consistency, logical persuasiveness and the totality of the circumstance), the undersigned finds and concludes that the (insert party or witness name) was credible as to ...(cite the facts that were based on credibility).

OTHER CONSIDERATIONS:

- Will there be a method for ascertaining the identity of the attendees? Either the hearing coordinator or the hearing officer as part of the introduction to the hearing could take names, addresses, email addresses.
- The hearing officer should announce the case at the beginning of the hearing, identify who is on the call, identify the exhibits/documents in the case, remind parties not to refer to documents not identified and not available to everyone. *(See sample introduction for hearings in Section 1 of this chapter.)*

Section 3 Techniques to Navigate Hearings

HANDLING COMPLEX ISSUES

When a hearing may be lengthy or is becoming lengthy, and/or involves difficult or technical subject matter, some techniques can help simplify the process and make it more manageable. These strategies can help to assure the hearing is conducted efficiently, allowing adequate time for evidence on disputed issues, but eliminating discussion of irrelevant matters.

NARROWING THE ISSUES

You should inform parties that subjects not in dispute will not be heard.

You could circulate a tentative agenda before the hearing. Work with your hearing coordinator if you decide to do this. You could introduce the tentative agenda during your introductory remarks. The parties should be asked if they have additional issues to discuss at the hearing.

BREAKS AND PROMPTNESS

Short breaks should be taken when some time off will make the hearing progress go more smoothly, for example, when the participants tire, or to allow an expert witness to set up an exhibit.

If the hearing will last all morning or afternoon, the hearing should have a minimum of one recess in the morning and one in the afternoon. You should call a recess if a witness or representative need a break to regain composure and participate more effectively.

You should establish times for coming back from each break and enforce them.

RECESSED HEARINGS

Occasionally, it's necessary to hold the hearing open for additional evidence. If this is the case, all parties must be allowed to submit additional evidence. You could limit evidence to a specific issue.

An example would be where the participant/tenant asks you if they may leave the hearing open so they can obtain additional information to support the case. If the additional information is essential to the hearing, you can agree to leave the hearing open, and set a deadline for the participant/tenant to submit the additional information, and the date the hearing will reconvene. The hearing officer should allow time for the party (parties) receiving additional information to respond. Once that information is received, you must ensure the PHA representative receives the additional documents.

The reconvened hearing will focus on the additional documentation provided by the participant or tenant. There may be no need to reconvene the hearing. If it is necessary to reconvene, the hearing officer could consider doing so by phone.

If no additional information is received from the participant/tenant by the due date, you will issue a decision based on evidence provided at the hearing.

Section 4 Discipline and Practice of Presiding

INTRODUCTION

A hearing is a serious matter for a family. Housing assistance—a place to live—is often what’s at stake. Take your role seriously. Be factual, professional and calm. Use common sense.

You must control the hearing to give all parties an opportunity to present their cases, while preventing the hearing from becoming burdensome due to length or complexity.

While hearings must provide due process, remember they are intended to be less formal and less time-consuming than judicial litigation. Consequently, the techniques of presiding are among the most important of the hearing officer’s skills.

PREPARATION AND CONCENTRATION

As mentioned in an earlier chapter, you must be prepared so you know the case.

You must focus on the hearing and listen attentively. It is your responsibility to monitor your mind for distractions.

You should ensure that your schedule enables you to devote the time needed for the hearing. You must not allow the hearing to be interrupted for personal business.

ATTITUDE, Demeanor, AND BEHAVIOR

Your demeanor sets the tone for the hearing. You should rely on calm authority and impartial decision-making to take command of a hearing, rather than undue formality. You are not wearing robes or referred to as “your honor!”

Hearings should not be threatening to participants. You must treat all participants with equal respect. Participants and witnesses should be addressed formally, for example, Mr. Jones or Ms. Smith. You should require all participants to address each other, and the witnesses, respectfully.

It’s essential to show the same respect to all parties. If an advocate neglects to do so, you remember. If a PHA representative neglects to do so, you remember.

You should not argue with participants and shouldn’t permit any participants or witnesses to argue with each other. Again, you set the tone through use of calm authority. You demonstrate respect for the hearing process and, by your demonstration, you establish the authority to set limits and remind others of respect for the process.

CONTROLLING THE HEARING

You must control the hearing. Even though a hearing is more informal than a court of law, you have functions and responsibilities similar to a trial judge: You have the responsibility to conduct the hearing in a fair manner and to make decisions needed to move the hearing forward, including regulating time and conduct.

- For example, you may place reasonable time limits on the presentation of evidence. As soon as the topic is exhausted or fully developed, you should stop the party or the witness and direct him or her to go to other matters. If a party is rambling, or if a question is irrelevant, you should intervene.

Section 4: Discipline and Practice of Presiding

If tempers become short and an altercation threatens to disrupt the hearing, you should call a recess, go off the record, and restore order. If a participant in the hearing becomes unruly or offensive in remarks or manner, you should express disapproval of the conduct and warn against a repetition. You should remind all participants to address each other, and the witnesses, respectfully.

If you anticipate problems, you could spend additional time explaining the ground rules for the conduct of the participants. Besides requiring that the participants address each other and the hearing officer with courtesy, you could require that the participants remain seated during the hearing, and that participants keep silent during another participant's presentation.

If the disruptive behavior continues, you should formally remind participants that any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer. Also state that you will terminate the review if it's not orderly, and make your decision only on what has been presented.

To summarize, when a participant behaves inappropriately and disrupts the hearing, you may take action, including:

- Issuing warnings that explain expected behavior and the consequences of non-compliance
- Offering a recess to allow time for participants to gain self-control
- Rescheduling the hearing for a future date
- Closing the hearing and making the decision based upon what has been submitted and presented

Section 4: Discipline and Practice of Presiding

SAFETY

Hearings often involve very personal matters that are highly emotional and may result in hostile or violent behavior among hearing participants. Occasionally an attendee may attempt to take over or disrupt a proceeding.

The best advice is to be prepared. Discuss security arrangements with the hearing coordinator before the hearing. In extreme circumstances, police will be called upon to provide security.

At a minimum, you should have access to a telephone and number to call for any needed assistance. If a person at a hearing appears to be getting out of control, or disrupting the proceeding, you should call a recess for a “time-out” and may seek assistance at that time. You should never attempt to personally break up a physical encounter.

Section 5 Summary

You are responsible for regulating the conduct and course of the hearing to ensure due process and an orderly hearing. This includes:

- Setting the tone of the hearing through the use of calm authority
- Emphasizing the requirement that only one person speak at a time
- Explaining that each party will have an opportunity to present his side

During the hearing, the hearing officer:

- Keeps the hearing on track
- Ensures that the participant/tenant's and PHA's rights are protected
- Determines whether there is a need for an interpreter
- Limits the number of people in attendance at the hearing if space is limited
- Administers oaths and affirmations
- Ensures consideration of all relevant points at issue and facts pertinent to the participant/tenant's situation at the time the action was taken with attention to issues of particular concern to the participant/tenant
- Goes over all relevant evidence during the hearing
- Regulates the conduct and course of the hearing to ensure due process and an orderly hearing
- Conducts the hearing in a way that makes the participant/tenant feel most at ease but meets requirements

Section 5: Summary

The participant/tenant or his or her representative must have the opportunity to:

- Examine evidence to be used in the hearing before the hearing begins
- Examine or request copies (at a reasonable cost) of all documents and records used at the hearing
- Present the case personally or with the aid of others, including legal counsel
- Bring witnesses
- Establish all pertinent facts and circumstances
- Present arguments or make statements about the case without undue interference
- Present documentary evidence
- Question or refute any testimony or evidence, including confronting and cross-examining adverse witnesses.

Section 6 Post-Test

1. Generally, which party makes the first opening statement?
 - a. The family
 - b. The party with the burden of proof
 - c. Legal Aid
 - d. The plaintiff
 - e. Whoever is most strident
2. Whose duty is it to keep the hearing on track?
 - a. The hearing coordinator's
 - b. The PHA representative's
 - c. Legal Aid's
 - d. The plaintiff's
 - e. The hearing officer's
3. When a participant behaves inappropriately and disrupts the hearing, the hearing officer could take the following action(s):
 - a. Issuing warnings that explain what behavior is expected and the consequences of noncompliance
 - b. Offer a recess to allow participants time to gain self-control
 - c. Reschedule the hearing for a future date
 - d. Close the hearing and make the decision based on what has been submitted and presented
 - e. Any of the above
4. It is never permitted to hold the hearing open for additional evidence.
 - a. True
 - b. False

Section 6: Post-Test

5. The following is a best practice strategy to ensure safety at the hearing.
 - a. Requiring the attendance of a security guard at all hearings
 - b. Requiring law enforcement presence at all hearings
 - c. Discuss security arrangements before the hearing
 - d. Have controversial witnesses appear privately, without the opportunity for cross-examination
 - e. All of the above
6. The tone and demeanor of the hearing officer contributes greatly to the orderly conduct of hearings.
 - a. True
 - b. False
7. The hearing officer should set the tone of:
 - a. Authoritarian control
 - b. Parental permissiveness
 - c. Calm authority
 - d. Sternness and strictness
 - e. Confrontation and encounter
8. The hearing officer is never allowed to end the hearing before all evidence has been presented.
 - a. True
 - b. False
9. A hearing is considered “informal” because:
 - a. There is no dress code
 - b. The hearing officer's decision carries no weight
 - c. The hearing is not bound by the protocols of a court
 - d. Attendees can be unruly

Section 6: Post-Test

10. The hearing officer may:
- a. Exclude evidence that has been submitted
 - b. Place reasonable time limits on the presentation of evidence
 - c. Have private conversations with different parties during the course of the hearing
 - d. Leave the room during the hearing for a break while testimony continues
 - e. All of the above
 - f. None of the above

CHAPTER 13 **Making and Writing the Hearing Decision**

LEARNING OUTCOMES

After completing this chapter, you should be able to:

- Identify crucial considerations when making your decision
- Define preponderance of evidence
- Recognize the duty and process of thinking through the decision
- Identify the contents of the final decision

INTRODUCTION

Hearing decisions determine whether the PHA decisions are in accordance with the law, HUD regulations, and PHA policies. You will make your decision by critically thinking about all relevant issues in the context of law, regulations and policies.

Remember, your decision must be based solely and exclusively upon the facts presented at the hearing and whether the PHA followed all due process obligations. The importance of preparing a clear, reasoned, complete decision is paramount. Your hearing decision may be an important piece of evidence in court, should the case continue that far.

The maxim for the final hearing decision notice is *not*, “the longer, the better.” The hearing decision needs to be clear, make sense, and be fair.

You must get your decision out on time, so give yourself time to think about it.

Although of course the decision is your responsibility, don't feel you have to make the decision unilaterally, if there are issues about which you're not expert. It's a best practice to find a mentor. This person could be a wise friend or colleague, a fellow hearing officer at another housing authority, or any uninvolved person.

If you need a technical expert, discuss this with the hearing coordinator. HUD rules can be dense. Some PHAs assign technical experts with whom the hearing officer can consult, as long as everyone understands and is absolutely scrupulous that you don't discuss the case—only the regulations.

Your PHA should have a standard hearing decision form. The form will actually help walk you through your decisions and writing it. You may want to compare the template currently being used with the templates in this book.

Section 1 Procedural Rights

The hearing officer must decide not only whether the participant/tenant did or did not violate a program regulation, law, or policy. The hearing officer must also decide whether the PHA correctly applied the program rules, regulations, or PHA policies, and followed all due process. Was the participant/tenant clearly notified, in writing, of the issues which prompted the notice and informed of his or her rights at each step?

PHAs and hearing officers often ignore basic procedural rights, including adequate written notice of reasons for the proposed termination, the opportunity for a prompt hearing, and a written decision setting forth the legal and factual basis for the hearing decision.

An article in the *Housing Law Bulletin*, Volume 36, May 2006, described two similar cases where a court of appeals considered whether form termination notices and form hearing decision letters satisfied the procedural due process requirements for voucher terminations. In both cases, the judge overruled the hearing officer's and lower court's decisions due to lack of established procedure and clear documentation.

Section 2 Preponderance of the Evidence

BURDEN OF PROOF

Again, ordinarily the party seeking a change in the status quo has the burden of proof. The standard of proof in a hearing is preponderance of the evidence.

PREPONDERANCE OF THE EVIDENCE

PREPONDERANCE OF THE EVIDENCE STANDARD

The PHA will use the concept of the preponderance of the evidence as the standard for making all hearing decisions.

Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

If the PHA is seeking to take adverse action against the family or is failing to take action to which the family feels entitled, the PHA has the burden of proof to show that a program rule was violated. That means the PHA has the burden to produce the evidence. The participant/tenant can respond with contrary evidence. The hearing decision will rest on the preponderance of evidence.

Here is a further discussion of preponderance of the evidence:

- Something is more likely than not true if you believe that the chance that it is true is even the slightest bit greater than the chance that it is false. In more familiar language, something is more likely than not true if you believe there is a greater than 50 percent chance that it is true. 51 percent certainty is sufficient; no more is required for you to decide that something is more likely than not true.

Section 2: Preponderance of the Evidence

- If you believe that the chance that something is true is 50/50 or less, you must decide that it is false. In other words, when you find something to be more likely than not true, you are to accept it as true.
- If you believe that something asserted as fact has a 50/50 chance of being true or false, then the party making the assertion has not met the burden of proof by a preponderance of the evidence.

RELIABILITY OF THE EVIDENCE

Basically, all evidence is admissible, but certain evidence is more reliable than other kinds of evidence, and you have to weigh its reliability before using it to reach a decision.

Reliability is used to determine the weight given to a piece of evidence in meeting the preponderance standard described above.

Best practice is to consider:

- Bias of the individual making the statement
- Whether the statement is signed and sworn under penalty of perjury
- Whether the statement is contradicted by other direct evidence
- The credibility of the individual making the statement
- Whether hearsay is corroborated by other evidence

PROTECTING THE EVIDENCE

For the PHA representative:

- Make sure the family, owner, etc., have signed and dated all PHA documents
- Date all correspondence
- For notes of contacts with the family and others related to the file, include the date of the contact, the full name of the contact and your name.
- Ask witnesses with first-hand knowledge of violations if they would attend the hearing (by phone is OK).
- Only use the lease or signed documents (like Family Obligations in the Voucher), for the period in which the violation occurred.

A DISCUSSION ABOUT HEARSAY EVIDENCE

Hearsay evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Hearsay is based not on a witness's personal knowledge.

Unlike in a court, all evidence, including hearsay, is considered in a PHA hearing, unless irrelevant, immaterial, or unduly repetitious. There have been many court cases reviewing termination hearing decisions based on hearsay. Courts have consistently overturned PHA termination cases based solely on hearsay, unless there is clear "probative value" and credibility of the hearsay evidence, demonstrating preponderance of evidence. "Probative" is evidence which is sufficiently useful to prove something important in a hearing or trial.

For example, courts have consistently overruled terminations based only on:

- A letter sent by a biased party claiming a participant had committed fraud:
- Emails from a police officer relaying information from unidentified officers and witnesses (double hearsay)
- Newspaper articles

Section 2: Preponderance of the Evidence

The important distinction with hearsay is the weight given it. Hearsay is given no weight in and of itself when making a finding of fact. The hearing officer may include hearsay evidence when considering their decision if it is corroborated by other evidence to support a finding of fact.

If the family has made statements which indicate relevant violations or noncompliance, and/or their testimony is conflicting or changes significantly, the hearing officer would weigh credibility in the light of the quantity and quality (reliability) of the hearsay offered by the PHA.

The elements identified by courts to determine reliability of hearsay are:

- The bias of the individual providing the statement
- Whether the statement is signed under penalty of perjury;
- Whether the hearsay is corroborated by direct evidence; and
- Credibility of the person making the statement.

In the event hearsay evidence is the only evidence presented, the probative value and credibility of statements must clearly meet the standard for preponderance of evidence. Remember, the party seeking the change has the burden of proof to meet this standard. And, as we've discussed, the hearing decision is based on both preponderance of evidence and due process considerations, including the right to cross-examine and confront witnesses.

Guidance for PHAs

PHAs should carefully consider whether they want to move forward with a termination action based solely on hearsay. If, for example, before the PHA seeks termination with only hearsay evidence, the PHA should consider conducting further investigation or providing first-hand witnesses, which would add much more weight to the PHA's case.

Summary

Hearsay, again, is admissible in a hearing and may be useful for adding weight to the preponderance of evidence "scales," but the hearing decision should never be based on hearsay alone; due process considerations and credibility come into play if hearsay is the only evidence presented at the hearing.

Section 3 Findings of Fact

Your written decision needs to include findings of fact, based exclusively on evidence presented during the hearing or matters officially noticed.

Findings of fact are based on the kind of evidence on which “reasonable and prudent people would rely on in their daily affairs.” Evidence doesn’t need to be at the level admissible in a judicial hearing, but you should exclude evidence that’s irrelevant, immaterial, or unduly repetitious.

WHAT TO LOOK FOR

Hearsay evidence is allowed if, again, it’s the type of evidence that reasonable and prudent people might rely on, but hearsay evidence isn’t sufficient in itself to support the PHA’s findings of fact, and must not violate a participant/tenant’s right to confront witnesses.

Disputes of fact are decided by a preponderance of the evidence.

Section 4 Thinking About Your Decision

As you deliberate on your decision:

- Determine if the agency's or its designee's actions were in compliance with statutes, policies or procedures
- Carefully weigh the evidence presented in accordance with the appropriate standard of proof

QUESTIONS TO ASK YOURSELF AS YOU MAKE YOUR DECISION

Following are some helpful questions to ask yourself as you think about and make your decision:

- Is this a mandatory termination or eviction as required by HUD regulation or statute?
- If there has been a request for reasonable accommodation, has it been considered?
- What about VAWA?
- What about LEP?
- What is the intended result or desired outcome of the decision?
- Are any staff's personal issues or likes and dislikes involved in the decision?
- Is the decision consistent with the agency's values?
- How will the decision affect the integrity of the program?
- How will the decision affect the safety of the staff or other participants/tenants?
- Were program expectations clearly communicated to and understood by the participants/tenants?
- Have you given your honest opinion about what should be done in this decision?
- If they are not meeting program expectations, has this been communicated to the participants/tenants?
- Has it been monitored, documented and dated?
- Are there other people who need to be contacted to give input on this decision?
- Do you have any hesitance in implementing this decision?
- Are you willing to stand by this decision tomorrow?

Section 5 The Final Decision

WRITING

Again, give yourself time to think about your decision, and time to write it. Deliberate on the evidence presented at the hearing. Go back over the documents. Give yourself time to do a first draft and then edit it. The secret of good writing is to “write, write, write” and then “cut, cut, cut.”

Some people are great thinkers but not great writers. Some people are great writers but terrible spellers. Talk to the hearing coordinator about editing if you need this kind of help. If there are no arrangements for editing at the PHA, find someone uninvolved who’s willing to be your editor. The final written decision needs to be a picture-perfect document. A document that's poorly written will not have the “face validity” you want it to have, especially if the case goes to court.

PLAIN LANGUAGE

A housing authority has the duty to use and write plain language to its applicants, participants, tenants, and the public.

The Plain Language Act was passed by Congress in 2009 to enhance citizen access to government information and services by establishing that government documents issued to the public be written clearly.

The Plain Writing Act, signed into law in 2010, requires that all federal documents be written in “plain language” that the average person can understand.

Your hearing decisions could address this obligation in relatively easy ways:

- Ask a retired English teacher or English major to review your decision for plain language
- Don’t use acronyms that the average 8th-grader couldn’t understand
- Don’t use over-complicated language
- Don’t express more than one idea or concept in a sentence
- Keep sentences fairly short
- If you have the choice between a simple word and a big word, use the simple word.

CONTENTS OF THE FINAL DECISION

The hearing officer must render a decision based on the evidence presented at the hearing by the PHA representative, any PHA witnesses, the participant/tenant and his or her representative and/or witnesses. The decision states a determination of whether the PHA followed program policy.

Your decision must summarize the facts, identify each issue considered, specify the reasons for the decision on each issue and identify the supporting evidence, laws, regulations, and PHA policies upon which the decisions are made.

The PHA should consult its language assistance plan (LAP) to determine if the decision by the hearing officer should be translated (or a cover sheet translated) into any other language. The cover sheet, for example, could include a short translated statement that describes the outcome of the hearing and instructs the participant/tenant to call the PHA if he or she needs assistance to understand the decision.

The hearing decision requires the hearing officer's signature.

Section 6 **Hearing Decision Template**

Following is one hearing decision template. There is no one “right” template. Some templates have instructions or notes embedded. It should be kept in mind, again, that this is not a hearing in a court of law. You want to adhere to the principle of “plain language” for your participants and tenants. Speak in plain English and not in “legalese.” Don’t make forms or language so complicated that they can’t be easily understood.

NOTE: This is not a HUD form or a legal form. State law may affect some of these categories; in addition, your PHA may have particular procedures that should be incorporated. Check with hearing coordinator or legal counsel before adopting this form.

Notification of Housing Choice Voucher Informal Hearing Decision
 _____ **Housing Authority**

Date:	
Name of Housing Choice Voucher participant:	
Address of participant:	
Hearing date and time:	
Hearing location:	
Hearing officer:	
Name of Housing Authority representative:	
Name of family representative (if applicable):	
Others present at hearing (list all):	
Intended Action:	The Housing Authority intends to:
Decision:	Intended action is <input type="checkbox"/> Upheld <input type="checkbox"/> Overturned

The decision will provide the following:

- I. Procedural History
- II. Issues
- III. Summary of the Evidence
- IV. Findings of Fact
- V. Conclusions
- VI. Decision

Section 6: Hearing Decision Template

I. Procedural History

On _____, the Housing Authority notified the participant of its intended action to _____. The participant filed a request for an informal hearing in a timely manner. Following this request, the Housing Authority appointed the Hearing Officer and scheduled this hearing. The Hearing Officer did not make or approve the decision under review and is not a subordinate of such person. Prior to or during the hearing, no party sought to disqualify the Hearing Officer for bias, prejudice, or conflict of interest, or because of an ex parte contact with one of the parties. On _____ the Housing Authority gave the participant reasonable written notice of the informal hearing.

_____, the Hearing Officer, conducted an informal hearing on the date indicated above, in compliance with the Housing Authority's Section 8 Housing Choice Voucher administrative plan and 24 CFR §982.555. This informal hearing was tape recorded by the Housing Authority. Although the Housing Authority is not required to transcribe the hearing record, it will provide the participant a copy of the tape recording, if requested, provided the participant pays for the reasonable cost of reproducing the tape.

II. Issues

[Brief, impartial statement of the issues to be decided at the hearing. Include all regulations and policies alleged to be in violation.]

III. Summary of the Evidence

[Insert names of all witnesses who testified at the hearing, whether in person or by telephone, and summarize the testimony of each witness. Insert a list of the exhibits, if any, that were admitted into evidence and made part of the hearing record.]

IV. Findings of Fact

[Insert the relevant findings of fact, based on a preponderance of the evidence presented in the hearing and on matters officially noticed in the hearing.]

V. Conclusions:

[Briefly state the facts that were found to be true by a preponderance of the evidence. Cite the HUD regulations and PHA policy that apply.]

VI. Decision

[Restate decision.]

Family's Right to Judicial Review:

This decision shall not constitute a waiver of, nor affect in any manner whatever, any rights you may have to judicial review through the court system in this matter.

Signed,

(Name), Hearing Officer

On _____, a copy of this hearing decision was sent by first class mail, postage prepaid, to the following:

HEARING DECISION #1: TAMMY EDGECOMB

***Town of Vernon
Housing Authority
Vernon CT***

March 1, 2017

Tammy Edgecomb
Kurt Edgecomb
Vernon CT

**NOTICE OF TERMINATION FROM HOUSING CHOICE VOUCHER
(SECTION 8) PROGRAM EFFECTIVE IMMEDIATELY**

The reason for this action is:

Having engaged in drug related criminal activity or violent criminal activity, including criminal activity by any family member, is in violation of HUD regulations at 24 CFR 982.553(b)(2).

You have the right to request an informal hearing if you dispute the reasons or our intended action. You may retain counsel or other representation, if desired, at your own expense. Either you or your counsel will be given an opportunity to examine evidence and question any adverse witnesses and will also be given an opportunity to present testimony and evidence in your favor.

VHA Testimony—Edgecomb

***Testimony and Evidence from Catherine Melon,
Coordinator, Housing Choice Voucher Program
The VHA’s Representative***

Testimony

The Edgecombs and their two minor children began participating in the Housing Choice Voucher (HCV, formerly known as Section 8) program in 1987. In July of 2016, Tammy Edgecomb's brother was visiting at her apartment when he asked her for a ride to the store. At the store parking lot, he sold cocaine to two men. Based on that incident Tammy Edgecomb was arrested on February 28, 2017 and charged with conspiracy to sell cocaine under Connecticut statutes, charges which were terminated by withdrawal by the prosecution. The HCV coordinator had no personal knowledge of the circumstances.

Evidence

1. A police report describing the arrest and underlying circumstances:
 - Discussions that the author of the report had overheard monitoring a wireless transmitter--no information based on his firsthand observations.
 - Quotations from a confidential informant which implicated Tammy Edgecomb as present at drug deals at the apartment and at the parking lot, and from an undercover officer

Neither the police officers nor the confidential informant were available at the informal hearing for plaintiffs to confront or cross-examine.

2. Two newspaper articles detailing the arrest, quoting the observation of unspecified unhealthy conditions in the apartment and drug paraphernalia.

The hearing officer upheld the PHA’s decision. Tammy Edgecomb took the case to court.

The Decision

1. How do you think the judge ruled?

HEARING DECISION #2: MAYA BASA

***Townville Municipal Housing Authority
2200 Crown Ridge Rd.
Townville NV 22012***

July 12, 2017

Family Address: Maya Basa, Owners: Dirk and Annabelle Payan,
Townville, NV Townville, NV

**Tenant Notification of Termination of Program Assistance and
Housing Assistance Payment Contract
(Tenant Noncompliance)**

HAP Contract #: VO1825
Anniversary Date: September 1, 2017

In compliance with federal requirements, the Townville Municipal Housing Authority will terminate the above-referenced housing assistance payments (HAP) contract, effective September 30, 2017 because:

Specifically:

On May 4, 2017, it was reported that you were no longer living in your unit and that your utilities have been shut off. After verification from Townville Public Utilities that your utilities have been shut off since April 25, 2017, with a balance owed of \$420.08 and verification from Mountaintop Jr. High School that your daughter had been enrolled there since November 15, 2015 and various pieces of important mail going to a different address, it has been determined that you are in violation of your Family Obligations for not notifying the Housing Authority that you are no longer living in the unit and not having paid your utility bills. As a result of these violations, your housing choice voucher (Section 8) assistance is being terminated.

This type of conduct or failure to perform a family obligation violates U.S. Department of Housing and Urban Development (HUD) regulations, Townville Municipal Housing Authority (TMHA) policies, and the Family Obligations as noted below:

1. 24 CFR 982.552 *PHA denial or termination of assistance for family.*
 - (a) *Action or inaction by family.* (1) a PHA may deny assistance for an applicant or terminate assistance for a participant under the programs because of the family's action or failure to act as described in this section or §982.553.

Section 6: Hearing Decision Template

- (c) *Authority to deny admission or terminate assistance: (1) Grounds for denial or termination of assistance.* The PHA may at any time deny program assistance for an applicant, or terminate program assistance for a participant, for any of the following grounds:
 - (i) If the family violates any family obligations under the program (see §982.551).
 - (iv) If any member of the family has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal Housing program (see also §982.553(a)(1)).
- 2. 24 CFR 982.551 *Obligations of participant.*
 - (a) *Supplying required information –*
 - (2) The family must supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements.
 - (4) Any information supplied by the family must be true and complete.
 - (f) *Family notice of move or lease termination.* The family must notify the PHA and the owner before the family moves out of the unit, or terminates the lease on notice to the owner. See §982.354(d).
 - (h) *Use and occupancy of unit –*
 - (1) The family must use the assisted unit for residence by the family. The unit must be the family's only residence.
 - (3) The family must promptly notify the PHA if any family member no longer resides in the unit.
 - (i) *Absence from unit.* The family must supply any information or certification requested by the PHA to verify that the family is living in the unit, or relating to family absence from the unit, including any PHA-requested information or certification on the purposes of family absences. The family must cooperate with the PHA for this purpose. The family must promptly notify the PHA of absence from the unit.
- 3. (k) *Fraud and other program violation. The members of the family must not commit fraud, bribery or any other TMHA Family Obligations*

The Family Must:

1. Provide information that is true and complete.

The family is responsible for ensuring all information provided is true and complete. (If the family intentionally, willingly and knowingly fails to provide complete and accurate information, or is involved in an illegal scheme, the Housing Authority will terminate assistance.)
2. Supply any information that the Housing Authority or HUD determines is necessary including evidence of citizenship or eligible immigration status, and information for use in a regularly scheduled reexamination or interim reexamination of family income and composition.

Section 6: Hearing Decision Template

4. Supply any information requested by the Housing Authority to verify that the family is living in the unit or information related to any family member's absence from the unit.
 5. The family must notify the Housing Authority in writing within ten (10) days if any family member no longer resides in the unit.
 10. Use the assisted unit for residence by the family. The unit must be the family's only residence.
 14. Pay all utility bills and provide and maintain appliances that the owner is not required to provide under the lease.
4. Title 19 U.S.C. §1001. Statements or entries generally.
- (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly –
 - (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
 - (2) makes any materially false, fictitious, or fraudulent statement or representation; or
 - (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statements or entries.

Regulations provide that you may submit a written request for an informal hearing to this office within ten (10) days (excluding Saturday and Sunday) from the date of this letter should you wish to appeal this decision. You only have until **5:00 pm on July 26, 2017** to provide this office with your written request for hearing.

If you are an individual with a handicap or disability, you have the right to request reasonable accommodation.

Persons with Limited English Proficiency (LEP): If you are a person who needs services or information in a language other than English, you have the right to request translation services free of charge. You may also use, at your own expense, an interpreter of your own choosing, in place of, or as a supplement to, free language services offered by TMHA.

You also have protections under the Violence Against Women Act (VAWA) if you are a victim of domestic violence, dating violence, sexual assault or stalking. VAWA protections apply to men, women and children. A notice of VAWA protections and a VAWA certification form HUD-5382 are enclosed with this notice.

If you have further questions, you may contact me at 333.333.333 or by e-mail at MLeinward@TMHA.com

Sincerely,
Michelle Leinward, Housing Choice Voucher Manager

PHA TESTIMONY—

***Testimony from Michelle Leinward, Housing Choice Voucher Manager,
The TMHA's Representative***

Ms. Basa's boyfriend, who is the father of her children, David Cernik, was an authorized household member until Ms. Basa was granted a restraining order in October, 2014. The order expired one year later in October, 2015, but program rules do not permit a person who is removed from the household because of domestic violence to return to the household. Ms. Basa submitted a relocation request April 20, 2016. She later submitted a request for tenancy approval for Mr. Cernik's address. She and Mr. Cernik came into the office and together talked about moving and looking for housing. At that time it occurred to me that they seemed to be looking for housing so they could live together.

I warned them that Mr. Cernik could never be a part of Ms. Basa's household. Mr. Cernik became upset and left the office. He returned later with several documents which showed that Ms. Basa was already residing with him at his address.

Based on this information, I conducted an investigation and found that Townville Public Utilities disconnected power to Ms. Basa's address on April 25, 2016, and there was a balance owing of \$420.08 as of May 5, 2016. Utility statements were sent to Mr. Cernik's address beginning March 12, 2015. I contacted Ms. Basa's daughter's (Melinda's) school and verified that the address for her daughter was Mr. Cernik's address and that she had been enrolled there since November, 2015. The school, Mountaintop Junior High School, in Townville ST, is not the daughter's local school and is located in Middleville, out of Ms. Basa's school district.

Testimony from Dirk Payan, Owner

I have no reason to believe Ms. Basa was not living at the house from November, 2016 through today. Although she may have been away a couple of days per month, I saw her at the home every month at different times during the month. I go over there regularly to clean the yard, and then lately, I started going over more often after I heard from the Housing Authority to confirm that she would be moving. She was always there. I did see where someone, I assumed her boyfriend, kicked in the front door. Except for that damage, which she took care of, she was a good tenant and I have had no complaints.

Testimony by or on Behalf of Participant—

Testimony from Maya Basa, Participant

OK, David pays my utility bill. It's in the child support agreement and I reported that to the Housing Authority immediately and do every time it's in the paperwork. This statement dated April 13, 2016, shows the service address as my address, although his address is the billing address. My power was only off for five days and the dates the Housing Authority is talking about are incorrect. David was mad at me in April after we came in here because I could not move in with him, so he did not pay my bill. I had to get my church to pay the bill. It is current now.

OK, as far as Melinda's attendance at a school outside her home district my daughter was having serious problems at her home school and after talking with people at other schools in my district and people in Middleville District, I felt that the school in Middleville would be the best placement for her. Yes, I did use Mr. Cernik's address to be able to enroll her in the school. The school sends mail there. But, my other daughter, Corina, attends her home school, Central Avenue, and rides the bus to school. It picks her up practically in front of my house and drops her off. I did not understand I was certifying that I was living at another address when I had mail sent there.

My landlord gave me notice to move and I thought that since the restraining order had expired, I could reunite the family and have David back in the household. When we came in here and I learned from Michelle, here, that David could not be in the household, I began looking for other housing immediately.

The problem is, he became angry with me when he found out the Housing Authority was going to refuse to allow him in the household. He was mad that I was going to go along with the requirement. At that point, we were already not getting along, I was OK that he couldn't live with us. That's when he came and kicked in my door; I had to file another restraining order for that, which was granted on May 18, 2016. The order was changed on June 9, 2016 to allow "reasonable non-hostile contact re: children in common, and contact to prove petitioner's household..."

Yes, I signed the TMHA Family Obligations every year on my anniversary appointment.

The Parties' Positions at Hearing

Basa

It is Ms. Basa's position that she did not understand she was certifying she was living at another address when she had mail sent there. She also asserts that the power was only off for five days; she got her church to pay the bill and it is current now.

TMHA

It is the Housing Authority's position that Ms. Basa moved out of the assisted unit in November, 2016, and then moved back. The Housing Authority issued the termination notice because Participant was not living in the assisted unit and because the utilities had been disconnected.

The Hearing Decision

1. How would you decide this case as the hearing officer?



HEARING DECISION #3 – REVISED FABRE NOTICE



March 14, 2016

Family Address: Mitchell Fabre 1560 Acadia Street Middletown, STATE, ZIP	Owner Address: Crown Ridge Apts. 1500 Acadia Street Middletown, STATE, ZIP
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**Tenant Notification of Termination of Program Assistance and
 Housing Assistance Payment Contract
 (Tenant Noncompliance)**

HAP Contract #: VO1824
 Anniversary Date: January

In compliance with federal requirements, the Middletown Housing Authority will terminate the above-referenced housing assistance payments (HAP) contract, effective, May 1, 2016 because:

Specifically:

On March 2, 2016 you came into the office to turn in documentation that was requested from you. You were told, in order for your file to be completed, a statement from your landlord was needed approving the additional person to your household. That same day you came back with a signed letter of approval. That letter was not written by the apartment manager, and appears to have a forged signature.

LEGAL GROUNDS FOR THIS ACTION

Violation	Regulation or Policy
Family's action or failure to act	24 CFR 982.552 <i>PHA denial or termination of assistance for family.</i> (a) <i>Action or inaction by family.</i> (1) a PHA may deny assistance for an applicant or terminate assistance for a participant under the programs because of the family's action or failure to act as described in this section or §982.553. (c) <i>Authority to deny admission or terminate assistance:</i> (1) <i>Grounds for denial or termination of assistance.</i> The PHA may at any time deny program assistance for an applicant, or terminate program assistance for a participant, for any of the following grounds: (i) If the family violates any family obligations under the program (see §982.551). (iv) If any member of the family has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program (see also §982.553(a)(1)).

Hearing Officer Specialist
 Making and Writing the Hearing Decision

Section 6: Hearing Decision Template

Violation	Regulation or Policy
Fraud	<p>Title 18 U.S.C. §1001. Statements or entries generally.</p> <p>(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully –</p> <p>(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;</p> <p>(2) makes any materially false, fictitious, or fraudulent statement or representation; or</p> <p>(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statements or entry.</p> <p><i>MHA Plan Chapter 14-II-B. Family-Caused Errors and Program Abuse</i>, pg 3. According to MHA policy, use of a false name or the use of falsified, forged, or altered documents, intentional misreporting of family information or circumstances (e.g., income, family composition) and omitted facts that were obviously known by a family member (e.g., not reporting employment income) will be considered evidence of family program abuse. The PHA will evaluate whether program abuse occurred based upon a preponderance of the evidence.</p>

YOUR RIGHTS

Important:

If you disagree with this decision, you have the right to request an Informal Hearing. To request an Informal hearing, you must submit a written request to this office within ten (10) days (excluding Saturday and Sunday) from the date of this letter. You only have until March 28, 2016 to provide this office with your written request for hearing.

Contact Sean Barry at 816-299-6477 to make a request

You have the right to request an interpreter, free of charge, if you do not read, write, speak or understand English well.

Submitted by Les O'Malley 816-299-3399

Necesito servicios de intérprete
en español.

Waxaan u baahnahay turjubaan
Somali ah.

If you have a disability that poses a limitation or barrier in your ability to participate in an informal hearing, you may request a reasonable accommodation.

If you have a disability that poses a limitation or barrier in your ability to participate in an informal hearing, you may request a reasonable accommodation.

If you are a victim or threatened victim of domestic violence, dating violence, or stalking, you have certain protections under the Violence Against Women Act (VAWA). Enclosed is an explanation of your rights and VAWA self-certification form HUD-5382.

Section 6: Hearing Decision Template

HOW TO REQUEST A SECTION 8 INFORMAL HEARING

You have the right to request a fair hearing and decision by an impartial hearing officer. You must state why you disagree with our intended action.

If you wish to request a hearing, please send this page to: **Sean Barry, Hearing Coordinator, Middletown Housing Authority, 100 First Avenue, Middletown, STATE, ZIP**. If you need any assistance in making this request, contact your Housing Specialist, who will help you.

If you make your hearing request within 10 working days from March 14, 2011, your Housing Choice Voucher benefits, if any, will continue at the current level, at least until the hearing decision is issued.

If you request a hearing within the time above, the Middletown Housing Authority will send you a Hearing Notification Letter, scheduling the date and time of the hearing. Before the scheduled hearing, The Middletown Housing Authority will send a Hearing Packet to you, the PHA representative, and the Hearing Officer three (3) days before the scheduled date of the hearing. The Hearing Packet will contain all the documents and evidence on which the PHA will rely at the hearing. It is your responsibility to look through the Hearing Packet before the hearing.

WHAT RIGHTS DO YOU HAVE AT THE INFORMAL HEARING?

A complete list of your rights at the hearing will be sent to you when the Middletown Housing Authority receives your hearing request. You may review the complete Section 8 regulations at our office. Please call Sean Barry at 816-299-6477 for an appointment. This is a summary of your rights at an informal hearing: (1) The right to be represented by an attorney or any other person of your choice (free legal advice may be available from a variety of local agencies); (2) The right to present any evidence on your behalf, including the right to bring and question your own witnesses, and the right to cross-examine our witnesses; and (3) The right to review contents of our hearing packet five days before the hearing.

CHECK ALL APPROPRIATE BOXES BELOW, AND WE WILL SEND YOU MORE INFORMATION.

I need an interpreter because I do not read, write, speak or understand English well.

Necesito servicios de intérprete
en español.

Waxaan u baahnahay turjubaan
Somali ah.

I have a disability that poses a limitation or barrier in my ability to participate in an informal hearing, and I request a reasonable accommodation.

I am a victim or threatened victim of domestic violence, dating violence, sexual assault, or stalking. Attached is VAWA certification form HUD-5382 invoking my protections under the Violence Against Women Act (VAWA).

MHA Testimony—

***Testimony from Les O'Malley, Housing Specialist,
The MHA's Representative***

In November, 2015, Mr. Fabre submitted a change of circumstances form requesting to add Priscilla Dunphrey and their baby. I advised Mr. Fabre at that time that he would need to submit documentation for Ms. Dunphrey and the baby, and permission from the landlord. I sent two letters requesting this information. The first letter had a deadline of December 9, 2015. He submitted some but not all of the information. The second letter had a deadline of January 18, 2016, and requested that Mr. Fabre submit the approval from the landlord to add the new family members. Both letters indicated that failure to return the requested documents by the deadline would result in the initiation of termination procedures.

We did not receive any documents or have any contact from Mr. Fabre by January 18, 2016, so I issued a termination notice on February 25, 2016. On March 2, 2016, we received a handwritten letter with the apartment manager's, Ms. Warwick's signature, purporting to be approval from the landlord to add Ms. Dunphrey and the baby to Mr. Fabre's household. I noticed that the phone number to contact for more information on the letter was the same as the phone number for Mr. Fabre. So, I called the apartment manager, Ms. Warwick, who indicated that she had not written or signed any notice regarding Mr. Fabre. She asked to see the information we received. I faxed her a copy of the letter and in return Ms. Warwick submitted a notarized document indicating that she did not author or sign the letter. Mr. Fabre and Ms. Dunphrey visited the Housing Authority and reported that the assistant manager had written and signed the note.

I saw that Ms. Dunphrey was added to the lease, so I called back to Ms. Warwick, the apartment manager, to inquire about the circumstances. Ms. Warwick told me that Ms. Dunphrey had had an outstanding debt with her prior landlord that needed to be satisfied before she could be added to the lease. When Mr. Fabre showed that he paid the debt, Ms. Warwick added Ms. Dunphrey to the lease.

Testimony from Theresa Warwick, Apartment Manager

I did add Ms. Dunphrey to the lease after Mr. Fabre showed that he paid the debt from Ms. Dumphrey's prior residence. I did not find out about the forgery until the Housing Authority called me.

Our management's policy for the apartment complex states that all correspondence from the apartment community must be on the company letterhead and must be typed and saved in the computer. The Housing Authority sent the letter that was supposedly from me and it is on notepad paper. If the Housing Authority had not taken this termination action, I would have referred the forgery to our attorney for evaluation for further action.

Testimony by or on Behalf of Participant--

Testimony from Mitchell Fabre, Participant

From November until March, I was attempting to get the documentation to give to the Housing Authority. I was also trying to comply with the apartment manager's requirements for adding Ms. Dunphrey to the lease. I was trying to pay off Ms. Dunphrey's debts, including a debt of over \$1000, with her previous landlord. But, I received this termination notice before I could pay off the debt. I went to the prior landlord to ask if I could make monthly payments, but this was not acceptable to Ms. Warwick. I then went to the Housing Authority to ask what to do, and they gave me more time.

I was getting upset over the whole situation and wanted to make it right. I was getting upset about how soon the Housing Authority wanted the information and about Ms. Dunphrey's debts, which I didn't even know about until the apartment manager told me they needed to be paid. I sent Ms. Dunphrey to the apartment management office, and she came back with a sealed envelope. I took it to the Housing Authority and I told the receptionist that the letter was not from the manager, but was from the management office. I did not know Ms. Dunphrey actually wrote the letter. I did not ask Ms. Dunphrey what was in the letter. I did not look at the letter because I just assumed the managers would know what to do to add an individual to the household. I did not contact the Housing Authority before the deadlines to say I was having difficulty adding Ms. Dunphrey to the lease. I have been on the Section 8 program since 2003 with no other violations. I did not receive a briefing packet, but I have signed Family Obligations every year.

***Testimony from Priscilla Dunphrey,
Participant's Girlfriend***

Yes, I forged the letter. I was worried because Mitchell was panicking trying to come up with the money to pay my debts. I went to the manager to get approval, but she was not there. I was scared that Mitchell would get kicked off the program, so i wrote the letter, put it in an envelope, and told him it was from the assistant manager. I really, really regret having done this, especially considering what's happened since with Mitchell's housing.

***Testimony from Joanne Baldrige,
Maternity Support Services Case Manager,
Participant's Witness***

I have been working with this family since their baby was born in October, 2015. It was my impression that Mr. Fabre and Ms. Dunphrey were confused about the information requested from the Housing Authority. I think they thought they had already turned in everything but the approval from the landlord. I did not call the Housing Authority, myself, to get clarification and I'm not sure if they did.

The Parties' Positions at Hearing

Fabre

It is Mr. Fabre's position that he did not know what Ms. Dunphrey was doing and she should be given a second chance, because she was unfamiliar with the rules and was trying to help him.

MHA

It is the Housing Authority's position that, in violation of federal law and program rules, Mr. Fabre submitted a false document to avoid termination and to avoid bringing in the proper documents from the landlord.

1. How would you decide this case as the hearing officer?

A large, empty rectangular box with a thin black border, intended for the user to write their response to the question above. The box is currently blank.

Section 7 Post-Test

1. The longer a hearing decision, the better.
 - a. True
 - b. False
2. The final decision template should be identical to a court decision template.
 - a. True
 - b. False
3. Hearsay evidence:
 - a. Is not admissible at a hearing
 - b. Should not be used as the sole basis for the hearing officer's decision
 - c. Is sometimes more powerful than documentary or real evidence
 - d. Can be heard but cannot be considered in the hearing officer's decision
4. You are the hearing officer in a termination case for Sandy Martin, a public housing tenant. Your decision to uphold or overturn the PHA's intended action will be based on all of the following except:
 - a. The validity of the evidence
 - b. Prior tenancy history before moving into public housing
 - c. Whether or not the PHA followed all due process requirements
 - d. The validity of the grounds for termination

Section 7: Post-Test

5. You are reviewing the evidence presented in a termination hearing and conclude that the evidence on both sides carries equal weight. You would:
 - a. Consider any evidence presented by the PHA after the hearing is closed
 - b. Consider that the PHA has not met the burden of proof
 - c. Decline to make a decision on the case
 - d. Refer the decision to the executive director
 - e. Conduct your own investigation after the hearing is closed
6. A police incident report always carries more weight than other evidence.
 - a. True
 - b. False

Notes

CHAPTER 14 What Happens After the Hearing

LEARNING OUTCOMES

After completing this chapter, you should be able to:

- Recognize the steps taken after the written decision has been rendered.

INTRODUCTION

The decision should be dated the date it is rendered. The decision should be e-mailed to the agency the same date. The decision should be placed in the agency mail for pickup or processing no later than the following business day.

The hearing officer should keep planned actions confidential until made known to both parties. Unless and until a decision is to be circulated to the parties or released, the hearing officer should not reveal it to anyone other than his or her staff and associates (who are subject to the same rules).

Section 1 Actions After the Hearing Decision

If the decision is to reverse the PHA's intended action, the participant/tenant is reinstated with his or her former status.

HOUSING CHOICE VOUCHER

If you uphold the PHA's decision to terminate, the voucher subsidy continues until after the hearing and the decision is made. If the subsidy is terminated and the participant wishes to remain in the unit (and the landlord allows it), the participant will be responsible to pay the full amount of rent.

PUBLIC HOUSING

If the PHA decision is overturned, the PHA must immediately reinstate the family to its prior status. If you uphold the PHA's decision to terminate, the PHA will file a landlord/tenant complaint to begin the eviction process with the court. Only the court can render an official eviction. If the tenant pursues the case in court and the PHA prevails, and the tenant doesn't move out, the PHA contacts the responsible law enforcement agency to perform a lock-out after a stipulated amount of days from the judge's order.

RIGHT TO SEEK JUDICIAL REVIEW

Remember, nothing waives a family's right to go to court. If the hearing decision is to uphold termination, the PHA must notify the family that they have the right to seek judicial review and what the family's next step would be (e.g., location of the courthouse and the next step to file in court).

Section 2 The Log

Streamlining Regulations Final Rule; PIH 2016-05

PHAs must create a log of public housing hearing officer decisions and make the log available to the hearing officer, prospective complainants and representatives of complainants.

At a minimum, the log must include:

- The date of the hearing decision
- The general reason for the grievance hearing (failure to pay rent, community service and self-sufficiency noncompliance, etc.) and
- Whether the decision was in favor of the complainant or PHA

Industry Practice

The PHA could decide to also track:

- When the hearing was requested (to track that hearings are scheduled and held promptly, per PHA policy)
- When the hearing was held (to ensure that hearing decisions are rendered promptly, per PHA policy)

While HUD regulations don't require a log for applicant informal hearings, it's advisable for the PHA to track these as well.

The PHA could establish a policy to track Housing Choice Voucher administrative reviews for applicants and informal hearings for participants.

Section 3 Post-Test

1. Nothing waives a family's right to:
 - a. Remain on the program
 - b. Go to court
 - c. Be afforded the opportunity for a hearing
 - d. Argue with a witness at a hearing
 - e. Challenge the hearing officer's authority at a hearing
2. If, in a public housing hearing, the hearing decision upholds the PHA's decision to terminate:
 - a. The PHA locks the tenant out
 - b. The tenant has 5 days to move out
 - c. The eviction process will continue
 - d. The tenant is then entitled to another administrative appeal
 - e. The PHA may take any of the above actions
3. In the voucher program, if the hearing decision is to uphold the PHA in terminating the participant from the program, the participant must move out of the assisted unit.
 - a. True
 - b. False

CHAPTER 15 Hearing Officers' Ongoing Education

LEARNING OUTCOMES

After completing this chapter, you should be able to:

- Recognize the importance of orienting and educating hearing officers
- Recognize common mistakes for hearing officers
- Identify strategies for ongoing education

INTRODUCTION

The caliber, integrity, and knowledge of your hearing officers will carry your cases through a fair process and clear determinations that will hold up to scrutiny and judicial challenges.

Section 1 **Orienting and Educating Hearing Officers**

ORIENTING NEW HEARING OFFICERS

As we've seen, the hearing officer fulfills an important function. The integrity of the process and the decisions can enhance the PHA's standing in the community and establish a reputation for fairness.

Orientation should be tailored to the needs of the PHA and of the hearing officers. For example, "inside" staff serving as hearing officers may be technical experts in the HUD regulations and program policies; these hearing officers will need training on hearing requirements and how to conduct hearings.

Community volunteers may need additional briefings and training on HUD regulations and PHA policies. It's a mistake to think these experts will not need to be oriented in PHA hearings. They may be legal experts, but HUD regulations are dense and specific to HUD programs, and PHA hearings are not the same as court proceedings. As we've emphasized, a strong intention is to keep PHA hearings informal enough so that participant/tenants aren't intimidated.

Some PHAs require all hearing officers to attend training on:

- Federal laws applicable to the voucher and public housing programs
- Landlord/tenant laws in the PHA's state
- Federal and state fair housing laws
- The PHA's administrative plan and admissions and continued occupancy policy
- Rules of evidence and administrative processes
- Conducting an orderly hearing

The PHA could establish, for new hearing officers, a mentoring system whereby experienced hearing officers (within or outside the PHA) and PHA regulatory experts mentor new hearing officers. Monthly or quarterly meetings and availability for questions could be an element of this mentoring system.

ONGOING EDUCATION

A best practice is training with a certification examination. Another best practice is a yearly retreat, where hearing officers refresh on hearing requirements, share especially problematic decisions, and re-commit. HUD regulations and laws change, and hearing officers must have up-to-date knowledge.

The PHA could hold a quarterly or semi-annual meeting, or alternatively, the hearing coordinator could put out a periodic e-mail, to disseminate important and new hearing decisions (with identifying names deleted).

OTHER TOPICS FOR EDUCATION OF HEARING OFFICERS

PHAs should ensure that hearing officers are trained in PHA procedural rules and regulations, the hearing officer's administrative duties, and the decision-making process.

COMMON ERRORS TO AVOID

In orienting new hearing officers and providing ongoing education, it's helpful to identify the most common errors in hearings. These common areas should be discussed periodically.

CONTACTING THE HEARING OFFICER

Again, you cannot talk to a party without all other parties being present. Inquiries concerning schedule should be directed to the hearing coordinator.

ASKING THE HEARING OFFICER FOR LEGAL ADVICE

A hearing is really an adversarial proceeding. The hearing officer must remain neutral in all respects. You do not have authority to give legal advice to the parties in a hearing.

FAILURE TO PROVIDE COPIES OF DOCUMENTS TO OTHER PARTIES

You may not consider, in a hearing, documents filed by a party that have not been provided to or served on the other parties. The hearing packet or pre-hearing protocol should certify that all other parties have received a copy.

Section 1: Orienting and Educating Hearing Officers

INTERRUPTING OR ARGUING WITH WITNESSES

It is not proper to interrupt witnesses or argue with them. Each party has an opportunity to cross examine each witness testifying for an opposing party.

TESTIFYING WHILE CROSS-EXAMINING A WITNESS

A party, directly or through an attorney, may question any witness called to testify for an opposing party. It is not proper for the party asking questions to try to testify during cross examination.

PARTICIPANT/TENANT NOT BEING PREPARED TO GIVE OWN TESTIMONY

A person representing him or herself is not usually experienced in this type of forum, does not have technical expertise, and may not be especially articulate at expressing his or her case. You, as the hearing officer, may need to assist by asking the participant/tenant to explain documents, and help him or her move on to the next point. Your patience and professionalism will help everyone focus on the facts at hand.

Section 2 Behavioral Competencies

The hearing officer's competencies (knowledge, skills and abilities) extend beyond procedural and technical expertise. In its hearing officer orientation and periodic retreats, the PHA may want to have training conducted on the qualities and competencies a hearing officer should consistently demonstrate.

PROBLEM SOLVING

You must be able to identify and resolve problems in a timely manner, which means you gather and analyze information skillfully and integrate multiple concepts. You must work well in group problem-solving situations (for example, with advocates). And you must be able to use reason even when dealing with sensitive topics and/or irate customers.

CUSTOMER SERVICE

An attitude of customer service means value to all, regardless of rank, position, or even behavior. You respond appropriately behaviorally while respecting all persons equally. This attitude is brought to each moment as you relate. You must be able to manage difficult or sensitive customer situations while keeping these principles in mind.

INTERPERSONAL SKILLS

You remain faithful to and focused on your role. While hardly anyone can refrain from not taking anything personally, you are honest with yourself when you *are* taking another's behavior personally. Only then can you attend to your state of mind instead of blaming others and exacerbating conflict. Frightened people can say and do unwise things. Interpersonal competency means you listen and respond to others without throwing away your equilibrium.

TEAMWORK

You balance the team (the hearing coordinator, PHA personnel, advocate groups) and your individual responsibilities. You know that the common mission of the team and of you personally is the integrity of the fair hearing.

PROFESSIONALISM

You approach others in a tactful manner, even if they are not tactful to you. You need to be able to react well under pressure. As a hearing officer, you must be able to accept responsibility for your decisions and actions. You will learn from your mistakes if you are honest with yourself and acknowledge your mistakes to others, as appropriate.

Section 3 Hearing Resources

24 CFR 966.57(a)

HUD regulations for public housing no longer require the PHA to retain and maintain on file a copy of the decision, with all names and identifying references deleted. Instead, as noted in chapter 14, the PHA must maintain a log to track public housing hearings.

The PHA should consider maintaining a log of Housing Choice Voucher hearings as well.

In addition, maintaining a “hearing library” of past hearing decisions on file, names and identifying references deleted, is a best practice option for the systematic collection of decisions. Such a “hearing library” allows prospective and current hearing officers and other interested parties to examine the reasoning and conclusions of agency decisions, the amount or nature of adverse actions imposed by the PHA, or other patterns that should be consistent or fair to all participants/tenants.

- Hearing officers could periodically review, individually and as a group, the hearing file library. It's now possible to index hearing decisions electronically, and the PHA could share these decisions, securely, with hearing officers.

Lastly, reviewing appeal court decisions is an excellent way for hearing officers to discern what “loses” and “wins” a case at the appeal court level. Many of these cases can be researched on the internet, or the PHA may want to subscribe to a periodical addressing important and emerging landlord/tenant legal issues.

The PHA should regularly monitor hearings and evaluate hearing decisions to ensure the competence and impartiality of hearing officers, and to ensure compliance with the PHA's hearing/grievance procedures and other PHA policies and relevant laws.

Hearing Officer Specialist
Hearing Officers' Ongoing Education
Section 3: Hearing Resources

Notes

CHAPTER 16 Scenarios and Case Studies

LEARNING OUTCOMES

After completing these scenarios and then the case studies, you should be able to:

- Think through issues and facts presented in the hearing
- Bring the issues and facts to the applicable laws, regulations and policies
- Determine whether the PHA has met the burden of proof to demonstrate preponderance of the evidence
- Practice writing hearing decisions

INTRODUCTION

We'll do these case studies in groups and individually.

SCENARIOS

These scenarios will help us with discussion and critical thinking. We won't cite HUD regulations here. These are real court cases. To save paper and time, the court decisions are greatly abbreviated. Precedent cases and HUD citations are omitted.

SCENARIO #1

Your Task

Review the scenario and make your tentative decision. Discuss with your group. This hearing decision was appealed in court. We'll review the court decision later.

The Scenario

Deborah Morales lives at 444 South Street, Pineville, USA. Since 2010, she has received rental assistance through the Section 8 HCV program administered by Pineville Housing Authority (PHA). Thomas Gallegos is the father of Ms. Morales' three minor children.

On April 30, 2019, Deborah Morales was sent a termination notice by the Pineville Housing Authority which stated:

You failed to report and disclose all household members for program purposes and any associated household income.

Ms. Morales requested an informal hearing. On June 5, 2019, the PHA sent Ms. Morales a letter which stated:

Please be advised that the Pineville Housing Authority Housing Choice Voucher Program has scheduled an informal hearing for Thursday, June 20, 2019. The purpose of the informal hearing is to determine your continued eligibility for the program based on the following program determination:

You failed to report and disclose all household members for program purposes and any associated household income.

At the hearing, PHA called no witnesses and submitted only one document in support of the allegation set forth in its April 30th letter. The document is untitled and undated, and appears similar to a computer-generated document, but contains no computer identification. Nothing on the face of the document identifies its origin or source.

According to the hearing officer's findings, Morales and Gallegos testified that Gallegos visited his children at her residence "all the time," and that he spent the night at Morales' home "two or three" nights each week. Gallegos did this to discourage further hostile conduct by a neighbor against whom Ms. Morales had made a criminal complaint, which complaint resulted in battery with charges pending against the neighbor. Gallegos, according to the hearing officer's findings, testified that he used Deborah Morales' address for his vehicle registration because he could obtain a more favorable insurance rate at that address.

At the hearing, to attempt to establish that Gallegos did not reside with her, Ms. Morales produced the following documents:

- A recent subpoena from the County District Attorney to Gallegos at 123 Park Place.
- A recent letter from the County District Attorney to Gallegos at 123 Park Place.
- A recent “Monthly Statement of Account” (regarding child support) by the County Bureau of Child Support for Gallegos at 123 Park Place.
- Copies of three wage statements from Crosstown Trucking for Gallegos at 123 Park Place.
- Driver’s license for Gallegos at 123 Park Place.

The hearing officer upheld the PHA’s decision to terminate Ms. Morales' benefits based on his conclusion that: 1) “based upon testimony at the hearing that the demeanor of both the participant and Mr. Gallegos to be questionable at best; and 2) “both the participant’s and Mr. Gallegos’ testimony to be vague, self-serving, uncorroborated and at time contradictory and wholly not credible.”

Your Decision

Based on the facts presented, what would your decision have been if you were the hearing officer?

CASE STUDY

Your Task

The purpose in this first case study is to understand and weigh the issues. You may want to refer to Chapter 7.

The Case

You are presiding over a hearing at the Elm County Housing Authority (ECHA) on September 15, 2020. The following are the facts, based on documentary evidence in the hearing packet. We won't present copies of all the documentary evidence, but rather will give you a synopsis.

George Keppler keeps several snakes in his public housing unit. He often carries them around the development and brings them into the community room. After receiving a number of complaints, the property manager discovered that George had such snakes and let George know through a conversation on February 6, 2020, and a follow-up letter on February 20, 2020, that snakes were not allowed under the property's pet policy. George informed the manager on March 3, 2020, that he needs the snakes because of a disability. The manager responded in writing that she needed documentation of George's disability from a knowledgeable professional. She explained she also needed documentation that the need for the snakes was related to his disability ("nexus"). The manager asked George on March 14, 2020, to fill out the property's reasonable accommodation request form. The manager asked George to sign a release so that she could send verification documents to George's knowledgeable professional 1) verifying that there was a disability and 2) verifying the need for snakes was related to George's disability-posed limitations ("nexus"). George never completed the property's RA request form. George's therapist, Dr. Regina Potter, sent a letter to ECHA on April 12, 2020, stating that George was indeed a person with disabilities. Dr. Potter further verified that the snakes provided a necessary therapeutic benefit due to his disability and were a necessary accommodation to remove a barrier to his housing. The manager let George know in writing on May 2, 2020, that she could accommodate the snakes if George could provide documentation that the snakes were not poisonous. The manager also informed George that needed to agree to keep the snakes in his unit and not to take them outside of his apartment unless in a cage. George assured the manager that the snakes were harmless and agreed to get reassurances that the snakes were not poisonous (from the pet store or his veterinarian). After several days and reminders, George still did not produce documentation regarding the safety of the snakes, and he continued to walk around the development and spend time in the community room with the snakes not in a cage, making some tenants very nervous. He claimed that the snakes were service animals and therefore, under the ADA, the snakes were allowed in public spaces, including the community room. George was sent a warning notice on June 14, 2020, that he was non-lease compliant for disturbance of others' peaceful enjoyment of the development and for having an unauthorized pet.

Eventually, the manager sent George a 30-day termination on July 15, 2020. George requested an informal settlement which was held on August 3, 2020. He then requested a grievance hearing after he was dissatisfied with the results of the informal settlement. George has brought his therapist, Regina Potter, to the hearing. Ms. Potter has submitted additional documentation that George has a mental health disability and that ECHA must not proceed with the eviction but rather must accommodate George's disability and allow him to stay.

Your Hearing Decision

If you were the hearing officer in this case, what are some of the issues you would weigh? What do you think your decision would be? This was a real court case. See if your decision matches the judge's.

Notes

CHAPTER 17 **Summary Review**

SUMMARY REVIEW

1. In the Housing Choice Voucher program, the PHA may establish a policy to deny applicants the opportunity for an informal review even when required by the regulations.
 - a. True
 - b. False
2. The PHA has the authority to evaluate the review decision for applicants based on all of the following except:
 - a. The validity of grounds for denial of assistance
 - b. Whether or not the grounds for denial were stated factually in the notice
 - c. The validity of the evidence
 - d. Other history of the applicant not related to grounds for denial
3. If the facts prove that there are grounds for denial, and the denial is discretionary, the PHA will:
 - a. Automatically admit the applicant
 - b. Always uphold the PHA's decision to deny
 - c. Consider the circumstances of the case
 - d. Consider the current political situation
4. The PHA is not permitted to terminate a family's assistance until the time allowed for the family to request a hearing has elapsed, and any requested hearing has been completed.
 - a. True
 - b. False

5. A Housing Choice Voucher participant must be afforded the right to request a hearing for all of the following situations except:
 - a. A determination of the family unit size under the PHA's subsidy standards
 - b. A PHA determination that the unit is not in accordance with HQS because of the family size
 - c. A determination of the family's annual and adjusted income
 - d. A determination to terminate assistance because of the family's actions or failure to act
 - e. A determination to terminate assistance because the participant has been absent from the unit longer than the maximum time permitted under PHA policy
6. The only admissible types of evidence that can be presented at a hearing are documentary evidence and real evidence.
 - a. True
 - b. False
7. Regarding documents that are introduced at the hearing, if the participant or tenant has not been given the opportunity to examine these documents before the hearing, the hearing officer:
 - a. Will overturn the PHA's decision
 - b. Will consider the documents as long as the family is given a reasonable amount of time during the hearing to examine the documents
 - c. Will refuse to admit such evidence
 - d. Must reschedule the hearing for a later date
 - e. May take any of the above actions
8. In the Housing Choice Voucher program, a participant may be terminated from the program without being evicted by the landlord from the dwelling unit.
 - a. True
 - b. False

9. Two important considerations for the hearing officer, in reviewing the facts presented at a hearing, are whether the PHA followed all procedural obligations (proper notices, etc.) and whether the PHA's case has been upheld by a preponderance of the evidence.
 - a. True
 - b. False
10. Regarding hearings for terminations, documentation should include:
 - a. Notice that the participant/tenant may not request a reasonable accommodation during the hearing
 - b. Explanation, with notice of termination, of VAWA rights (Form HUD-5380) and VAWA self-certification Form HUD-5382
 - c. All historical information whether relevant or not
 - d. Notice that if the hearing decision is to uphold the PHA's decision to terminate, the participant/tenant may not seek judicial review
11. Two crucial deliberations as you write the hearing decision are (two correct answers):
 - a. Whether the PHA's actions were in compliance with statutes, policies, and procedures
 - b. The prior history of noncompliance of the participant/tenant
 - c. The quality of hearsay evidence
 - d. The preponderance of the evidence
 - e. The written quality of the family's statement(s)

Notes

CHAPTER 18 **Answers to Learning Activities, Hearing
Decisions, Scenarios and Case Studies**

ANSWER TO CHAPTER 2 LEARNING ACTIVITIES

LEARNING ACTIVITY 2-1: BURDEN OF PROOF

The Court's Response to Learning Activity 2-1

The Court noted that HUD regulations contained the basic procedures to be followed in an informal Section 8 termination hearing, but did not address the burden of persuasion. 24 C.F.R. § 982.555. The Court relied upon Due Process considerations established in *Goldberg v. Kelly*, 397 U.S. 254 (1970) before welfare benefits may be terminated.

The Court held that the public housing authority has the burden of persuasion, and must present sufficient evidence to establish a prima facie case that an unauthorized individual was in the unit more than 15 consecutive days without authority approval, or a total of 30 days in a 12 month period.

The Court then concluded that the police reports presented by the PHA were legally insufficient to establish the required prima facie case, as the police reports did not address the length of the alleged stay.

Thus, the Court held that the hearing officer erred in relying upon legally insufficient evidence to terminate Rojo's Section 8 assistance, and reversed the case.

ANSWERS TO CHAPTER 3 LEARNING ACTIVITIES

LEARNING ACTIVITY 3-2: MITIGATING CIRCUMSTANCES

The Court's Response to Case Study

Other than for HUD-mandated terminations, hearing officers have authority to levy sanctions lesser than termination. The hearing officer's belief that she did not have the authority to consider a lesser sanction was erroneous. HUD's due process regulations at 24 C.F.R. § 982.552(c)(2)(i) (2016) require the decision maker to weigh the evidence, find facts relating to "all relevant circumstances," and to balance them in the decision whether to impose a sanction less severe than termination. The hearing officer's failure to consider mitigating circumstances was contrary to HUD regulations and due process. The court was unable to agree that, if the son no longer lived with the participant and did not visit the apartment, the allegations against the son outweighed the mitigating factors that applied in the participant's case.

Judgment: Remedy

Reversed and remanded, with instructions to remand the matter to the hearing officer with instructions to conduct a de novo (new) informal hearing consistent with due process. The hearing officer was ordered to consider the lesser sanction of removal of the son as a tenant and shall make findings as to why that sanction is, or is not, appropriate under the circumstances.

LEARNING ACTIVITY 3-3: EVALUATING NOTICE

Fabre Decision

MIDDLETOWN HOUSING AUTHORITY INFORMAL HEARING DECISION

Regarding: Mitchell Fabre Participant	INFORMAL HEARING DECISION HOUSING CHOICE VOUCHER PROGRAM
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INTRODUCTION

Lincoln Fairmind, Hearing Officer, conducted an informal hearing on April 18, 2011, pursuant to the provisions of 24 CFR 982.555 and the Middletown Housing Authority’s Section 8 Administrative Plan (hereinafter MHA Plan), Chapter 16-III, *Informal Hearings for Participants*, pp. 10-16. Participant appeared, representing himself. Priscilla Dunphrey, Participant’s girlfriend, and Joanne Baldrige, Maternity Support Services Case Manager, appeared as witnesses on behalf of Participant. Les O’Malley, Housing Specialist, appeared on behalf of the Housing Authority. Theresa Warwick, Apartment Manager, appeared as a witness for the Housing Authority. The Hearing Officer did not make or approve the decision under review and is not a subordinate of the person who did make the decision.

PROCEDURAL HISTORY

On March 14, 2011, the Housing Authority sent Participant a *Tenant Notification of Termination of Program Assistance and Housing Assistance Payment Contract* effective May 1, 2011. On March 15, 2011, Participant filed a timely request for an Informal Hearing. Following this request, the Housing Authority scheduled the Informal Hearing, and on March 22, 2011, gave Participant reasonable written notice of the Informal Hearing.

HEARING ISSUES

1. The Housing Authority notified Participant that Participant’s housing assistance would be terminated, effective May 1, 2011 because:

Specifically:

On March 2, 2011 you came into the office to turn in documentation that was requested from you. You were told, in order for your file to be completed, a statement from your landlord was needed approving the additional person to your household. That same day you came back with a signed letter of approval. That letter was not written by the apartment manager, and appears to have a forged signature.

2. Did the Housing Authority’s Notice of Termination meet Due Process requirements?
3. Was the Housing Authority’s decision to terminate in accordance with the law, HUD regulations (Title 24 CFR) and the Housing Authority’s own policies

Having fully considered the entire record, the undersigned Hearing Officer enters the following Findings of Fact, Conclusions of Law and Decision:

FINDINGS OF FACT

1. The Housing Authority sent the Notice of Termination described above and no other notice or information from the Housing Authority regarding the Housing Authority's decision was provided to Appellant.
2. Appellant has been on the Section 8 program since 2000 with no other violations. He did not receive a briefing packet, but he has signed the Family Obligations form every year.

CONCLUSIONS OF LAW

1. 24 CFR 982.301 Information when family is selected.
 - (b) *Information packet. When a family is selected to participate in the program, the PHA must give the family a packet that includes information on the following subjects:*
 - (13) Family obligations under the program;
 - (14) Family obligations under the program, including any obligations of a welfare-to-work family.
 - (15) PHA informal hearing procedures. This information must describe when the PHA is required to give a participant family the opportunity for an informal hearing, and how to request a hearing.
2. 24 CFR 982.555
 - (c) *Notice to family.*
 - (2) In the cases described in paragraphs (a)(1) (iv), (v) and (vi) of this section, the PHA must give the family prompt written notice that the family may request a hearing. The notice must:
 - (i) Contain a brief statement of reasons for the decision,
 - (ii) State that if the family does not agree with the decision, the family may request an informal hearing on the decision, and
 - (iii) State the deadline for the family to request an informal hearing.
3. PHA Plan, Chapter 12-II.E. Termination Notice, 12-12: [HCV GB, p. 15-7]
If a family's assistance is to be terminated, whether voluntarily or involuntarily, the PHA must give the family and the owner written notice that specifies:
The reasons for which assistance has been terminated
The effective date of the termination
The family's right to an informal hearing as described in Chapter 16

4. Whether the Housing Authority's notice of termination complies with due process must be judged in light of the law, HUD regulations and the Housing Authority's own policies. The requirement of notice is to inform the tenant of the allegations so that he or she can prepare a defense. Thus, the notice should be sufficiently specific to enable the tenant to prepare for the hearing. At a minimum, the notice should describe what the family did to violate HUD regulations, indicate which family member committed the proscribed act, and provide a brief factual statement describing the act. The notice should also provide notice of adverse evidence so that the Section 8 participant has an opportunity to rebut it. *Edgecomb v. Housing Authority of the Town of Vernon*, 824 F. Supp. 312, 314-315 (D. Conn. 1993), citing, 55 Fed. Reg. 133 at 28,541 (July 11, 1990).
5. Here, the notice does provide a brief statement of the reasons for the termination. However, it does not provide sufficient detail about who committed the forgery or what regulations were violated. The notice also does not contain a statement that if the family does not agree with the decision, the family may request an informal hearing on the decision, how to request a hearing, or the deadline for doing so. Additionally, the Housing Authority is required to provide information in a participant's briefing packet about the Family Obligations and hearing procedures. Although Appellant has signed yearly Family Obligations forms, he did not receive a briefing packet.

Under these circumstances, the undersigned concludes that the Housing Authority's Notice of Termination does not meet Due Process requirements. For this reason, the undersigned does not reach the other hearing issues.

DECISION

The Housing Authority's decision to terminate Participant Mitchell Fabre's housing assistance is **OVERTURNED**. The Housing Authority is directed to maintain Appellant's program status.

Date of Decision: April 19, 2011

Lincoln Fairmind

Hearing Officer

This decision shall not constitute a waiver of, nor affect in any manner whatever, any rights you may have to judicial review through the court system in this matter.

ANSWER TO CHAPTER 4 LEARNING ACTIVITY

LEARNING ACTIVITY 4-1: DUE PROCESS

The PHA accused Ms. Mata of fraud, tried to evict her, lost in court, lost in a grievance hearing, and then balked at paying attorney's fees.

A County Superior Court judge dismissed the eviction last year, agreeing with Mata that her due process had been denied. He also ordered the agency to pay attorney's fees. That was based on the agency's own contractual lease with Mata, which required such payment to whoever won a lease dispute.

But housing officials balked. They argued the court couldn't award the fees, because they said the eviction was dismissed on "procedural irregularities in the administrative proceeding."

Around the time officials were fighting the attorneys' fees, they were trying to evict Mata a second time, on the same issues. They lost that effort too, when a hearing officer found Mata to be credible. The hearing officer described the agency's allegation—that Mata was passing off her husband as her brother—as "unidentified double or triple hearsay" unworthy of evidentiary weight.

The Appeals Court found the dismissal was due to the housing authority's own "failure to comply" with federal and internal rules. "By any measure, Mata prevailed in this action," the judges wrote on their decision Tuesday. The Court of Appeals ruled in favor of Gloria Mata, saying the Housing Authority had to pay her \$8,575 in attorney's fees and other costs.

ANSWER TO CHAPTER 6 CASE STUDY

ANSWER TO LEARNING ACTIVITY 6-2: CASE STUDY

The Consent Decree

Below is an excerpt from an article in the Housing Law Bulletin, Volume 38, with specific names deleted. See how your thinking matches the court's. Do you agree with the consent decree? What could the PHA have done to avoid the consent decree?

Cedartown Housing Authority Agreed to Broad Reforms for Voucher Termination Hearings

Cedartown Housing Authority (CHA) recently signed a consent decree committing to substantially reform its termination hearings for Section 8 voucher holders. The agreement came on the heels of a lawsuit initiated by a Section 8 participant who alleged due process deficiencies in CHA's practices and procedures in conducting termination hearings, first filed in state court as a writ petition but later removed to federal court by CHA.

In an earlier ruling on CHA's motion to dismiss the case for failure to state a claim, the federal court had agreed with CHA that its hearing procedures met the minimal standards laid out in the governing HUD regulations. However, the court went further, stating that in the absence of a comprehensive post-termination review, a simple adherence to HUD's minimum standards for pre-termination review "may well prove" inadequate under *Goldberg v. Kelly*.

The court's concern doubtless encouraged the housing authority to commence the settlement negotiations that produced the substantial reforms described below. Since most PHAs employ similar termination hearing procedures simply patterned after the HUD regulations, advocates everywhere should consider whether a due process challenge might bring needed reform to any defective procedures.

The lawsuit underlying the consent decree arose from an alleged pattern of deficiencies in the hearing policies and practices of CHA. Prior to the suit, according to the residents, CHA had terminated nearly 300 families from the Section 8 program in three years, in hearings before a single hearing officer with no training and no legal background. CHA policy prohibited participants from raising legal arguments and defenses, including those based on cases and statutes; participants could only use HUD regulations and CHA policies, as well as facts, in their defense. With CHA's blessing, *the hearing officer routinely disregarded valid defenses participants raised under antidiscrimination laws, disability accommodation statutes, laws protecting survivors of domestic violence, state landlord-tenant law, judicial rulings, and other legal authorities* [emphasis added]. Termination was upheld in well over 90% of the cases. Because most Section 8 voucher holders are elderly, disabled or single-parent households with children, as well as extremely low income, the loss of a voucher is devastating and often results in homelessness or the break-up of the family.

The Terms of the Consent Decree

CHA entered into a consent decree with Whitman in which it agreed, “whether or not required by law,” to afford a full panoply of procedural safeguards to any Section 8 participant facing termination. It agreed to allow participants to present, and require hearing officers to consider, “any relevant legal argument arising from any valid source of law... No legal theories or authorities shall be precluded from consideration at informal hearings or otherwise excluded on a categorical or near-categorical basis.” In order to ensure that its hearing officers are both impartial and qualified to hear the legal arguments, CHA agreed to implement a new process for selecting and training its officers; only persons with “no other affiliation” with CHA can hold the position, and officers are to be selected by a five-person committee, with one member appointed by each of the CHA’s Union and the County Bar Association Housing Justice Project’s Sponsor Group.

To qualify for the position of hearing officer, the consent decree provides that an applicant must have a J.D. from an accredited law school and at least three years relevant experience as an attorney, law clerk, judge, arbitrator, administrative law judge, or other legal professional. CHA agreed to maintain a minimum roster of three hearing officers to serve at the informal hearings, to provide each officer with at least six hours of training, and to conduct an annual performance evaluation for each hearing officer. In order to facilitate these reviews, CHA agreed to distribute evaluation forms to all persons present in attendance at every informal hearing, allowing them to provide anonymous feedback on their impression of the officer’s fairness, impartiality, and the opportunity provided for the participant to present his or her evidence and arguments.

The consent order also articulates evidentiary standards for the hearings, providing that while the parties may present evidence without regard to admissibility under the evidentiary rules for judicial proceedings, the hearing officer retains the discretion to exclude evidence that is irrelevant, immaterial, or unduly repetitious. In deciding to exclude evidence, the hearing officer is to rely on evidentiary principles, including, *inter alia* [among other things], that the information offered presents a danger of unfair prejudice or confusion of the issues, that the information lacks competence or is not based on personal knowledge, and/or that the information is offered in violation of some public policy.

CHA further agreed to provide each participant who undergoes an informal termination hearing with a written decision containing, *inter alia*, a summary of any evidence and arguments presented by the parties, a statement of the facts upon which the decision is based, and a clear statement of the conclusions of law. It also agreed to electronically record all informal hearings (unless the voucher participant objects to such recording), to keep and maintain the recording as public record on file for at least thirty-seven months after the decision, and to provide, upon request and at cost, a copy of the recording to the participant or his or her representative.

The Solution

Cedartown PHA concluded that they were probably terminating more vouchers than they should have been. A closer look into the cases showed that Cedartown's informal hearings fell woefully short of any imaginable due process standards. It was obvious that Cedartown's hearing practices were violating voucher participants' rights. Community advocates were alerted via complaints from participants. But before advocates could effectively address the problem, they needed to determine what they would want Cedartown's informal hearings to look like if they could design them themselves. They started reviewing hearing practices from throughout the country and trying to assemble a set of best practices that would cover basically the entire hearing process. They incorporated those best practices into a draft consent decree, which formed the basis of the community advocates' negotiating position with the PHA

ANSWER TO CHAPTER 9 LEARNING ACTIVITY

LEARNING ACTIVITY 9-1: FAMILIAL STATUS

Discussion

*24 CFR 100.20; 24 CFR 5.403;
PH Occupancy Guidebook,
p. 25.*

The PHA's decision should be overturned (in fact, this case should not go to a hearing). Familial status is a protected class, and it is discriminatory to prohibit children. It is prohibited in public housing to forbid children to reside in designated E/D, elderly-only designated, or disabled-designated only developments. As long as the family isn't overcrowding the unit (and two persons would not normally be overcrowding a unit), the PHA cannot require the family to transfer.

LEARNING ACTIVITY 9-4: VAWA

VAWA PHA's Eviction Action is Overturned

1. The PHA did not meet its preexisting VAWA obligations. Under VAWA, PHAs are not allowed to specify the kind of documentation that tenants seeking protections need to provide.
2. The PHA failed to prove that Kevin's off-premises drug activity six months after leaving the unit constituted a lease violation by Susan, and PHA not meeting its procedural obligations under VAWA prohibited Susan from removing him. There is precedent here in other court cases, where a PHA was seeking to evict a tenant based on a criminal violation by another family member who had moved out [Boston Hous.Auth. v. Bruno, 58 Mass. App. Ct. 486 (2003)]

ANSWERS TO CHAPTER 10 SCENARIOS

HEARING DECISION FOR SCENARIO #1 KAMALA KHAN

You overturn the PHA's decision. The PHA violated the federal statutes when it required proof from the tenants that the dog had received hearing assistance training. Per Notice FHEO 2020-01, PHAs cannot refuse to allow a person to have an assistance animal just because the animal is not professionally trained.

HEARING DECISION FOR SCENARIO #2 - MAURICIO RODRIGUES

The hearing should not continue until the request for the live-in aide has been considered. While eviction is generally cause for mandatory termination of assistance the PHA decision is subject to consideration of reasonable accommodation (CFR 982.552(c)(2)).

THE COURT'S DECISION FOR SCENARIO #3 - JOSEPH AQUINO

This was a court case. The judge stated that two questions decided this case: Was the specific accommodation sought by the voucher holder "necessary" to accommodate his disability? And, if so, was it a "reasonable" request or accommodation? The judge ruled for the PHA. He ruled that the PHA had removed the barrier by providing a microwave, got Meals on Wheels with Joseph's consent, etc. Bottom line, the PHA went the country mile. This wasn't so much about Joseph's needs-the PHA agreed that he needed accommodation-Joseph's hearing complaint was based on his wants and his pocket book.

HEARING DECISION FOR SCENARIO #4 - AUDREY GREEN

The hearing officer upheld the PHA's termination. While the participant has not breached a repayment agreement (since she refused to sign it), the regulations allow for termination due to failure to report income and for debts owed to the PHA.

Notice PIH 2018-18 states that participants are required to reimburse the PHA for overpayments due to unreported income, in a lump sum or in monthly payments. "If the tenant refuses to enter into a repayment agreement or fails to make payments on an existing or new repayment agreement, he PHA must terminate the family's tenancy or assistance, or both."

ANSWERS TO CHAPTER 13 HEARING DECISIONS

HEARING DECISION #1 - TAMMY EDGEComb

Was Due Process followed?

1. The Termination Notice: What was missing?

- No factual detail on who did what, when
- No information on how and when to appeal

From Edgecomb case:

Whether defendants' termination procedures in this case complied with the applicable regulations must be judged in light of the due process requirements of *Goldberg v. Kelly*. Quoting Fed Reg., PHAs must adopt written informal pre-termination hearing procedures for participants, which fully meet the requirements of *Goldberg v. Kelly*. The requirement of notice is to inform the tenant of the allegations so that he can prepare a defense.

Here, the termination notice was insufficient to inform plaintiffs adequately of the allegations against them. The notice "failed to set forth a factual statement of the incident or incidents which constituted the grievance." The notice does not indicate which family member committed proscribed acts, what the nature of the alleged crime was, or when the relevant acts were committed. Nor did it provide notice of adverse evidence so that they would be able to rebut it. The notice merely restated the regulation relied on.

A proper notice in compliance with the regulations would state the particular felony and the person who allegedly committed it, and would give a brief factual statement concerning the incident.

24 CFR 982.555

(c) *Notice to family.*

(2) In the cases described in paragraphs (a)(1) (iv), (v) and (vi) of this section, the PHA must give the family prompt written notice that the family may request a hearing. The notice must:

- (i) Contain a brief statement of reasons for the decision,
- (ii) State that if the family does not agree with the decision, the family may request an informal hearing on the decision, and
- (iii) State the deadline for the family to request an informal hearing.

What else was missing?

- The right to request Reasonable Accommodation
- No LEP, VAWA notices
- No contact information—who sent the notice

2. What about the testimony?

24 CFR 982.555 Informal hearing for participant.

(e) Hearing procedures–

(5) Evidence. The PHA and the family must be given the opportunity to present evidence, and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

Edgecomb case:

Participants have the right to cross examine any witness upon which a PHA relies." The hearing officer relied solely on the police report and the articles to sustain defendants' denial of assistance. Hence the decision was based upon evidence which, because of its hearsay character, was provided by witnesses who could not be cross-examined by plaintiffs.

While administrative pretermination hearings are informal, the opportunity to confront and cross-examine witnesses is essential when the information supplied by those witnesses is the reason for the loss of benefits. Denying the tenant the opportunity to confront and cross-examine persons who supplied information upon which the housing authority's action is grounded is improper.

Court's Decision: In view of hearsay character of all the evidence against plaintiffs, and the questions of credibility in view of the contrary evidence, plaintiffs were denied the opportunity to confront and cross-examine the witnesses relied upon by defendants, in violation of the applicable regulations as interpreted by HUD.

The Hearing Officer's Decision

3. Problems with the Hearing Officer's Decision

In Edgecomb:

The hearing officer's conclusory statement that "there was a preponderance of evidence that indicated that a Family member did engage in such drug related activity while on the Section 8 Program, which is a violation" must be considered insufficient.

The opinion did not state the elements of fact or law on which the decision to uphold the termination of assistance was based. Nor did the hearing officer specify the reasons for her determination or indicate the evidence on which it rested.

Court's Decision:

This decision was contrary to HUD regulations and requirements.

In another example, (state case), ***Degelman v. Housing Authority of City of Pittsburgh***, Pa.Cmwlth., No. 228 C.D. 2009

The family argued that the hearing officer's decision failed to satisfy the elements necessary for a proper adjudication because the hearing officer did not explain the rationale behind her ultimate factual findings, which reflect credibility determinations favoring police testimony rather than her own testimony. Also, the hearing officer did not discuss how she resolved conflicting evidence on the same issue. Finally, the hearing officer failed to reconcile the differences between information in a sworn affidavit and sworn testimony. The Court remanded back to the hearing officer for better findings.

824 F.Supp. 312
26 Fed.R.Serv.3d 790
(Cite as: 824 F.Supp. 312)

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United States District Court,
D. Connecticut.

Tammy EDGECOMB and Kurt Edgecomb,
v.
HOUSING AUTHORITY OF the TOWN OF
VERNON and Catherine Melan.

No. 2:92cv01028 (PCD).

June 10, 1993.

Former Section 8 public housing tenants brought action against local housing authority, challenging decision to terminate their assistance. The District Court, Dorsey, J., held that: (1) Secretary of Department of Housing and Urban Development (HUD) was not necessary party; (2) notice of termination was insufficient to satisfy due process; (3) termination hearing did not comply with HUD regulations; but (4) tenants were not entitled to compensatory damages.

Judgment accordingly.

West Headnotes

[1] Federal Civil Procedure 219
[170Ak219 Most Cited Cases](#)

Secretary of Department of Housing and Urban Development (HUD) was not necessary party in action brought by former Section 8 public housing tenants challenging their termination from program based on alleged drug-related activity of family member, where tenants did not challenge constitutionality of regulations governing termination, but instead claimed that director of local housing authority failed to give them notice and termination hearing in accordance with HUD regulations. [Fed.Rules Civ.Proc.Rule 19\(a, b\), 28 U.S.C.A.](#); United States Housing Act of 1937, § 8, as amended, [42 U.S.C.A. § 1437f](#).

[2] Administrative Law and Procedure 454
[15Ak454 Most Cited Cases](#)

[2] Constitutional Law 278.3
[92k278.3 Most Cited Cases](#)

[2] United States 82(3.5)
[393k82\(3.5\) Most Cited Cases](#)

Notice of decision to terminate assistance of Section 8 public housing tenants for "having engaged in drug-related criminal activity or violent criminal activity, including criminal activity by any family member" was insufficient to inform tenants adequately of allegations against them, as required by due process; notice did not state particular felony, person who committed it, or give brief factual statement concerning incident. [U.S.C.A. Const.Amend. 5, 14](#); United States Housing Act, § 8, as amended, [42 U.S.C.A. § 1437f](#).

[3] Administrative Law and Procedure 463.1
[15Ak463.1 Most Cited Cases](#)

[3] United States 82(3.5)
[393k82\(3.5\) Most Cited Cases](#)

Tenants whose Section 8 public housing assistance was terminated were denied opportunity to confront and cross-examine witnesses relied on by local housing authority at informal hearing, in violation of applicable regulations as interpreted by Department of Housing and Urban Development (HUD); all evidence against tenants was hearsay, and questions of credibility existed in view of contrary evidence. United States Housing Act of 1937, § 8, as amended, [42 U.S.C.A. § 1437f](#).

[4] Administrative Law and Procedure 489.1
[15Ak489.1 Most Cited Cases](#)

[4] United States 82(3.5)
[393k82\(3.5\) Most Cited Cases](#)

Hearing officer's written decision to disqualify tenants from receiving Section 8 public housing assistance, based on finding that family member engaged in drug-related activity, was insufficient and was contrary to Department of Housing and Urban Development (HUD) regulations and requirements; decision did not state elements of fact or law on which it was based, and did not specify reasons or indicate evidence on which it rested. United States Housing Act of 1937, § 8, as amended, [42 U.S.C.A. § 1437f](#).

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[5] Civil Rights  273
[78k273 Most Cited Cases](#)

Evidence that termination of Section 8 public housing assistance caused tenant to become depressed and angry, resulting in increased family discord and stress and exacerbated preexistent stress-related medical symptoms was insufficient to support award of compensatory damages after it was determined that termination violated due process, absent evidence termination was in bad faith. United States Housing Act of 1937, § 8, as amended, [42 U.S.C.A. § 1437f](#); [42 U.S.C.A. § 1983](#).

*313 [Dennis J. O'Brien](#), Conn. Legal Services, Willimantic, CT, Kevin J. Brophy, Torrington, CT, Joelen J. Gates, Conn. Legal Services, Rockville, CT, Richard L. Tenenbaum, Danbury, CT, for plaintiffs.

[Ralph J. Alexander](#), [John F. Sullivan](#), East Hartford, CT, for defendants.

RULING ON PENDING MOTIONS

[DORSEY](#), District Judge.

Plaintiffs, former participants in the Housing Assistance Payments Program pursuant to Section 8 of the U.S. Housing Act of 1937, [42 U.S.C. § 1437f](#) ("the Section 8 program"), allege illegal deprivation of their right to continued rental subsidies. Defendant Melan is sued in her official capacity, as executive director of defendant Housing Authority of Vernon ("VHA"). Plaintiffs seek declaratory, injunctive, and monetary relief. Defendants move to dismiss pursuant to [Fed.R.Civ.P. Rules 12\(b\)\(7\)](#) and [19\(b\)](#). Plaintiffs have moved for a preliminary injunction. After a hearing, and in accordance with the parties' understanding, this case will now be decided on the merits.

Background

Under Section 8, subsidies are paid on behalf of low-income families to lessors. The program is administered by local public housing agencies ("PHAs"), such as VHA, which enter into Annual Contributions Contracts ("ACCs") with the U.S. Department of Housing and Urban Development ("HUD"). Pursuant to the ACCs, subsidies compensate landlords for the difference between the rent a tenant can afford and the

market rental rate. HUD's regulations for the Section 8 program are in 24 C.F.R. § § 812, 813, and 882.

Plaintiffs and their two minor children began participating in the Section 8 program in 1987. In July of 1991, Tammy Edgecomb's brother was visiting at her apartment when he asked her for a ride to the store. At the store parking lot, he sold cocaine to two men. Based on that incident Tammy Edgecomb was arrested on February 28, 1992 and charged with conspiracy to sell cocaine under [Conn.Gen.Stat. § § 21a-277\(a\)](#) and [53a-48](#), charges which were terminated by *nolle prosequi*.

PHAs are authorized to deny or terminate assistance under Section 8 if any family member has engaged in drug-related or violent criminal activity. [24 C.F.R. § § 882.118\(b\)\(4\)](#), 882.210(b)(4). In March of 1992, plaintiffs were notified by the VHA that they were to be terminated from the program immediately and that:

The reason for this action is ... having engaged in drug related criminal activity or violent criminal activity, including criminal activity by any family member and is in violation of HUD regulations at [24 CFR 882.118\(b\)\(4\)](#).

You have the right to request an informal hearing if you dispute the reasons or our intended action. You may retain counsel or other representation, if desired, at your own expense. Either you or your counsel will be given an opportunity to examine evidence and question any adverse witnesses and will also be given an opportunity to present testimony and evidence in your favor.

Complaint, Exhibit A. Plaintiffs timely requested an informal hearing. On April 6, 1992, the Section 8 coordinator advised plaintiffs that they were terminated and that no hearing would be held. Defendants immediately ceased payments to plaintiffs' landlord.

On September 8, 1992, plaintiffs again requested an informal hearing which was held on October 7, 1992. The hearing officer ordered the termination of assistance in a written opinion dated November 4, 1992. Defendants paid retroactive assistance for the period from April through November, 1992. Defendants made no payments to plaintiffs' landlord after November, 1992.

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Discussion

I. Motion to Dismiss

[1] Defendants move to dismiss pursuant to [Fed.R.Civ.P. 12\(b\)\(7\)](#) based on plaintiffs' failure to join the Secretary of HUD under [Fed.R.Civ.P. 19](#). Defendants argue that the Secretary is a necessary party because plaintiffs *314 are seeking adjudication of the constitutional validity of HUD's regulations, and because defendants are merely agents who apply those regulations. See Memorandum in support of Defendants' Motion to Dismiss, at 5. Defendants also argue that any decision here would jeopardize defendants' federal funding under their ACC. See *id.* at 6.

A person shall be joined as a party if:

(1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

[Fed.R.Civ.P. 19\(a\)](#). If such a person has not been joined, the court shall order that he or she be made a party. *Id.* If joinder is not feasible, the court must decide, based on a number of factors specified in [Fed.R.Civ.P. 19\(b\)](#), whether the action should proceed or be dismissed.

Joinder of HUD is not necessary for a just adjudication of this action. Plaintiffs do not challenge the constitutionality of the regulations governing the termination of assistance under Section 8. Rather, plaintiffs allege defendants' violation of those regulations. Specifically, plaintiffs allege a failure to provide notice and a termination hearing in accordance with the regulations. As the complaint challenges only defendants' conduct and not the validity of the applicable regulations, the court may grant the relief requested. See [Arthur v. Starrett City Assoc.](#), 89 F.R.D. 542 (E.D.N.Y.1981).

A finding for plaintiffs here would not subject defendants to a risk of inconsistent obligations,

[Fed.R.Civ.P. 19\(a\)\(2\)\(ii\)](#), or jeopardize defendants' standing with HUD. If a PHA has committed an error, it is required to take corrective action. See HUD Handbook 7420.7, *Public Housing Agency Administrative Practices Handbook for the Section 8 Existing Housing Program*, ¶¶ 9-11 (1979) (Plaintiff's Memorandum in Opposition, Appendix A). The complaint alleges that defendants erred by failing to comply with the applicable regulations. For purposes of a motion to dismiss under [Rule 12\(b\)\(7\)](#), the well-pleaded factual allegations contained in the complaint are accepted as true. [Kingstone v. Liberman](#), 99 F.R.D. 329, 330 (W.D.Pa.1983).

This case differs from [M.A.I.N. v. Comm'r, Maine Dept' of Human Services](#), 697 F.Supp. 557 (D.Me.1988), vacated on other grounds, 876 F.2d 1051 (1st Cir.1989), where plaintiff alleged that the regulations themselves, which only the Secretary had authority to alter, were infirm. There, as in [Peques v. Mississippi State Employment Service](#), 57 F.R.D. 102 (N.D.Miss.1972) (Secretary of Labor held indispensable party in suit for modification of state's job placement procedures), granting the requested relief would have required the state defendant to violate federal regulations. No such problem is presented here. As it is not necessary for HUD "to be joined if feasible," [Fed.R.Civ.P. 19\(a\)](#), this action will not be dismissed pursuant to [Fed.R.Civ.P. 12\(b\)\(7\)](#).

II. Plaintiffs' Claims

A. Notice

[2] Notice of a PHA's decision to terminate assistance must "contain a brief statement of the reasons for the decision." 24 C.F.R. § 882.216(a)(1). Whether defendants' termination procedures in this case complied with the applicable regulations must be judged in light of the due process requirements of [Goldberg v. Kelly](#), 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970). See 55 Fed.Reg. 133 at 28, 541 (July 11, 1990) ("PHAs must adopt written informal pretermination hearing procedures for participants, which fully meet the requirements of [Goldberg v. Kelly](#)"). "A subsidy for housing through the Section 8 program ... is a property interest of the recipient." [United States v. Robinson](#), 721 F.Supp. 1541, 1542 (D.R.I.1989). The requirement of notice is to inform the tenant

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of the allegations so that he can prepare a defense. *315 [Escalera v. New York City Housing Authority, 425 F.2d 853, 862 \(2d Cir.1970\)](#). Thus, notice should be "sufficiently specific ... to enable [the] applicant to prepare rebuttal evidence to introduce at his hearing appearance." [Billington v. Underwood, 613 F.2d 91, 94 \(5th Cir.1980\)](#).

Here, the notice of termination for "having engaged in drug-related criminal activity or violent criminal activity, including criminal activity by any family member ..." was insufficient to inform plaintiffs adequately of the allegations against them. The notice "failed to set forth a factual statement of the incident or incidents which constituted the grievance." [Housing Authority of King County v. Saylor, 19 Wash.App. 871, 578 P.2d 76, 79 \(1978\)](#) (termination notice stating that tenant was "in violation of your lease in section 6j: The Tenant shall not commit or maintain a nuisance on or about the premises" held insufficient). The notice sent to plaintiffs does not indicate which family member committed proscribed acts, what the nature of the alleged crime was, or when the relevant acts were committed. See *id.* Nor did it provide notice of adverse evidence so that they would be able to rebut it. See [Robbins v. United States Railroad Retirement Bd., 594 F.2d 448, 453 \(5th Cir.1979\)](#). The notice merely restated the regulation relied on. A notice which "merely parrot[s] the broad language of the regulations" is insufficient. [Billington, 613 F.2d at 94](#).

The regulations interpreted in light of [Goldberg v. Kelly, 397 U.S. at 267, 90 S.Ct. at 1020](#), require timely and adequate notice detailing the reasons for the proposed termination. A proper notice in compliance with the regulations would state the particular felony and the person who allegedly committed it, and would give a brief factual statement concerning the incident. See [Saylor, 578 P.2d at 79](#). Such would impose no significant burden upon defendants, while the additional safeguards thus provided would reduce significantly the risk of an erroneous deprivation of Section 8 benefits. See [Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 \(1976\)](#).

B. Informal Hearing

[3] Plaintiffs contend that the informal hearing in October, 1992 violated 24 C.F.R. § 882.216.

Plaintiffs allege that they were denied an opportunity to confront their accusers, that the hearing officer's decision was based entirely on hearsay, and that the hearing officer did not indicate the reasoning behind her decision. The hearing provided for by the applicable regulations is informal and admissibility is not subject to the rules of evidence. 24 C.F.R. § 882.216(b)(6)(iv). Nevertheless, PHAs must allow the parties to present evidence and question any witnesses. 24 C.F.R. § 882.216(b)(6)(iv). Defendants must prove the allegations against plaintiffs by a preponderance of the evidence. 24 C.F.R. § 882.216(b)(6)(v).

At the October hearing, plaintiffs offered their own testimony, including that of Tammy Edgecomb that she would not have given her brother a ride had she been aware of his purpose. Plaintiffs' landlords and a parent aide testified that neither had seen any evidence of drug-related activity in plaintiffs' apartment. The Section 8 coordinator testified as to the basis of the termination. Also in evidence was a police report describing the arrest and underlying circumstances and two newspaper articles detailing the arrest, quoting the observation of unspecified unhealthy conditions in the apartment and drug paraphernalia. The hearing officer accepted these documents into evidence pursuant to 24 C.F.R. § 882.216(b)(6)(iv).

The Section 8 coordinator had no personal knowledge of the circumstances. The police report was based on discussions that the affiant had overheard monitoring a wireless transmitter and provided no information based on his firsthand observations. The report contained quotations from a confidential informant which implicated Tammy Edgecomb as present at drug deals at the apartment and at the parking lot, and from an undercover officer, but not from plaintiffs. Neither the police officers nor the confidential informant were available at the informal hearing for plaintiffs to confront or cross-examine.

"Participants have the right to cross examine any witness upon which a PHA relies." 55 Fed.Reg. 133, at 28,541 (July 11, 1990). The hearing officer relied solely on the police report and the articles to sustain defendants' *316 denial of assistance. Hence the decision was based upon evidence which, because of its hearsay character, was provided by witnesses

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who could not be cross-examined by plaintiffs. While administrative pretermination hearings are informal, the opportunity to confront and cross-examine witnesses is essential when the information supplied by those witnesses is the reason for the loss of benefits. Goldberg v. Kelly, 397 U.S. at 269-70, 90 S.Ct. at 1021-22. Denying the tenant the opportunity to confront and cross-examine persons who supplied information upon which the housing authority's action is grounded is improper. Escalera, 425 F.2d at 862.

Richardson v. Perales, 402 U.S. 389, 91 S.Ct. 1420, 28 L.Ed.2d 842 (1971), does not contradict this conclusion. In that case, it was held that a written physician's report, despite its hearsay character and the absence of cross-examination, may constitute substantial evidence under § 205(g) of the Social Security Act, when the claimant had a right to subpoena the reporting physician but failed to do so. Id. at 402, 91 S.Ct. at 1427. In Perales, unlike in the case here, the claimant had an opportunity to cross-examine but failed to take advantage of it, id. at 404-05, 91 S.Ct. at 1428-29. The Section 8 procedures do not provide participants with the right to subpoena witnesses. Nor did Perales concern the termination of benefits previously granted, id. at 407, 91 S.Ct. at 1430. In view of hearsay character of all the evidence against plaintiffs, and the questions of credibility in view of the contrary evidence, plaintiffs were denied the opportunity to confront and cross-examine the witnesses relied upon by defendants, in violation of the applicable regulations as interpreted by HUD.

[4] Pursuant to 24 C.F.R. § 882.216(b)(6)(v), the hearing officer must issue a written decision stating briefly the reasons for the decision. HUD interprets this requirement as follows:

The statement of decision required by the regulation must be truly informative as to the reasons for the decision. This would include a short statement of the elements of fact or law on which the decision is actually based. A bare and conclusory statement of the hearing decision, that does not let the participant know the basic reasons for the decision, will not satisfy the regulatory requirement.

49 Fed.Reg. 62 at 12,230 (March 29, 1984). The hearing officer's conclusory statement that "there was a preponderance of evidence that indicated that a Family member did engage in

such drug related activity while on the Section 8 Program, which is a violation of 24 C.F.R. 882.118 ..." must be considered insufficient. Complaint, Exhibit H. The opinion did not state the elements of fact or law on which the decision to uphold the termination of assistance was based. Nor did the hearing officer specify the reasons for her determination or indicate the evidence on which it rested. See Kowal v. United States, 412 F.2d 867, 873, 188 Ct.Cl. 631 (1969); Saylor, 578 P.2d at 79; see also Goldberg v. Kelly, 397 U.S. at 271, 90 S.Ct. at 1022. This decision was contrary to HUD regulations and requirements. See 24 C.F.R. § 882.216(b)(7)(1)(B).

C. Damages

[5] Plaintiffs seek compensatory damages under 42 U.S.C. § 1983 to redress deprivation of their constitutional right to due process resulting from the initial termination of assistance in April, 1992 without a hearing. Defendants have admitted that the initial termination of assistance without a hearing was improper. In November of 1992, defendants reinstated the Section 8 subsidies retroactively for the period from April through November of 1992.

Title 42 U.S.C. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. Tammy Edgecomb testified before this court that the unlawful termination in April caused her to become depressed *317 and angry, resulted in increased family discord and stress, and exacerbated her pre-existent stress-related medical symptoms. See Hearing Transcript, at 56-63.

Mental and emotional distress are compensable under § 1983. Carey v. Piphus, 435 U.S. 247, 263-64, 98 S.Ct. 1042, 1052-53, 55 L.Ed.2d 252 (1978). Where the deprivation is of a procedural due process nature, it is not justifiable to award compensatory damages without proof that the injury actually was caused by the deprivation. Id.

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at 264, 98 S.Ct. at 1052. The evidence presented at the hearing before this court did not establish injury to a degree which warranted assessing compensatory damages. There was no evidence of bad faith on the part of defendants, and thus no basis for assessing punitive damages. See Smith v. Wade, 461 U.S. 30, 56, 103 S.Ct. 1625, 1640, 75 L.Ed.2d 632 (1983). For the denial of plaintiffs' right to due process, plaintiffs are awarded nominal damages of one dollar (\$1.00).

Conclusion

Defendants' motion to dismiss (document # 10) is denied.

For the foregoing reasons, defendants' termination of plaintiffs' housing assistance payments based on the hearing of October 7, 1992, violated the applicable regulations and is unlawful and void. Accordingly, defendants shall reinstate plaintiffs' Section 8 housing assistance payments retroactive to December 1, 1992. Defendants are hereby enjoined from terminating plaintiffs' Section 8 housing assistance payments on the basis of the previously established record.

Plaintiffs' motion for a preliminary injunction (document # 4) is denied as moot in light of the above finding.

SO ORDERED.

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END OF DOCUMENT

HEARING DECISION #2 - MAYA BASA

Basa Decision

BEFORE THE TOWNVILLE MUNICIPAL HOUSING AUTHORITY

Regarding: Maya Basa Participant	INFORMAL HEARING DECISION HOUSING CHOICE VOUCHER PROGRAM
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INTRODUCTION

Denise Clarity, Hearing Officer, conducted an informal hearing on June 20, 2011, pursuant to the provisions of 24 CFR 982.555 and the Townville Municipal Housing Authority’s Section 8 Administrative Plan (hereinafter TMHA Plan), Chapter 16-III, *Informal Hearings for Participants*, pp. 10-16. Participant appeared, representing herself. Michelle Leinward, Housing Choice Voucher Manager, appeared on behalf of the Housing Authority. Dirk and Annabelle Payan, Owners, appeared by phone as witnesses for Participant. The Hearing Officer did not make or approve the decision under review and is not a subordinate of the person who did make the decision.

PROCEDURAL HISTORY

On May 12, 2011, the Housing Authority sent Participant a *Tenant Notification of Termination of Program Assistance and Housing Assistance Payment Contract* effective, June 30, 2011. On May 16, 2011, Participant filed a timely request for an informal hearing. Following this request, the Housing Authority scheduled the informal hearing, and on May 24, 2011, gave Participant reasonable written notice of the Informal Hearing.

HEARING ISSUES

The Housing Authority notified Participant that pursuant to 24 CFR 982.551, 24 CFR 982.552, Title 18 U.S.C. 1001, and TMHA Plan, Exhibit 12-1 *Statement of Family Obligations*, Participant’s housing assistance would be terminated effective June 30, 2010 because:

Specifically:

On May 4, 2010 , it was reported that you were no longer living in your unit and that your utilities have been shut off. After verification from Townville Public Utilities that your utilities have been shut off since April 25, 2010, with a balance owed of \$420.08 and verification from Mountaintop Jr. High School that your daughter had been enrolled there since November 15, 2010 and various pieces of important mail going to a different address, it was been determined that you are in violation of your Family Obligations for not notifying the Housing Authority that you are no longer living in the unit and not having paid your utility bills. As a result of these violations, your Section 8 assistance is being terminated.

This type of conduct or failure to perform a family obligation violates U.S. Department of Housing and Urban Development (HUD) regulations, Townville Municipal Housing Authority (TMHA) policies, and the Family Obligations.

Having fully considered the entire record, the undersigned Hearing Officer enters the following Findings of Fact, Conclusions of Law, and Decision:

FINDINGS OF FACT

1. Participant's boyfriend and the father of her children, David Cernik, was an authorized household member until Participant was granted a restraining order in October, 2009. Even though the order expired one year later in October, 2010, program rules do not permit a person who is removed from the household because of domestic violence to return to the household. Participant submitted a relocation request April 20, 2011. She later submitted a request for tenancy approval for Mr. Cernik's address. Based on this and Mr. Cernik's attendance with Participant in the Housing Authority office during which they made representations about their joint activity in moving and looking for housing, the Housing Authority believed Participant was trying to move into Mr. Cernik's house with a Section 8 voucher.
2. The housing specialist warned Participant that Mr. Cernik could never be a part of her household. Mr. Cernik became upset and left the office. He returned later with several documents purporting to show that Participant was residing with him at his address.
3. The Housing Authority conducted an investigation and found that Townville Public Utilities disconnected power to Participant's address on April 25, 2011, and there was a balance owing of \$420.08 as of May 5, 2011. Utility statements were sent to Mr. Cernik's address beginning March 12, 2010. The Housing Authority contacted Participant's daughter's (Melinda's) school and verified that the address for the daughter was Mr. Cernik's address and that she had been enrolled there since November, 2010. The school, Mountaintop Junior High School, in Townville ST, is not the daughter's local school and is located in Middleville, out of Participant's school district.
4. It is the Housing Authority's position that Participant moved out of the assisted unit in November, 2010, and then moved back. The Housing Authority issued the termination notice because Participant was not living in the assisted unit and because the utilities had been disconnected.
5. At the hearing, regarding the utilities, Participant explained that Mr. Cernik, as part of a child support agreement (reported to the Housing Authority as income), pays Participant's utility bill. The statement dated April 13, 2011, shows the service address as the address for the assisted unit. Participant asserts that the power was only off for five days and the dates obtained by the Housing Authority are incorrect. Participant stated that Mr. Cernik was upset with Participant because she could not move in with him, so he did not pay her utility bill. She was able to get her church to pay the bill and it is current.

6. Regarding her daughter's attendance at a school outside her home district and using Mr. Cernik's address, Participant explained that her daughter was having serious problems at her home school and after investigating other district schools, she determined that the school in Middleville would be the best placement for her. She admits that she used Mr. Cernik's address to be able to enroll her daughter in the school. Her other daughter, Corina, attends her home school, Central Avenue, and rides the bus to school.
7. Regarding the request for tenancy approval, her landlord had given her notice to move and Participant thought that since the restraining order had expired, she could reunite the family and have Mr. Cernik back in the household. When she learned from the housing specialist that Mr. Cernik could not be in the household, she began looking for other housing immediately.
8. Angry with Participant over the Housing Authority's refusal to permit him in the household and Participant's compliance with the requirement, Mr. Cernik apparently kicked in the door of Participant's residence, prompting Participant to file for another restraining order, which was granted on May 18, 2011. The order was modified on June 9, 2011 to allow "reasonable non-hostile contact re: children in common, and contact to prove petitioner's household..."
9. The landlord, Mr. Payan, believed that Participant was living at the assisted unit during the period November, 2010 through the present. Although he believes she may have been away a couple of days per month, he saw her at the home every month at different times during the month. He was in the habit of cleaning the yard, and then lately, trying to confirm that she would be moving. He noted that someone, he presumed to be Mr. Cernik, kicked in her door. He reported that Participant was a good tenant and that he had no complaints.
10. Participant asserts that she did not understand she was certifying that she was living at another address when she had mail sent there.
11. Participant acknowledged having signed the TMHA Family Obligations on January 24, 2011.
12. The undersigned Hearing Officer is unable to give substantial weight to documents or statements not certified or supported by live testimony, because they are hearsay.

Having carefully considered and weighed all the evidence, including the reasonableness of the testimony and the totality of the circumstances presented, the undersigned Hearing Officer finds Participant's testimony and other evidence to be credible when compared with the Housing Authority's inferences based on uncertified documents and hearsay.

CONCLUSIONS OF LAW

1. 24 CFR 982.552 *PHA denial or termination of assistance for family.*
 - (a) *Action or inaction by family.* (1) a PHA may deny assistance for an applicant or terminate assistance for a participant under the programs because of the family's action or failure to act as described in this section or §982.553.
 - (c) *Authority to deny admission or terminate assistance:* (1) *Grounds for denial or termination of assistance.* The PHA may at any time deny program assistance for an applicant, or terminate program assistance for a participant, for any of the following grounds:
 - (i) If the family violates any family obligations under the program (see §982.551).
 - (iv) If any member of the family has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal Housing program (see also §982.553(a)(1)).See also TMHA Plan Chapter 12-I-E. *Mandatory Policies and Other Authorized Terminations*, pg. 5.
2. 24 CFR 982.551 *Obligations of participant.*
 - (a) *Supplying required information –*
 - (2) The family must supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition with accordance with HUD requirements.
 - (4) Any information supplied by the family must be true and complete.
 - (f) *Family notice of move or lease termination.* The family must notify the PHA and the owner before the family moves out of the unit, or terminates the lease on notice to the owner. See §982.354(d).
 - (h) *Use and occupancy of unit –*
 - (1) The family must use the assisted unit for residence by the family. The unit must be the family's only residence.

- (3) The family must promptly notify the PHA if any family member no longer resides in the unit.
- (i) *Absence from unit.* The family must supply any information or certification requested by the PHA to verify that the family is living in the unit, or relating to family absence from the unit, including any PHA-requested information or certification on the purposes of family absences. The family must cooperate with the PHA for this purpose. The family must promptly notify the PHA of absence from the unit.
- (k) *Fraud and other program violation.* The members of the family must not commit fraud, bribery or any other corrupt or criminal act in connection with the programs.

3. TMHA Family Obligations

The Family Must:

1. Provide information that is true and complete.
The family is responsible for ensuring all information provided is true and complete. (If the family intentionally, willingly and knowingly fails to provide complete and accurate information, or is involved in an illegal scheme, the Housing Authority will terminate assistance.)
2. Supply any information that the Housing Authority or HUD determines is necessary including evidence of citizenship or eligible immigration status, and information for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
4. Supply any information requested by the Housing Authority to verify that the family is living in the unit or information related to any family member's absence from the unit.
5. The family must notify the Housing Authority in writing within ten (10) days if any family member no longer resides in the unit.
10. Use the assisted unit for residence by the family. The unit must be the family's only residence.
14. Pay all utility bills and provide and maintain appliances that the owner is not required to provide under the lease.

4. Title 19 U.S.C. §1001. Statements or entries generally.
- (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully –
- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
 - (2) makes any materially false, fictitious, or fraudulent statement or representation; or
 - (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statements or entries.
5. Based on a preponderance of evidence, the undersigned concludes that the Housing Authority has not established that Participant failed to perform one or more of the family's obligations under the Section 8 Rental Assistance program. Specifically, the undersigned concludes that the Housing Authority has failed to show that Participant was not living in the assisted unit. Her failure to maintain utilities is mitigated by the circumstances which led to the disconnect and her ability to restore them.

In reaching this conclusion, the undersigned recognizes that the Housing Authority's general assertions are true; that is, Participant's utility statements were being sent to an address other than hers, her utilities were disconnected for a time, and her daughter was enrolled at a school outside her home district, using Mr. Cernik's address. However, the undersigned finds Participant's explanations credible, especially in light of the Owner's testimony and the court document.

DECISION

The Housing Authority's decision to terminate Participant Maya Basa's housing assistance is **OVERTURNED**. The Housing Authority is directed to maintain Participant's program status.

Date of Decision: June 22, 2011

Denise M. Clarity

Hearing Officer

This decision shall not constitute a waiver of, nor affect in any manner whatever, any rights you may have to judicial review through the court system in this matter.

Date of Mailing: _____

A copy of the hearing decision was sent by first class mail, postage prepaid, to the following:

HEARING DECISION #3 - REVISED FABRE NOTICE

Fabre Answer Key-Full Scenario

1. What documents would you want to see in the hearing packet before the hearing?

Mr. Fabre's appeal letter
MHA letter scheduling hearing
MHA Change of Circumstance Form
MHA letters to Mr. Fabre
Alleged forged note
Notarized document from Ms. Warwick
Family Obligations signed by Mr. Fabre
Relevant HUD regulations and Housing Authority policies—Admin. Plan

2. Were there any remaining due process concerns?

3. Can you identify what authority you might look to for making your decision?

See written Fabre decision
24 CFR 982.552—violation of family obligations, fraud
Title 18 U.S.C. §1001
PHA's Administrative Plan policies

4. What is your decision? State conclusion with supporting facts.

See written Fabre decision
Credibility an issue? How would you express credibility issue in your decision?

MIDDLETOWN HOUSING AUTHORITY INFORMAL HEARING DECISION

Regarding: Mitchell Fabre Participant	INFORMAL HEARING DECISION HOUSING CHOICE VOUCHER PROGRAM
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INTRODUCTION

Lincoln Fairmind, Hearing Officer, conducted an informal hearing on April 18, 2011, pursuant to the provisions of 24 CFR 982.555 and the Middletown Housing Authority’s Section 8 Administrative Plan (hereinafter MHA Plan), Chapter 16-III, *Informal Hearings for Participants*, pp. 10-16. Participant appeared, representing himself. Priscilla Dunphrey, Participant’s girlfriend, and Joanne Baldrige, Maternity Support Services Case Manager, appeared as witnesses on behalf of Participant. Les O’Malley, Housing Specialist, appeared on behalf of the Housing Authority. Theresa Warwick, Apartment Manager, appeared as a witness for the Housing Authority. The Hearing Officer did not make or approve the decision under review and is not a subordinate of the person who did make the decision.

PROCEDURAL HISTORY

On March 14, 2011, the Housing Authority sent Participant a *Tenant Notification of Termination of Program Assistance and Housing Assistance Payment Contract* effective May 1, 2011. On March 15, 2011, Participant filed a timely request for an Informal Hearing. Following this request, the Housing Authority scheduled the Informal Hearing, and on March 22, 2011, gave Participant reasonable written notice of the Informal Hearing.

HEARING ISSUES

The Housing Authority notified Participant that pursuant to Title 18 U.S.C. Section 1001, 24 CFR 982.552, and MHA Plan, Exhibit 12-1 *Statement of Family Obligations*, Participant’s housing assistance would be terminated effective May 1, 2010 because:

Specifically:

On March 2, 2011 you came into the office to turn in documentation that was requested from you. You were told, in order for your file to be completed, a statement from your landlord was needed approving the additional person to your household. That same day you came back with a signed letter of approval. That letter was not written by the apartment manager, and appears to have a forged signature.

Having fully considered the entire record, the undersigned Hearing Officer enters the following Findings of Fact, Conclusions of Law and Decision:

FINDINGS OF FACT

1. In November, 2010, Participant submitted a Change of Circumstances form requesting to add Priscilla Dunphrey and their baby. The Housing Authority advised Participant at that time that he would need to submit documentation for Ms. Dunphrey and the baby, and permission from the landlord. The Housing Authority sent two letters requesting this information. The first letter had a deadline of December 9, 2010; Participant submitted some but not all of the information. The second letter had a deadline of January 18, 2011, and primarily requested that Participant submit the approval from the landlord to add the new family members. Both letters indicated that failure to return the requested documents by the deadline would result in the initiation of termination procedures.
2. When the requested documents were not received by the second deadline, the Housing Authority issued a termination notice on February 25, 2011. On March 2, 2011, the Housing Authority received a handwritten letter with Ms. Warwick's signature, purporting to be approval from the landlord to add Ms. Dunphrey and the baby to Participant's household. The Housing Specialist noticed that the phone number to contact for more information on the letter was the same as the phone number for Participant. Upon this discovery, the Housing Specialist called the apartment manager, Ms. Warwick, who indicated that she had not written or signed any notice regarding Participant. She requested to see the information the Housing Authority had received. The Housing Specialist faxed her a copy of the letter and in return Ms. Warwick submitted a notarized document indicating that she did not author or sign the letter. At some point, Participant and Ms. Dunphrey visited the Housing Authority and reported that the assistant manager had written and signed the note.
3. Shortly thereafter, Ms. Dunphrey was added to the lease, whereupon the Housing Specialist called back to Ms. Warwick, the apartment manager, to inquire about the circumstances. Ms. Warwick informed the Housing Specialist that Ms. Dunphrey had had an outstanding debt with her prior landlord that needed to be satisfied before she could be added to the lease. Participant showed that he paid the debt and Ms. Dunphrey was added to the lease.

4. The landlord's policy for the apartment complex (Exhibit 3) stipulates that all correspondence from the apartment community must be on the company letterhead and must be typed and saved in the computer. It appears that the same type of notepad paper was used for both Participant's appeal letter and the letter purporting to be from the apartment manager. Ms. Warwick stated that if the Housing Authority had not taken this termination action, she would have referred the forgery to the landlord's attorney for evaluation for further action.
5. Participant asserts that from November, 2010 until March, 2011, he was attempting to provide documentation to the Housing Authority and to comply with the apartment manager's requirements for adding Ms. Dunphrey to the lease; that is, satisfying Ms. Dunphrey's debts, including a debt of over \$1000 with her previous landlord. He stated that he received a termination notice before he could pay off the debt. He stated that he visited the prior landlord to arrange monthly payments, but this was not acceptable to Ms. Warwick. He visited the Housing Authority to ask what to do, and was given more time.
6. Participant stated that he later sent Ms. Dunphrey to the apartment management office, but neither the manager nor the assistant manager was there. Ms. Dunphrey, according to Participant, returned with a sealed envelope and he took it to the Housing Authority for submission. Although he later testified that he did not ask Ms. Dunphrey what was in the letter, nor did he look at it, he first testified that he told the Housing Authority receptionist that the letter was not from the manager, but was from the management office. He testified that he did not know Ms. Dunphrey actually wrote the letter. Participant acknowledged that he was "getting upset" about the urgency for providing information to the Housing Authority and having to pay Ms. Dunphrey's debts, some of which he learned about from the apartment manager. He testified that he did not look at the letter because he assumed the managers would know what to do to add an individual to the household.
7. Ms. Dunphrey admitted to forging the letter. She stated she was worried because Participant was "panicking" trying to come up with the money to satisfy her debts. She went to the manager to get approval, but she was not there. She testified that she was "scared" that Participant would get kicked off the program, so she wrote the letter, put it in an envelope, and told him it was from the assistant manager. She stated that she regrets having done this, and the consequences for Participant.

8. Joanne Baldrige, Maternity Support Services Case Manager, stated that it was her impression that Participant and Ms. Dunphrey were confused about the information requested from the Housing Authority. However, no one called the Housing Authority to indicate that the requests were confusing and that everything but the approval from the landlord had been turned in. Participant did not contact the Housing Authority before the deadlines to indicate that he was having difficulty adding Ms. Dunphrey to the lease. When he did contact the Housing Authority, he was allowed more time.
9. It is Participant's position that he did not know what Ms. Dunphrey was doing and she should be given a second chance, because she was unfamiliar with the rules and was trying to help him.
10. It is the Housing Authority's position that, in violation of federal law and program rules, Participant submitted a false document to avoid termination and to avoid bringing in the proper documents from the landlord.
11. Participant acknowledged having signed the MHA Family Obligations on November 8, 2010. Ms. Dunphrey signed the MHA Family Obligations on November 16, 2010.

CONCLUSIONS OF LAW

1. 24 CFR 982.552 *PHA denial or termination of assistance for family.*
 - (a) *Action or inaction by family.* (1) a PHA may deny assistance for an applicant or terminate assistance for a participant under the programs because of the family's action or failure to act as described in this section or §982.553.
 - (c) *Authority to deny admission or terminate assistance:* (1) *Grounds for denial or termination of assistance.* The PHA may at any time deny program assistance for an applicant, or terminate program assistance for a participant, for any of the following grounds:
 - (i) If the family violates any family obligations under the program (see §982.551).
 - (iv) If any member of the family has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal Housing program (see also §982.553(a)(1)).See also MHA Plan Chapter 12-I-E. *Mandatory Policies and Other Authorized Terminations*, pg. 5.

2. Title 18 U.S.C. §1001. Statements or entries generally.
 - (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully –
 - (1) falsifies, conceals, or covers up by any trick, scheme, or device a material; fact;
 - (2) makes any materially false, fictitious, or fraudulent statement or representation; or
 - (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statements or entry.

3. MHA Plan Chapter 14-II-B. *Family-Caused Errors and Program Abuse*

PHA Policy:

An applicant or participant in the HCV program must not knowingly:

Make a false statement to the PHA [Title 18 U.S.C. Section 1001]
Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.552(c)(iv)], pg. 6.

In MHA Plan, Chapter 14-I-A. Preventing Errors and Program Abuse, pg. 2, the term error refers to an unintentional error or omission. Program abuse or fraud refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

According to MHA policy, use of a false name or the use of falsified, forged, or altered documents, intentional misreporting of family information or circumstances (e.g., income, family composition) and omitted facts that were obviously known by a family member (e.g., not reporting employment income) will be considered evidence of family program abuse.

The PHA will evaluate whether program abuse occurred based upon a preponderance of the evidence. *MHA Plan Chapter 14-II-B. Family-Caused Errors and Program Abuse, pg. 3.*

In the case of program abuse caused by a family, the PHA may, at its discretion, impose any of the following remedies:

The PHA may deny or terminate the family's assistance following the policies set forth in Chapter 3 and Chapter 12 respectively. *MHA Plan, pg. 14-6.*

4. Based on a preponderance of evidence, the undersigned concludes that Participant is responsible for submitting a forged document to the Housing Authority to gain or maintain certification in the Section 8 program.

In reaching this conclusion, the undersigned finds first, that Ms. Dunphrey admitted to the forgery, which alone is sufficient evidence of program abuse; and second, that Participant gave conflicting testimony about the forged letter. His assertion that he was not aware of Ms. Dunphrey's act was not credible. Having carefully considered and weighed all the evidence, including the reasonableness of the testimony and the totality of the circumstances presented, the undersigned does not find Participant's testimony and other evidence to be logically persuasive. The undersigned's decision is based on a reasonable determination of what most likely happened based on a preponderance of the evidence.

The Housing Authority's decision to terminate housing assistance was in accordance with the law, HUD regulations and the Housing Authority's policies.

DECISION

The Housing Authority's decision to terminate Participant Mitchell Fabre's housing assistance is **UPHELD**. Participant's Housing Assistance Payments will terminate effective May 1, 2011.

Date of Decision: April 19, 2011

Lincoln Fairmind

Hearing Officer

This decision shall not constitute a waiver of, nor affect in any manner whatever, any rights you may have to judicial review through the court system in this matter.

Date of Mailing: _____

A copy of the hearing decision was sent by first class mail, postage prepaid, to the following:

ANSWER TO CHAPTER 16 CASE STUDIES

COURT RESPONSE TO CASE STUDY #1 - MORALES

While a transcript would, of course, be helpful, such is not mandated here. However, the administrative record must be comprehensible and adequate for purposes of review.

We must determine whether the record supports the decision of the housing authority here, that of the hearing officer. Where the hearing officer's findings and conclusions are the only record of testimony, and where it is obvious from reading the findings that the factual summary is filtered through the lens of one who has already concluded that the witnesses are "wholly not credible," the record is inadequate for an impartial judicial review.

Because the inadequate record here makes us unable to meaningfully review the substance of the PHA's decision, we remand for a new hearing which complies with the procedural requirements the PHA has adopted.

Decision:

Reversed and remanded.

SYNOPSIS OF COURT RESPONSE TO CASE STUDY #2 - KEPLER

ECHA had agreed to allow Kepler to keep the snakes as support animals provided that they did not jeopardize the health, safety and welfare of other residents and staff. ECHA allowed him to keep the snakes if he (1) provided a declaration from a professional that the snakes were not poisonous or otherwise a danger to others' safety, and (2) kept the snakes in a cage when on the premises or when the snakes were being transported. He refused to comply with these conditions and claimed in court an unlimited right to carry the snakes around with him, including in the community room and offices when he paid his rent.

Because a housing authority may deny a requested accommodation as unreasonable, ECHA's request for additional information to assess the potential safety risks was reasonable.

In sum, the Court finds that ECHA did not fail to reasonably accommodate Kepler's disabilities. The Court rules for ECHA with no reservations.

Notes

CHAPTER 19 Answer Keys to Post Tests

CHAPTER 1: INTRODUCTION

1. c	4. c	7. c	10.b
2. b	5. b	8. d	11.c
3. b	6. a	9. b	

CHAPTER 2: HUD REGULATIONS COMMON TO THE HOUSING CHOICE VOUCHER AND PUBLIC HOUSING PROGRAMS

1. b	4. a	7. b	9. b
2. e	5. b	8. b	10.a
3. d	6. d and e		

CHAPTER 3: HUD REGULATIONS FOR THE HOUSING CHOICE VOUCHER PROGRAM

Fabre Answer Key

1. Was Due Process followed?

Missing from the Termination Notice:

No specific authority cited

No information on how and when to appeal

The right to request Reasonable Accommodation

No LEP, VAWA notices

No contact information—who sent the notice

2. Anything missing you need to fully answer?

Appeal letter with date; letter scheduling hearing

3. What is your decision? State conclusion with supporting facts.

Credibility an issue?

CHAPTER 3: HUD REGULATIONS FOR THE HOUSING CHOICE VOUCHER PROGRAM

1. b	4. c	7. b	10.b
2. a	5. b	8. a	11.b
3. c	6. b	9. d	

CHAPTER 4: HUD REGULATIONS AND GUIDANCE—PUBLIC HOUSING

1. c	4. b	7. b	10.a	12.a
2. a	5. c	8. b	11.b	13.b
3. e	6. d	9. d		

CHAPTER 6: THE PHA ADMINISTRATIVE PLAN AND ACOP

1. b	4. a	7. e
2. b	5. f	8. a
3. b	6. d	

CHAPTER 7: HEARING/GRIEVANCE INTERNAL PROCESSES

1. b	4. c	7. e
2. b	5. b	
3. c	6. b	

CHAPTER 8: REASONABLE ACCOMMODATION REQUESTS

1. b	4. d	7. d
2. b	5. a	
3. e	6. c	

CHAPTER 9: WORKING WITH ADVOCACY GROUPS

1. a	4. b	7. b	10.a
2. b	5. a	8. a and c	11.c
3. a	6. c	9. e	12.e

CHAPTER 10: PROGRAM ELEMENTS MOST COMMONLY HEARD

1. d	4. a
2. b	
3. a	

CHAPTER 11: PREPARING FOR THE HEARING

1. a	4. b
2. e	5. c
3. a	

CHAPTER 12: CONDUCTING ORDERLY HEARINGS

1. b	4. b	7. c	10.b
2. e	5. c	8. b	
3. e	6. a	9. c	

CHAPTER 13: MAKING AND WRITING THE HEARING DECISION

1. b	4. b	7. b
2. b	5. b	
3. d	6. b	

CHAPTER 14: WHAT HAPPENS AFTER THE HEARING

1. b
2. c
3. b

CHAPTER 17: SUMMARY REVIEW

1. b	4. a	7. c	10.b
2. d	5. b	8. a	11.a and d
3. c	6. b	9. a	

CHAPTER 20 References

24 CFR References

PART 1	NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964	
§1.4	Discrimination prohibited.	20-1
PART 5	GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS	
SUBPART E	Restrictions on Assistance to Noncitizens	
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SUBPART B	Admission	
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SUBPART B	Grievance Procedures and Requirements	
§966.50	Purpose and scope.	20-13
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HUD Notices & Federal Documents

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24 CFR REFERENCES

PART 1 NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

1.4 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity to which this Part 1 applies.

(b) *Specific discriminatory actions prohibited.*—(1) A recipient under any program or activity to which this Part 1 applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(i) Deny a person any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;

(ii) Provide any housing, accommodations, facilities, services, financial aid, or other benefits to a person which are different, or are provided in a different manner, from those provided to others under the program or activity;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity;

(iv) Restrict a person in any way in access to such housing, accommodations, facilities, services, financial aid, or other benefits, or in the enjoyment of any advantage or privilege enjoyed by others in connection with such housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity;

(v) Treat a person differently from others in determining whether he satisfies any occupancy, admission, enrollment, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;

(vi) Deny a person opportunity to participate in the program or activity through the provision of services or otherwise, or afford him an opportunity to do so which is different from that afforded others under the program or activity (including the opportunity to participate in the program or activity as an employee but only to the extent set forth in paragraph (c) of this section).

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2)(i) A recipient, in determining the types of housing, accommodations, facilities, services, financial aid, or other benefits which will be provided under any such program or activity, or the class of persons to whom, or the situations in which, such housing, accommodations, facilities, services, financial aid, or other benefits will be provided under any such program or activity, or the class of persons to be afforded an opportunity to participate in any such program or activity, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity as respect to persons of a particular race, color, or national origin.

(ii) A recipient, in operating low-rent housing with Federal financial assistance under the United States Housing Act of 1937, as amended (42 U.S.C. 1401 et seq.), shall assign eligible applicants to dwelling units in accordance with a plan, duly adopted by the recipient and approved by the responsible Department official, providing for assignment on a community-wide basis in sequence based upon the date and time the application is received, the size or type of unit suitable, and factors affecting preference or priority established by the recipient's regulations, which are not inconsistent with the objectives of title VI of the Civil Rights Act of 1964 and this Part 1. The plan may allow an applicant to refuse a tendered vacancy for good cause without losing his standing on the list but shall limit the number of refusals without cause as prescribed by the responsible Department official.

(iii) The responsible Department official is authorized to prescribe and promulgate plans, exceptions, procedures, and requirements for the assignment and reassignment of eligible applicants and tenants consistent with the purpose of paragraph (b)(2)(ii) of this section, this Part 1, and title VI of the Civil Rights Act of 1964, in order to effectuate and insure compliance with the requirements imposed thereunder.

(3) In determining the site or location of housing, accommodations, or facilities, an applicant or recipient may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this Part 1 applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this Part 1.

(4) As used in this Part 1 the housing, accommodations, facilities, services, financial aid, or other benefits provided under a program or activity receiving Federal financial assistance shall be deemed to include any housing, accommodations, facilities, services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in paragraphs (b) and (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program should take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

Where previous discriminatory practice or usage tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this Part 1 applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purpose of the Act.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program or activity to which this part 1 applies is to provide employment, a recipient may not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program or activity (including recruitment or recruitment advertising, employment, layoff, termination, upgrading, demotion, transfer, rates of pay or other forms of compensation and use of facilities). The requirements applicable to construction employment under such program or activity shall be those specified in or pursuant to part III of Executive Order 11246 or any executive order which supersedes or amends it.

(2) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to this part 1 tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this part 1 applies, the provisions of this paragraph (c) shall apply to the employment practices of the recipient or other persons subject to this part 1 to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

PART 5 GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

SUBPART E Restrictions on Assistance to Noncitizens¹

5.500 Applicability.

(a) *Covered programs/assistance.* This subpart E implements Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 prohibits HUD from making financial assistance available to persons who are not in eligible status with respect to citizenship or noncitizen immigration status. This subpart E is applicable to financial assistance provided under:

- (1) Section 235 of the National Housing Act (12 U.S.C. 1715z) (the Section 235 Program);
- (2) Section 236 of the National Housing Act (12 U.S.C. 1715z-1) (tenants paying below market rent only) (the Section 236 Program);
- (3) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program); and
- (4) The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) which covers:
 - (i) HUD's Public Housing Programs;
 - (ii) The Section 8 Housing Assistance Programs; and
 - (iii) The Housing Development Grant Programs (with respect to low income units only).

(b) *Covered individuals and entities.* (1) Covered individuals/persons and families. The provisions of this subpart E apply to both applicants for assistance and persons already receiving assistance covered under this subpart E.

(2) Covered entities. The provisions of this subpart E apply to Public Housing Agencies (PHAs), project (or housing) owners, and mortgagees under the Section 235 Program. The term 'responsible entity' is used in this subpart E to refer collectively to these entities, and is further defined in 5.504.

5.502 Requirements concerning documents.

For any notice or document (decision, declaration, consent form, etc.) that this subpart E requires the responsible entity to provide to an individual, or requires the responsible entity to obtain the signature of an individual, the responsible entity, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

5.504 Definitions.

(a) The definitions '1937 Act', 'HUD', 'Public Housing Agency (PHA)', and 'Section 8' are defined in subpart A of this part.

(b) As used in this subpart E:

Child means a member of the family other than the family head or spouse who is under 18 years of age.

Citizen means a citizen or national of the United States.

Evidence of citizenship or eligible status means the documents which must be submitted to evidence citizenship or eligible immigration status. (See 5.508(b).)

Family has the same meaning as provided in the program regulations of the relevant Section 214 covered program.

Head of household means the adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

Housing covered programs means the following programs administered by the Assistant Secretary for Housing: (1) Section 235 of the National Housing Act (12 U.S.C. 1715z) (the Section 235 Program); (2) Section 236 of the National Housing Act (12 U.S.C. 1715z-1) (tenants paying below market rent only) (the Section 236 Program); and (3) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program).

INS means the U.S. Immigration and Naturalization Service.¹

Mixed family means a family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

National means a person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

1. The Immigration and Naturalization Service has been renamed the U.S. Citizenship and Immigration Services (USCIS), but Subpart E has not yet been updated to reflect the change.

References

Noncitizen means a person who is neither a citizen nor national of the United States.

Project owner means the person or entity that owns the housing project containing the assisted dwelling unit.

Public Housing covered programs means the public housing programs administered by the Assistant Secretary for Public and Indian Housing under title I of the 1937 Act. This definition does not encompass HUD's Indian Housing programs administered under title II of the 1937 Act. Further, this term does not include those programs providing assistance under section 8 of the 1937 Act. (See definition of 'Section 8 Covered Programs' in this section.)

Responsible entity means the person or entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status. The entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status under the various covered programs is as follows: (1) For the Section 235 Program, the mortgagee. (2) For Public Housing, the Section 8 Rental Certificate, the Section 8 Rental Voucher, and the Section 8 Moderate Rehabilitation programs, the PHA administering the program under an ACC with HUD. (3) For all other Section 8 programs, the Section 236 Program, and the Rent Supplement Program, the owner.

Section 8 covered programs means all HUD programs which assist housing under Section 8 of the 1937 Act, including Section 8-assisted housing for which loans are made under section 202 of the Housing Act of 1959.

Section 214 means section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a).

Section 214 covered programs is the collective term for the HUD programs to which the restrictions imposed by Section 214 apply. These programs are set forth in 5.500.

Tenant means an individual or a family renting or occupying an assisted dwelling unit. For purposes of this subpart E, the term tenant will also be used to include a homebuyer, where appropriate.

5.506 General provisions.

(a) *Restrictions on assistance.* Financial assistance under a Section 214 covered program is restricted to:

(1) Citizens; or

(2) Noncitizens who have eligible immigration status under one of the categories set forth in Section 214 (see 42 U.S.C. 1436a(a)).

(b) *Family eligibility for assistance.* (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (a) of this section, or unless the family meets the conditions set forth in paragraph (b)(2) of this section.

(2) Despite the ineligibility of one or more family members, a mixed family may be eligible for one of the three types of assistance provided in 5.516 and 5.518. A family without any eligible members and receiving assistance on June 19, 1995 may be eligible for temporary deferral of termination of assistance as provided in 5.516 and 5.518.

(c) *Preferences.* Citizens of the Republic of Marshall Islands, the Federated States of Micronesia, and the Republic of Palau who are eligible for assistance under paragraph (a)(2) of this section are entitled to receive local preferences for housing assistance, except that, within Guam, such citizens who have such local preference will not be entitled to housing assistance in preference to any United States citizen or national resident therein who is otherwise eligible for such assistance.

5.508 Submission of evidence of citizenship or eligible immigration status.

(a) *General. Eligibility for assistance* or continued assistance under a Section 214 covered program is contingent upon a family's submission to the responsible entity of the documents described in paragraph (b) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the family members may exercise the election not to contend to have eligible immigration status as provided in paragraph (e) of this section, and the provisions of 5.516 and 5.518 shall apply.

(b) *Evidence of citizenship or eligible immigration status.* Each family member, regardless of age, must submit the following evidence to the responsible entity.

(1) For U.S. citizens or U.S. nationals, the evidence consists of a signed declaration of U.S. citizenship or U.S. nationality. The responsible entity may request verification of the declaration by requiring presentation of a United States passport or other appropriate documentation, as specified in HUD guidance.

(2) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on September 30, 1996 or applying for assistance on or after that date, the evidence consists of:

(i) A signed declaration of eligible immigration status; and

(ii) Proof of age document.

(3) For all other noncitizens, the evidence consists of:

(i) A signed declaration of eligible immigration status;

(ii) One of the INS documents referred to in 5.510; and

(iii) A signed verification consent form.

(c) *Declaration.* (1) For each family member who contends that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to the responsible entity a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status.

(i) For each adult, the declaration must be signed by the adult.

(ii) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) For Housing covered programs: The written declaration may be incorporated as part of the application for housing assistance or may constitute a separate document.

(d) *Verification consent form.* (1) Who signs. Each noncitizen who declares eligible immigration status (except certain noncitizens who are 62 years of age or older as described in paragraph (b)(2) of this section) must sign a verification consent form as follows.

(i) For each adult, the form must be signed by the adult.

References

- (ii) For each child, the form must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.
- (2) Notice of release of evidence by responsible entity. The verification consent form shall provide that evidence of eligible immigration status may be released by the responsible entity without responsibility for the further use or transmission of the evidence by the entity receiving it, to:
 - (i) HUD, as required by HUD; and
 - (ii) The INS for purposes of verification of the immigration status of the individual.
- (3) Notice of release of evidence by HUD. The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the INS.
- (e) *Individuals who do not contend that they have eligible status.* If one or more members of a family elect not to contend that they have eligible immigration status, and other members of the family establish their citizenship or eligible immigration status, the family may be eligible for assistance under 5.516 and 5.518, or 5.520, despite the fact that no declaration or documentation of eligible status is submitted for one or more members of the family. The family, however, must identify in writing to the responsible entity, the family member (or members) who will elect not to contend that he or she has eligible immigration status.
- (f) *Notification of requirements of Section 214.* (1) When notice is to be issued. Notification of the requirement to submit evidence of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible status as provided by paragraph (e) of this section, shall be given by the responsible entity as follows:
 - (i) Applicant's notice. The notification described in paragraph (f)(1) of this section shall be given to each applicant at the time of application for assistance. Applicants whose applications are pending on June 19, 1995, shall be notified of the requirement to submit evidence of eligible status as soon as possible after June 19, 1995.
 - (ii) Notice to tenants. The notification described in paragraph (f)(1) of this section shall be given to each tenant at the time of, and together with, the responsible entity's notice of regular reexamination of income, but not later than one year following June 19, 1995.
 - (iii) Timing of mortgagor's notice. A mortgagor receiving Section 235 assistance must be provided the notification described in paragraph (f)(1) of this section and any additional requirements imposed under the Section 235 Program.
- (2) Form and content of notice. The notice shall:
 - (i) State that financial assistance is contingent upon the submission and verification, as appropriate, of evidence of citizenship or eligible immigration status as required by paragraph (a) of this section;
 - (ii) Describe the type of evidence that must be submitted, and state the time period in which that evidence must be submitted (see paragraph (g) of this section concerning when evidence must be submitted); and
 - (iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see 5.514 concerning INS appeal, and informal hearing process) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Tenants also shall be informed of how to obtain assistance under the preservation of families provisions of 5.516 and 5.518.
- (g) *When evidence of eligible status is required to be submitted.* The responsible entity shall require evidence of eligible status to be submitted at the times specified in paragraph (g) of this section, subject to any extension granted in accordance with paragraph (h) of this section.
 - (1) Applicants. For applicants, responsible entities must ensure that evidence of eligible status is submitted not later than the date the responsible entity anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see 5.512(a)).
 - (2) Tenants. For tenants, evidence of eligible status is required to be submitted as follows:
 - (i) For financial assistance under a Section 214 covered program, with the exception of Section 235 assistance payments, the required evidence shall be submitted at the first regular reexamination after June 19, 1995, in accordance with program requirements.
 - (ii) For financial assistance in the form of Section 235 assistance payments, the mortgagor shall submit the required evidence in accordance with requirements imposed under the Section 235 Program.
 - (3) New occupants of assisted units. For any new occupant of an assisted unit (e.g., a new family member comes to reside in the assisted unit), the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.
 - (4) Changing participation in a HUD program. Whenever a family applies for admission to a Section 214 covered program, evidence of eligible status is required to be submitted in accordance with the requirements of this subpart unless the family already has submitted the evidence to the responsible entity for a Section 214 covered program.
 - (5) One-time evidence requirement for continuous occupancy. For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any Section 214 covered program.
- (h) *Extensions of time to submit evidence of eligible status.*
 - (1) When extension must be granted. The responsible entity shall extend the time, provided in paragraph (g) of this section, to submit evidence of eligible immigration status if the family member:
 - (i) Submits the declaration required under 5.508(a) certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and
 - (ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.
 - (2) Thirty-day extension period. Any extension of time, if granted, shall not exceed thirty (30) days. The additional time provided should be sufficient to allow the individual the time to obtain the evidence needed. The responsible entity's determination of the length of the extension needed shall be based on the circumstances of the individual case.

References

(3) Grant or denial of extension to be in writing. The responsible entity's decision to grant or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted (which shall not exceed thirty (30) days). If the extension is denied, the notice shall explain the reasons for denial of the extension.

5.510 Documents of eligible immigration status.

(a) *General.* A responsible entity shall request and review original documents of eligible immigration status. The responsible entity shall retain photocopies of the documents for its own records and return the original documents to the family.

(b) *Acceptable evidence of eligible immigration status.* Acceptable evidence of eligible immigration status shall be the original of a document designated by INS as acceptable evidence of immigration status in one of the six categories mentioned in 5.506(a) for the specific immigration status claimed by the individual.

5.512 Verification of eligible immigration status.

(a) *General.* Except as described in paragraph (b) of this section and 5.514, no individual or family applying for assistance may receive such assistance prior to the verification of the eligibility of at least the individual or one family member. Verification of eligibility consistent with 5.514 occurs when the individual or family members have submitted documentation to the responsible entity in accordance with 5.508.

(b) *PHA election to provide assistance before verification.* A PHA that is a responsible entity under this subpart may elect to provide assistance to a family before the verification of the eligibility of the individual or one family member.

(c) *Primary verification.* (1) Automated verification system. Primary verification of the immigration status of the person is conducted by the responsible entity through the INS automated system (INS Systematic Alien Verification for Entitlements (SAVE)). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(2) Failure of primary verification to confirm eligible immigration status. If the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(d) *Secondary verification.* (1) Manual search of INS records. Secondary verification is a manual search by the INS of its records to determine an individual's immigration status. The responsible entity must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if the primary verification system verifies immigration status that is ineligible for assistance under a Section 214 covered program.

(2) Secondary verification initiated by responsible entity. Secondary verification is initiated by the responsible entity forwarding photocopies of the original INS documents required for the immigration status declared (front and back), attached to the INS document verification request form G-845S (Document Verification Request), or such other form specified by the INS to a designated INS office for review. (Form G-845S is available from the local INS Office.)

(3) Failure of secondary verification to confirm eligible immigration status. If the secondary verification does not confirm eligible immigration status, the responsible entity shall issue to the family the notice described in 5.514(d), which includes notification of the right to appeal to the INS of the INS finding on immigration status (see 5.514(d)(4)).

(e) *Exemption from liability for INS verification.* The responsible entity shall not be liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

5.514 Delay, denial, reduction or termination of assistance.

(a) *General.* Assistance to a family may not be delayed, denied, reduced or terminated because of the immigration status of a family member except as provided in this section.

(b) *Restrictions on delay, denial, reduction or termination of assistance.* (1) Restrictions on reduction, denial or termination of assistance for applicants and tenants. Assistance to an applicant or tenant shall not be delayed, denied, reduced, or terminated, on the basis of ineligible immigration status of a family member if:

- (i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;
- (ii) The family member for whom required evidence has not been submitted has moved from the assisted dwelling unit;
- (iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the assisted dwelling unit;
- (iv) The INS appeals process under 5.514(e) has not been concluded;
- (v) Assistance is prorated in accordance with 5.520; or
- (vi) Assistance for a mixed family is continued in accordance with 5.516 and 5.518; or
- (vii) Deferral of termination of assistance is granted in accordance with 5.516 and 5.518.

(2) Restrictions on delay, denial, reduction or termination of assistance pending fair hearing for tenants. In addition to the factors listed in paragraph (b)(1) of this section, assistance to a tenant cannot be delayed, denied, reduced or terminated until the completion of the informal hearing described in paragraph (f) of this section.

(c) *Events causing denial or termination of assistance.* (1) General. Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(i) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in 5.508(g) or by the expiration of any extension granted in accordance with 5.508(h);

(ii) Evidence of citizenship and eligible immigration status is timely submitted, but INS primary and secondary verification does not verify eligible immigration status of a family member; and

(A) The family does not pursue INS appeal or informal hearing rights as provided in this section; or

(B) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member; or

References

(iii) The responsible entity determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the public or assisted housing unit of the family member. Such termination shall be for a period of not less than 24 months. This provision does not apply to a family if the ineligibility of the ineligible individual was considered in calculating any proration of assistance provided for the family.

(2) Termination of assisted occupancy. For termination of assisted occupancy, see paragraph (i) of this section.

(d) *Notice of denial or termination of assistance.* The notice of denial or termination of assistance shall advise the family:

(1) That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(2) That the family may be eligible for proration of assistance as provided under 5.520;

(3) In the case of a tenant, the criteria and procedures for obtaining relief under the provisions for preservation of families in 5.514 and 5.518;

(4) That the family has a right to request an appeal to the INS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal in accordance with the procedures of paragraph (e) of this section;

(5) That the family has a right to request an informal hearing with the responsible entity either upon completion of the INS appeal or in lieu of the INS appeal as provided in paragraph (f) of this section;

(6) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the informal hearing process.

(e) *Appeal to the INS.* (1) Submission of request for appeal. Upon receipt of notification by the responsible entity that INS secondary verification failed to confirm eligible immigration status, the responsible entity shall notify the family of the results of the INS verification, and the family shall have 30 days from the date of the responsible entity's notification, to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the responsible entity with a copy of the written request for appeal and proof of mailing.

(2) Documentation to be submitted as part of appeal to INS. The family shall forward to the designated INS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the INS document verification request form G-845S (used to process the secondary verification request) or such other form specified by the INS, and a cover letter indicating that the family is requesting an appeal of the INS immigration status verification results.

(3) Decision by INS. (i) When decision will be issued. The INS will issue to the family, with a copy to the responsible entity, a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS is unable to issue a decision within the 30 day time period, the INS will inform the family and responsible entity of the reasons for the delay.

(ii) Notification of INS decision and of informal hearing procedures. When the responsible entity receives a copy of the INS decision, the responsible entity shall notify the family of its right to request an informal hearing on the responsible entity's ineligibility determination in accordance with the procedures of paragraph (f) of this section.

(4) No delay, denial, reduction, or termination of assistance until completion of INS appeal process; direct appeal to INS. Pending the completion of the INS appeal under this section, assistance may not be delayed, denied, reduced or terminated on the basis of immigration status.

(f) *Informal hearing.* (1) When request for hearing is to be made. After notification of the INS decision on appeal, or in lieu of request of appeal to the INS, the family may request that the responsible entity provide a hearing. This request must be made either within 30 days of receipt of the notice described in paragraph (d) of this section, or within 30 days of receipt of the INS appeal decision issued in accordance with paragraph (e) of this section.

(2) Informal hearing procedures. (i) Tenants assisted under a Section 8 covered program: For tenants assisted under a Section 8 covered program, the procedures for the hearing before the responsible entity are set forth in:

(A) For Section 8 Moderate Rehabilitation assistance: 24 CFR part 882;

(B) For Section 8 tenant-based assistance: 24 CFR part 982; or

(C) For Section 8 project-based certificate program: 24 CFR part 983.

(ii) Tenants assisted under any other Section 8 covered program or a Public Housing covered program: For tenants assisted under a Section 8 covered program not listed in paragraph (f)(3)(i) of this section or a Public Housing covered program, the procedures for the hearing before the responsible entity are set forth in 24 CFR part 966.

(iii) Families under Housing covered programs and applicants for assistance under all covered programs. For all families under Housing covered programs (applicants as well as tenants already receiving assistance) and for applicants for assistance under all covered programs, the procedures for the informal hearing before the responsible entity are as follows:

(A) Hearing before an impartial individual. The family shall be provided a hearing before any person(s) designated by the responsible entity (including an officer or employee of the responsible entity), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

(B) Examination of evidence. The family shall be provided the opportunity to examine and copy at the individual's expense, at a reasonable time in advance of the hearing, any documents in the possession of the responsible entity pertaining to the family's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;

(C) Presentation of evidence and arguments in support of eligible status. The family shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

(D) Controverting evidence of the responsible entity. The family shall be provided the opportunity to controvert evidence relied upon by the responsible entity and to confront and cross-examine all witnesses on whose testimony or information the responsible entity relies;

(E) Representation. The family shall be entitled to be represented by an attorney, or other designee, at the family's expense, and to have such person make statements on the family's behalf;

(F) Interpretive services. The family shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or responsible entity, as may be agreed upon by the two parties to the proceeding; and

(G) Hearing to be recorded. The family shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to, be provided by the responsible entity).

(3) Hearing decision. The responsible entity shall provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 days of the date of the informal hearing. The decision shall state the basis for the decision.

(g) *Judicial relief.* A decision against a family member, issued in accordance with paragraphs (e) or (f) of this section, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(h) *Retention of documents.* The responsible entity shall retain for a minimum of 5 years the following documents that may have been submitted to the responsible entity by the family, or provided to the responsible entity as part of the INS appeal or the informal hearing process:

- (1) The application for financial assistance;
- (2) The form completed by the family for income reexamination;
- (3) Photocopies of any original documents (front and back), including original INS documents;
- (4) The signed verification consent form;
- (5) The INS verification results;
- (6) The request for an INS appeal;
- (7) The final INS determination;
- (8) The request for an informal hearing; and
- (9) The final informal hearing decision.

(i) Termination of assisted occupancy.

(1) Under Housing covered programs, and in the Section 8 covered programs other than the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation programs, assisted occupancy is terminated by:

(i) If permitted under the lease, the responsible entity notifying the tenant that because of the termination of assisted occupancy the tenant is required to pay the HUD-approved market rent for the dwelling unit.

(ii) The responsible entity and tenant entering into a new lease without financial assistance.

(iii) The responsible entity evicting the tenant. While the tenant continues in occupancy of the unit, the responsible entity may continue to receive assistance payments if action to terminate the tenancy under an assisted lease is promptly initiated and diligently pursued, in accordance with the terms of the lease, and if eviction of the tenant is undertaken by judicial action pursuant to State and local law. Action by the responsible entity to terminate the tenancy and to evict the tenant must be in accordance with applicable HUD regulations and other HUD requirements. For any jurisdiction, HUD may prescribe a maximum period during which assistance payments may be continued during eviction proceedings and may prescribe other standards of reasonable diligence for the prosecution of eviction proceedings.

(2) In the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation programs, assisted occupancy is terminated by terminating assistance payments. (See provisions of this section concerning termination of assistance.) The PHA shall not make any additional assistance payments to the owner after the required procedures specified in this section have been completed. In addition, the PHA shall not approve a lease, enter into an assistance contract, or process a portability move for the family after those procedures have been completed.

5.516 Availability of preservation assistance to mixed families and other families.

(a) *Assistance available for tenant mixed families.* (1) General. Preservation assistance is available to tenant mixed families, following completion of the appeals and informal hearing procedures provided in 5.514. There are three types of preservation assistance:

- (i) Continued assistance (see paragraph (a) of 5.518);
- (ii) Temporary deferral of termination of assistance (see paragraph (b) of 5.518); or
- (iii) Prorated assistance (see 5.520, a mixed family must be provided prorated assistance if the family so requests).

(2) Availability of assistance.

(i) For Housing covered programs: One of the three types of assistance described is available to tenant mixed families assisted under a National Housing Act or 1965 HUD Act covered program, depending upon the family's eligibility for such assistance. Continued assistance must be provided to a mixed family that meets the conditions for eligibility for continued assistance.

(ii) For Section 8 or Public Housing covered programs. One of the three types of assistance described may be available to tenant mixed families assisted under a Section 8 or Public Housing covered program.

(b) *Assistance available for applicant mixed families.* Prorated assistance is also available for mixed families applying for assistance as provided in 5.520.

References

(c) *Assistance available to other families in occupancy.* Temporary deferral of termination of assistance may be available to families receiving assistance under a Section 214 covered program on June 19, 1995, and who have no members with eligible immigration status, as set forth in paragraphs (c)(1) and (2) of this section.

(1) For Housing covered programs: Temporary deferral of termination of assistance is available to families assisted under a Housing covered program.

(2) For Section 8 or Public Housing covered programs: The responsible entity may make temporary deferral of termination of assistance to families assisted under a Section 8 or Public Housing covered program.

(d) *Section 8 covered programs:* Discretion afforded to provide certain family preservation assistance.

(1) Project owners. With respect to assistance under a Section 8 Act covered program administered by a project owner, HUD has the discretion to determine under what circumstances families are to be provided one of the two statutory forms of assistance for preservation of the family (continued assistance or temporary deferral of assistance). HUD is exercising its discretion by specifying the standards in this section under which a project owner must provide one of these two types of assistance to a family. However, project owners and PHAs must offer prorated assistance to eligible mixed families.

(2) PHAs. The PHA, rather than HUD, has the discretion to determine the circumstances under which a family will be offered one of the two statutory forms of assistance (continued assistance or temporary deferral of termination of assistance). The PHA must establish its own policy and criteria to follow in making its decision. In establishing the criteria for granting continued assistance or temporary deferral of termination of assistance, the PHA must incorporate the statutory criteria, which are set forth in paragraphs (a) and (b) of 5.518. However, the PHA must offer prorated assistance to eligible families.

5.518 Types of preservation assistance available to mixed families and other families.

(a) *Continued assistance.* (1) General. A mixed family may receive continued housing assistance if all of the following conditions are met (a mixed family assisted under a Housing covered program must be provided continued assistance if the family meets the following conditions):

(i) The family was receiving assistance under a Section 214 covered program on June 19, 1995;

(ii) The family's head of household or spouse has eligible immigration status as described in 5.506; and

(iii) The family does not include any person (who does not have eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(2) Proration of continued assistance. A family entitled to continued assistance before November 29, 1996 is entitled to continued assistance as described in paragraph (a) of this section. A family entitled to continued assistance after November 29, 1996 shall receive prorated assistance as described in 5.520.

(b) *Temporary deferral of termination of assistance.* (1) Eligibility for this type of assistance. If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(2) Housing covered programs: Conditions for granting temporary deferral of termination of assistance. The responsible entity shall grant a temporary deferral of termination of assistance to a mixed family if the family is assisted under a Housing covered program and one of the following conditions is met:

(i) The family demonstrates that reasonable efforts to find other affordable housing of appropriate size have been unsuccessful (for purposes of this section, reasonable efforts include seeking information from, and pursuing leads obtained from the State housing agency, the city government, local newspapers, rental agencies and the owner);

(ii) The vacancy rate for affordable housing of appropriate size is below five percent in the housing market for the area in which the project is located; or

(iii) The consolidated plan, as described in 24 CFR part 91 and if applicable to the covered program, indicates that the local jurisdiction's housing market lacks sufficient affordable housing opportunities for households having a size and income similar to the family seeking the deferral.

(3) Time limit on deferral period. If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period for deferrals provided after November 29, 1996 shall not exceed a period of eighteen months. The aggregate deferral period for deferrals granted prior to November 29, 1996 shall not exceed 3 years. These time periods do not apply to a family which includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act.

(4) Notification requirements for beginning of each deferral period. At the beginning of each deferral period, the responsible entity must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(5) Determination of availability of affordable housing at end of each deferral period.

(i) Before the end of each deferral period, the responsible entity must satisfy the applicable requirements of either paragraph (b)(5)(i)(A) or (B) of this section. Specifically, the responsible entity must:

References

(A) For Housing covered programs: Make a determination that one of the two conditions specified in paragraph (b)(2) of this section continues to be met (note: affordable housing will be determined to be available if the vacancy rate is five percent or greater), the owner's knowledge and the tenant's evidence indicate that other affordable housing is available; or

(B) For Section 8 or Public Housing covered programs: Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply of affordable housing for the area in which the project is located, the consolidated plan (if applicable, as described in 24 CFR part 91), the responsible entity's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing.

(ii) The responsible entity must also:

(A) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceeds the maximum deferral period). This time period does not apply to a family which includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act, and a determination was made that other affordable housing is not available; or

(B) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed the maximum deferral period (unless the family includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act), or a determination has been made that other affordable housing is available.

(c) *Option to select proration of assistance at end of deferral period.* A family who is eligible for, and receives temporary deferral of termination of assistance, may request, and the responsible entity shall provide proration of assistance at the end of the deferral period if the family has made a good faith effort during the deferral period to locate other affordable housing.

(d) *Notification of decision on family preservation assistance.* A responsible entity shall notify the family of its decision concerning the family's qualification for family preservation assistance. If the family is ineligible for family preservation assistance, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the family of any applicable appeal rights.

5.520 Proration of assistance.

(a) *Applicability.* This section applies to a mixed family other than a family receiving continued assistance, or other than a family who is eligible for and requests and receives temporary deferral of termination of assistance. An eligible mixed family who requests prorated assistance must be provided prorated assistance.

(b) *Method of prorating assistance for Housing covered programs.*

(1) Proration under Rent Supplement Program. If the household participates in the Rent Supplement Program, the rent supplement paid on the household's behalf shall be the rent supplement the household would otherwise be entitled to, multiplied by a fraction, the denominator of which is the number of people in the household and the numerator of which is the number of eligible persons in the household;

(2) Proration under Section 235 Program. If the household participates in the Section 235 Program, the interest reduction payments paid on the household's behalf shall be the payments the household would otherwise be entitled to, multiplied by a fraction the denominator of which is the number of people in the household and the numerator of which is the number of eligible persons in the household;

(3) Proration under Section 236 Program without the benefit of additional assistance. If the household participates in the Section 236 Program without the benefit of any additional assistance, the household's rent shall be increased above the rent the household would otherwise pay by an amount equal to the difference between the market rate rent for the unit and the rent the household would otherwise pay multiplied by a fraction the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household;

(4) Proration under Section 236 Program with the benefit of additional assistance. If the household participates in the Section 236 Program with the benefit of additional assistance under the rent supplement, rental assistance payment or Section 8 programs, the household's rent shall be increased above the rent the household would otherwise pay by:

(i) An amount equal to the difference between the market rate rent for the unit and the basic rent for the unit multiplied by a fraction, the denominator of which is the number of people in the household, and the numerator of which is the number of ineligible persons in the household, plus;

(ii) An amount equal to the rent supplement, housing assistance payment or rental assistance payment the household would otherwise be entitled to multiplied by a fraction, the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household.

(c) *Method of prorating assistance for Section 8 covered programs.* (1) Section 8 assistance other than assistance provided for a tenancy under the Section 8 Rental Voucher Program or for an over-FMR tenancy in the Section 8 Rental Certificate Program. For Section 8 assistance other than assistance for a tenancy under the voucher program or an over-FMR tenancy under the certificate program, the PHA must prorate the family's assistance as follows:

(i) Step 1. Determine gross rent for the unit. (Gross rent is contract rent plus any allowance for tenant paid utilities).

(ii) Step 2. Determine total tenant payment in accordance with section 5.613(a). (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(iii) Step 3. Subtract amount determined in paragraph (c)(1)(ii), (Step 2), from amount determined in paragraph (c)(1)(i), (Step 1).

(iv) Step 4. Multiply the amount determined in paragraph (c)(1)(iii), (Step 3) by a fraction for which:

(A) The numerator is the number of family members who have established eligible immigration status; and

References

- (B) The denominator is the total number of family members.
- (v) Prorated housing assistance. The amount determined in paragraph (c)(1)(iv), (Step 4) is the prorated housing assistance payment for a mixed family.
- (vi) No effect on contract rent. Proration of the housing assistance payment does not affect contract rent to the owner. The family must pay as rent the portion of contract rent not covered by the prorated housing assistance payment.
- (2) Assistance for a Section 8 voucher tenancy or over-FMR tenancy. For a tenancy under the voucher program or for an over-FMR tenancy under the certificate program, the PHA must prorate the family's assistance as follows:
 - (i) Step 1. Determine the amount of the pre-proration housing assistance payment. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)
 - (ii) Step 2. Multiply the amount determined in paragraph (c)(2)(i), (Step 1) by a fraction for which:
 - (A) The numerator is the number of family members who have established eligible immigration status; and
 - (B) The denominator is the total number of family members.
 - (iii) Prorated housing assistance. The amount determined in paragraph (c)(2)(ii), (Step 2) is the prorated housing assistance payment for a mixed family.

(iv) No effect on rent to owner. Proration of the housing assistance payment does not affect rent to owner. The family must pay the portion of rent to owner not covered by the prorated housing assistance payment.

(d) *Method of prorating assistance for Public Housing covered programs.* The PHA must prorate the family's assistance, except as provided in §960.507 of this title, as follows:

(1) Step 1. Determining total tenant payment in accordance with 24 CFR 913.107(a). (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(2) Step 2. Subtracting the total tenant payment from a HUD-supplied 'public housing maximum rent' applicable to the unit or the PHA. (This 'maximum rent' shall be determined by HUD using the 95th percentile rent for the PHA.) The result is the maximum subsidy for which the family could qualify if all members were eligible ('family maximum subsidy').

(3) Step 3. Dividing the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has citizenship or eligible immigration status ('eligible family member'). The subsidy per eligible family member is the 'member maximum subsidy'.

(4) Step 4. Multiplying the member maximum subsidy by the number of family members who have citizenship or eligible immigration status ('eligible family members').

(5) Step 5. The product of steps 1 through 4, as set forth in paragraph (d)(2) of this section is the amount of subsidy for which the family is eligible ('eligible subsidy'). The family's rent is the 'public housing maximum rent' minus the amount of the eligible subsidy.

5.522 Prohibition of assistance to noncitizen students.

(a) *General.* The provisions of 5.516 and 5.518 permitting continued assistance or temporary deferral of termination of assistance for certain families do not apply to any person who is determined to be a noncitizen student as in paragraph (c)(2)(A) of Section 214 (42 U.S.C. 1436a(c)(2)(A)). The family of a noncitizen student may be eligible for prorated assistance, as provided in paragraph (b)(2) of this section.

(b) *Family of noncitizen students.* (1) The prohibition on providing assistance to a noncitizen student as described in paragraph (a) of this section extends to the noncitizen spouse of the noncitizen student and minor children accompanying the student or following to join the student.

(2) The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

5.524 Compliance with nondiscrimination requirements.

The responsible entity shall administer the restrictions on use of assisted housing by noncitizens with ineligible immigration status imposed by this part in conformity with all applicable nondiscrimination and equal opportunity requirements, including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-5) and the implementing regulations in 24 CFR part 1, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations in 24 CFR part 8, the Fair Housing Act (42 U.S.C. 3601-3619) and the implementing regulations in 24 CFR part 100.

5.526 Protection from liability for responsible entities and State and local government agencies and officials.

(a) *Protection from liability for responsible entities.* Responsible entities are protected from liability as set forth in Section 214(e) (42 U.S.C 1436a(e)).

(b) *Protection from liability for State and local government agencies and officials.* State and local government agencies and officials shall not be liable for the design or implementation of the verification system described in 5.512, as long as the implementation by the State and local government agency or official is in accordance with prescribed HUD rules and requirements.

5.528 Liability of ineligible tenants for reimbursement of benefits.

Where a tenant has received the benefit of HUD financial assistance to which the tenant was not entitled because the tenant intentionally misrepresented eligible status, the ineligible tenant is responsible for reimbursing HUD for the assistance improperly paid. If the amount of the assistance is substantial, the responsible entity is encouraged to refer the case to the HUD Inspector General's office for further investigation. Possible criminal prosecution may follow based on the False Statements Act (18 U.S.C. 1001 and 1010).

SUBPART J Access to Criminal Records and Information

5.903 What special authority is there to obtain access to criminal records?

(a) Authority. If you are a PHA that administers the Section 8 program and/ or the public housing program, this section authorizes you to obtain criminal conviction records from a law enforcement agency, as defined in 5.902. You may use the criminal conviction records that you obtain from a law enforcement agency under the authority of this section to screen applicants for admission to covered housing programs and for lease enforcement or eviction of families residing in public housing or receiving Section 8 project-based assistance.

(b) Consent for release of criminal conviction records. (1) In order to obtain access to records under this section, as a responsible entity you must require every applicant family to submit a consent form signed by each adult household member.

(2) By execution of the consent form, an adult household member consents that:

(i) Any law enforcement agency may release criminal conviction records concerning the household member to a PHA in accordance with this section;

(ii) The PHA may receive the criminal conviction records from a law enforcement agency, and may use the records in accordance with this section.

(c) Procedure for PHA. (1) When the law enforcement agency receives your request, the law enforcement agency must promptly release to you a certified copy of any criminal conviction records concerning the household member in the possession or control of the law enforcement agency. NCIC records must be provided in accordance with NCIC procedures.

(2) The law enforcement agency may charge you a reasonable fee for releasing criminal conviction records.

(d) Owner access to criminal records.—(1) General. (i) If an owner submits a request to the PHA for criminal records concerning an adult member of an applicant or resident household, in accordance with the provisions of paragraph (d) of this section, the PHA must request the criminal conviction records from the appropriate law enforcement agency or agencies, as determined by the PHA.

(ii) If the PHA receives criminal conviction records requested by an owner, the PHA must determine whether criminal action by a household member, as shown by such criminal conviction records, may be a basis for applicant screening, lease enforcement or eviction, as applicable in accordance with HUD regulations and the owner criteria.

(iii) The PHA must notify the owner whether the PHA has received criminal conviction records concerning the household member, and of its determination whether such criminal conviction records may be a basis for applicant screening, lease enforcement or eviction. However, except as provided in paragraph (e)(2)(ii) of this section, the PHA must not disclose the household member's criminal conviction record or the content of that record to the owner.

(2) Screening. If you are an owner of covered housing, you may request that the PHA in the jurisdiction of the property obtain criminal conviction records of an adult household member from a law enforcement agency on your behalf for the purpose of screening applicants.

(i) Your request must include a copy of the consent form, signed by the household member.

(ii) Your request must include your standards for prohibiting admission of drug criminals in accordance with 5.854, and for prohibiting admission of other criminals in accordance with 5.855.

(3) Eviction or lease enforcement. If you are an owner of a unit with Section 8 project-based assistance, you may request that the PHA in the location of the project obtain criminal conviction records of a household member from an appropriate law enforcement agency on your behalf in connection with lease enforcement or eviction.

(i) Your request must include a copy of the consent form, signed by the household member. (ii) If you intend to use the PHA determination regarding any such criminal conviction records in connection with eviction, your request must include your standards for evicting drug criminals in accordance with 5.857, and for evicting other criminals in accordance with 5.858.

(iii) If you intend to use the PHA determination regarding any such criminal conviction records for lease enforcement other than eviction, your request must include your standards for lease enforcement because of criminal activity by members of a household.

(4) Fees. If an owner requests a PHA to obtain criminal conviction records in accordance with this section, the PHA may charge the owner reasonable fees for making the request on behalf of the owner and for taking other actions for the owner. The PHA may require the owner to reimburse costs incurred by the PHA, including reimbursement of any fees charged to the PHA by the law enforcement agency, the PHA's own related staff and administrative costs. The owner may not pass along to the applicant or tenant the costs of a criminal records check.

(e) Permitted use and disclosure of criminal conviction records received by PHA—(1) Use of records. Criminal conviction records received by a PHA from a law enforcement agency in accordance with this section may only be used for the following purposes:

(i) Applicant screening. (A) PHA screening of applicants for admission to public housing (part 960 of this title); (B) PHA screening of applicants for admission to the Housing Choice Voucher Program (section 8 tenant-based assistance) (part 982 of this title);

(C) PHA screening of applicants for admission to the Section 8 moderate rehabilitation program (part 882 of this title); or the Section 8 project-based certificate or project-based voucher program (part 983 of this title); or

(D) PHA screening concerning criminal conviction of applicants for admission to Section 8 project-based assistance, at the request of the owner. (For requirements governing use of criminal conviction records obtained by a PHA at the request of a Section 8 owner under this section, see paragraph (d) of this section.)

(ii) Lease enforcement and eviction.

(A) PHA enforcement of public housing leases and PHA eviction of public housing residents;

(B) Enforcement of leases by a Section 8 project owner and eviction of residents by a Section 8 project owner. (However, criminal conviction records received by a PHA from a law enforcement agency under this section may not be used for lease enforcement or eviction of residents receiving Section 8 tenant-based assistance.)

References

(2) PHA disclosure of records. (i) A PHA may disclose the criminal conviction records which the PHA receives from a law enforcement agency only as follows:

(A) To officers or employees of the PHA, or to authorized representatives of the PHA who have a job-related need to have access to the information. For example, if the PHA is seeking to evict a public housing tenant on the basis of criminal activity as shown in criminal conviction records provided by a law enforcement agency, the records may be disclosed to PHA employees performing functions related to the eviction, or to a PHA hearing officer conducting an administrative grievance hearing concerning the proposed eviction.

(B) To the owner for use in connection with judicial eviction proceedings by the owner to the extent necessary in connection with a judicial eviction proceeding. For example, criminal conviction records may be included in pleadings or other papers filed in an eviction action, may be disclosed to parties to the action or the court, and may be filed in court or offered as evidence.

(ii) This disclosure may be made only if the following conditions are satisfied:

(A) If the PHA has determined that criminal activity by the household member as shown by such records received from a law enforcement agency may be a basis for eviction from a Section 8 unit; and

(B) If the owner certifies in writing that it will use the criminal conviction records only for the purpose and only to the extent necessary to seek eviction in a judicial proceeding of a Section 8 tenant based on the criminal activity by the household member that is described in the criminal conviction records.

(iii) The PHA may rely on an owner's certification that the criminal record is necessary to proceed with a judicial eviction to evict the tenant based on criminal activity of the identified household member, as shown in the criminal conviction record.

(iv) Upon disclosure as necessary in connection with judicial eviction proceedings, the PHA is not responsible for controlling access to or knowledge of such records after such disclosure.

(f) Opportunity to dispute. If a PHA obtains criminal record information from a State or local agency under this section showing that a household member has been convicted of a crime relevant to applicant screening, lease enforcement or eviction, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the applicant or tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information. This opportunity must be provided before a denial of admission, eviction or lease enforcement action on the basis of such information.

(g) Records management. Consistent with the limitations on disclosure of records in paragraph (e) of this section, the PHA must establish and implement a system of records management that ensures that any criminal record received by the PHA from a law enforcement agency is:

(1) Maintained confidentially;

(2) Not misused or improperly disseminated; and

(3) Destroyed, once the purpose(s) for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation.

(h) Penalties for improper release of information.—(1) Criminal penalty. Conviction for a misdemeanor and imposition of a penalty of not more than \$5,000 is the potential for: (i) Any person, including an officer, employee, or authorized representative of any PHA or of any project owner, who knowingly and willfully requests or obtains any information concerning an applicant for, or tenant of, covered housing assistance under the authority of this section under false pretenses; or

(ii) Any person, including an officer, employee, or authorized representative of any PHA or a project owner, who knowingly and willfully discloses any such information in any manner to any individual not entitled under any law to receive the information.

(2) Civil liability. (i) A PHA may be held liable to any applicant for, or tenant of, covered housing assistance affected by either of the following: (A) A negligent or knowing disclosure of criminal records information obtained under the authority of this section about such person by an officer, employee, or authorized representative of the PHA if the disclosure is not authorized by this section; or

(B) Any other negligent or knowing action that is inconsistent with this section.

(ii) An applicant for, or tenant of, covered housing assistance may seek relief against a PHA in these circumstances by bringing a civil action for damages and such other relief as may be appropriate against the PHA responsible for such unauthorized action. The United States district court in which the affected applicant or tenant resides, in which the unauthorized action occurred, or in which the officer, employee, or representative alleged to be responsible resides, has jurisdiction. Appropriate relief may include reasonable attorney's fees and other litigation costs.

PART 960 ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

SUBPART B Admission

960.208 Notification to applicants.

(a) The PHA must promptly notify any applicant determined to be ineligible for admission to a project of the basis for such determination, and must provide the applicant upon request, within a reasonable time after the determination is made, with an opportunity for an informal hearing on such determination.

(b) When a determination has been made that an applicant is eligible and satisfies all requirements for admission, including the tenant selection criteria, the applicant must be notified of the approximate date of occupancy insofar as that date can be reasonably determined.

PART 966 PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE

966.4 Lease Requirements.

(I)(5)(vii)(B)*Consideration of circumstances.* In a manner consistent with such policies, procedures and practices, the PHA may consider all circumstances relevant to a particular case such as the seriousness of the offending action, the extent of participation by the leaseholder in the offending action, the effects that the eviction would have on family members not involved in the offending activity and the extent to which the leaseholder has shown personal responsibility and has taken all reasonable steps to prevent or mitigate the offending action.

(C) *Exclusion of culpable household member.* The PHA may require a tenant to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

(D) *Consideration of rehabilitation.* In determining whether to terminate tenancy for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or a pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the PHA may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13662). For this purpose, the PHA may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

SUBPART B Grievance Procedures and Requirements

966.50 Purpose and scope.

The purpose of this subpart is to set forth the requirements, standards and criteria for a grievance procedure to be established and implemented by public housing agencies (PHAs) to assure that a PHA tenant is afforded an opportunity for a hearing if the tenant disputes within a reasonable time any PHA action or failure to act involving the tenant's lease with the PHA or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status.

966.51 Applicability.

(a)(1) The PHA grievance procedure shall be applicable (except as provided in paragraph (a)(2) of this section) to all individual grievances as defined in §966.53 of this subpart between the tenant and the PHA.

(2)(i) The term due process determination means a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process (as defined in §966.53(c)) before eviction from the dwelling unit. If HUD has issued a due process determination, a PHA may exclude from the PHA administrative grievance procedure under this subpart any grievance concerning a termination of tenancy or eviction that involves:

(A) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PHA;

(B) Any violent or drug-related criminal activity on or off such premises; or

(C) Any criminal activity that resulted in felony conviction of a household member.

(iii) For guidance of the public, HUD will publish in the Federal Register a notice listing the judicial eviction procedures for which HUD has issued a due process determination. HUD will make available for public inspection and copying a copy of the legal analysis on which the determinations are based.

(iv) If HUD has issued a due process determination, the PHA may evict the occupants of the dwelling unit through the judicial eviction procedures which are the subject of the determination. In this case, the PHA is not required to provide the opportunity for a hearing under the PHA's administrative grievance procedure.

(b) The PHA grievance procedure shall not be applicable to disputes between tenants not involving the PHA or to class grievances. The grievance procedure is not intended as a forum for initiating or negotiating policy changes between a group or groups of tenants and the PHA's Board of Commissioners

966.52 Requirements.

(a) Each PHA shall adopt a grievance procedure affording each tenant an opportunity for a hearing on a grievance as defined in §966.53 in accordance with the requirements, standards, and criteria contained in this subpart. A PHA may establish an expedited grievance procedure as defined in §966.53.

(b) The PHA grievance procedure shall be included in, or incorporated by reference in, all tenant dwelling leases pursuant to subpart A of this part.

(c) The PHA shall provide at least 30 days notice to tenants and resident organizations setting forth proposed changes in the PHA grievance procedure, and providing an opportunity to present written comments. Subject to requirements of this subpart, comments submitted shall be considered by the PHA before adoption of any grievance procedure changes by the PHA.

(d) The PHA shall furnish a copy of the grievance procedure to each tenant and to resident organizations.

(e) The PHA must not only meet the minimal procedural due process requirements contained in this subpart but also satisfy any additional requirements required by local, state, or federal law.

966.53 Definitions.

For the purpose of this subpart, the following definitions are applicable:

- (a) Grievance shall mean any dispute which a tenant may have with respect to PHA action or failure to act in accordance with the individual tenant's lease or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status.
- (b) Complainant shall mean any tenant whose grievance is presented to the PHA or at the project management office.
- (c) Elements of due process shall mean an eviction action or a termination of tenancy in a State or local court in which the following procedural safeguards are required:
 - (1) Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction;
 - (2) Right of the tenant to be represented by counsel;
 - (3) Opportunity for the tenant to refute the evidence presented by the PHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have;
 - (4) A decision on the merits.
- (d) Expedited grievance means a procedure established by the PHA for any grievance concerning a termination of tenancy or eviction that involves:
 - (1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA; or
 - (2) Any drug-related or violent criminal activity on or off such premises.
- (e) Hearing officer means an impartial person or persons selected by the PHA, other than the person who made or approved the decision under review, or a subordinate of that person. Such individual or individuals do not need legal training. PHAs must describe their policies for selection of a hearing officer in their lease forms as required by §966.4, changes to which are subject to a 30-day comment period as described in §966.3.
- (f) Tenant shall mean the adult person (or persons) (other than a live-in aide):
 - (1) Who resides in the unit, and who executed the lease with the PHA as lessee of the dwelling unit, or, if no such person now resides in the unit,
 - (2) Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit.
- (g) Resident organization includes a resident management corporation.

966.54 Informal settlement of grievance.

Any grievance shall be personally presented, either orally or in writing, to the PHA office or to the office of the project in which the complainant resides so that the grievance may be discussed informally and settled without a hearing. A summary of such discussion shall be prepared within a reasonable time and one copy shall be given to the tenant and one retained in the PHA's tenant file. The summary shall specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefor, and shall specify the procedures by which a hearing may be obtained if the complainant is not satisfied.

966.56 Procedures governing the hearing.

- (a) The hearing must be scheduled promptly for a time and place reasonably convenient to both the complainant and the PHA and held before a hearing officer. A written notification specifying the time, place, and the procedures governing the hearing must be delivered to the complainant and the appropriate official.
- (b) The complainant shall be afforded a fair hearing, which shall include:
 - (1) The opportunity to examine before the grievance hearing any PHA documents, including records and regulations, that are directly relevant to the hearing. (For a grievance hearing concerning a termination of tenancy or eviction, see also §966.4(m).) The tenant shall be allowed to copy any such document at the tenant's expense. If the PHA does not make the document available for examination upon request by the complainant, the PHA may not rely on such document at the grievance hearing.
 - (2) The right to be represented by counsel or other person chosen as the tenant's representative and to have such person make statements on the tenant's behalf;
 - (3) The right to a private hearing unless the complainant requests a public hearing;
 - (4) The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by the PHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the PHA or project management relies; and
 - (5) A decision based solely and exclusively upon the facts presented at the hearing.
- (c) If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for no more than 5 business days or may make a determination that the party has waived his right to a hearing. Both the complainant and the PHA must be notified of the determination by the hearing officer. A determination that the complainant has waived the complainant's right to a hearing will not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in an appropriate judicial proceeding.
- (d) At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the PHA must sustain the burden of justifying the PHA action or failure to act against which the complaint is directed.
- (e) The complainant or the PHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript.
- (f) Accommodation of persons with disabilities. (1) The PHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.

References

(2) If the tenant is visually impaired, any notice to the tenant which is required under this subpart must be in an accessible format.

(g) Limited English Proficiency. PHAs must comply with HUD's "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" issued on January 22, 2007 and available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/promotingfh/lep-faq.

966.57 Decision of the hearing officer or hearing panel.

(a) The hearing officer must prepare a written decision, including the reasons for the PHA's decision within a reasonable time after the hearing. A copy of the decision must be sent to the complainant and the PHA. The PHA must retain a copy of the decision in the tenant's folder. The PHA must maintain a log of all hearing officer decisions and make that log available upon request of the hearing officer, a prospective complainant, or a prospective complainant's representative.

(b) The decision of the hearing officer will be binding on the PHA unless the PHA Board of Commissioners determines that:

(1) The grievance does not concern PHA action or failure to act in accordance with or involving the complainant's lease on PHA regulations, which adversely affects the complainant's rights, duties, welfare or status; or

(2) The decision of the hearing officer is contrary to applicable Federal, State or local law, HUD regulations or requirements of the annual contributions contract between HUD and the PHA.

(c) A decision by the hearing officer or Board of Commissioners in favor of the PHA or which denies the relief requested by the complainant in whole or in part will not constitute a waiver of, nor affect in any manner whatever, any rights the complainant may have to a trial de novo or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

PART 982 SECTION 8 TENANT BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

SUBPART E Admission to Tenant-Based Program

982.205 Waiting list: Different programs.

(a) *Merger and cross-listing—(1) Merged waiting list.* A PHA may merge the waiting list for tenant-based assistance with the PHA waiting list for admission to another assisted housing program, including a federal or local program. In admission from the merged waiting list, admission for each federal program is subject to federal regulations and requirements for the particular program.

(2) *Non-merged waiting list: Cross-listing.* If the PHA decides not to merge the waiting list for tenant-based assistance with the waiting list for the PHA's public housing program, project-based voucher program or moderate rehabilitation program:

(i) If the PHA's waiting list for tenant-based assistance is open when an applicant is placed on the waiting list for the PHA's public housing program, project-based voucher program or moderate rehabilitation program, the PHA must offer to place the applicant on its waiting list for tenant-based assistance.

(ii) If the PHA's waiting list for its public housing program, project-based voucher program or moderate rehabilitation program is open when an applicant is placed on the waiting list for its tenant-based program, and if the other program includes units suitable for the applicant, the PHA must offer to place the applicant on its waiting list for the other program.

(b) *Other housing assistance: Effect of application for, receipt or refusal.* (1) For purposes of this section, "other housing subsidy" means a housing subsidy other than assistance under the voucher program. Housing subsidy includes subsidy assistance under a federal housing program (including public housing), a State housing program, or a local housing program.

(2) The PHA may not take any of the following actions because an applicant has applied for, received, or refused other housing assistance:

(i) Refuse to list the applicant on the PHA waiting list for tenant-based assistance;

(ii) Deny any admission preference for which the applicant is currently qualified;

(iii) Change the applicant's place on the waiting list based on preference, date and time of application, or other factors affecting selection under the PHA selection policy; or

(iv) Remove the applicant from the waiting list.

SUBPART L Family Obligations; Denial and Termination of Assistance

982.552 PHA denial or termination of assistance for family.

(c)(2) *Consideration of circumstances.* In determining whether to deny or terminate assistance because of action or failure to act by members of the family:

(i) The PHA may consider all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

(ii) The PHA may impose, as a condition of continued assistance for other family members, a requirement that other family members who participated in or were culpable for the action or failure will not reside in the unit. The PHA may permit the other members of a participant family to continue receiving assistance.

References

(iii) In determining whether to deny admission or terminate assistance for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the PHA may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the PHA may require the applicant or tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

(iv) If the family includes a person with disabilities, the PHA decision concerning such action is subject to consideration of reasonable accommodation in accordance with part 8 of this title.

(v) Nondiscrimination limitation and protection for victims of domestic violence, dating violence, or stalking. The PHA's admission and termination actions must be consistent with fair housing and equal opportunity provisions of §5.105 of this title, and with the requirements of 24 CFR part 5, subpart L, protection for victims of domestic violence, dating violence, or stalking.

982.554 Informal review for applicant.

(a) *Notice to applicant.* The PHA must give an applicant for participation prompt notice of a decision denying assistance to the applicant. The notice must contain a brief statement of the reasons for the PHA decision. The notice must also state that the applicant may request an informal review of the decision and must describe how to obtain the informal review.

(b) *Informal review process.* The PHA must give an applicant an opportunity for an informal review of the PHA decision denying assistance to the applicant. The administrative plan must state the PHA procedures for conducting an informal review. The PHA review procedures must comply with the following:

(1) The review may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person.

(2) The applicant must be given an opportunity to present written or oral objections to the PHA decision.

(3) The PHA must notify the applicant of the PHA final decision after the informal review, including a brief statement of the reasons for the final decision.

(c) *When informal review is not required.* The PHA is not required to provide the applicant an opportunity for an informal review for any of the following:

(1) Discretionary administrative determinations by the PHA.

(2) General policy issues or class grievances.

(3) A determination of the family unit size under the PHA subsidy standards.

(4) A PHA determination not to approve an extension or suspension of a voucher term.

(5) A PHA determination not to grant approval of the tenancy.

(6) A PHA determination that a unit selected by the applicant is not in compliance with HQS.

(7) A PHA determination that the unit is not in accordance with HQS because of the family size or composition.

(d) *Restrictions on assistance for noncitizens.* The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR part 5.

982.555 Informal hearing for participant.

(a) *When hearing is required.* (1) A PHA must give a participant family an opportunity for an informal hearing to consider whether the following PHA decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations and PHA policies:

(i) A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment.

(ii) A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the PHA utility allowance schedule.

(iii) A determination of the family unit size under the PHA subsidy standards.

(iv) A determination to terminate assistance for a participant family because of the family's action or failure to act (see §982.552).

(v) A determination to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under PHA policy and HUD rules.

(2) In the cases described in paragraphs (a)(1) (iv), (v) and (vi) of this section, the PHA must give the opportunity for an informal hearing before the PHA terminates housing assistance payments for the family under an outstanding HAP contract.

(b) *When hearing is not required.* The PHA is not required to provide a participant family an opportunity for an informal hearing for any of the following:

(1) Discretionary administrative determinations by the PHA.

(2) General policy issues or class grievances.

(3) Establishment of the PHA schedule of utility allowances for families in the program.

(4) A PHA determination not to approve an extension or suspension of a voucher term.

(5) A PHA determination not to approve a unit or tenancy.

(6) A PHA determination that an assisted unit is not in compliance with HQS. (However, the PHA must provide the opportunity for an informal hearing for a decision to terminate assistance for a breach of the HQS caused by the family as described in §982.551(c).)

(7) A PHA determination that the unit is not in accordance with HQS because of the family size.

(8) A determination by the PHA to exercise or not to exercise any right or remedy against the owner under a HAP contract.

(c) *Notice to family.* (1) In the cases described in paragraphs (a)(1) (i), (ii) and (iii) of this section, the PHA must notify the family that the family may ask for an explanation of the basis of the PHA determination, and that if the family does not agree with the determination, the family may request an informal hearing on the decision.

References

(2) In the cases described in paragraphs (a)(1) (iv), (v) and (vi) of this section, the PHA must give the family prompt written notice that the family may request a hearing. The notice must:

- (i) Contain a brief statement of reasons for the decision,
- (ii) State that if the family does not agree with the decision, the family may request an informal hearing on the decision, and
- (iii) State the deadline for the family to request an informal hearing.

(d) *Expeditious hearing process.* Where a hearing for a participant family is required under this section, the PHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

(e) *Hearing procedures—(1) Administrative plan.* The administrative plan must state the PHA procedures for conducting informal hearings for participants.

(2) *Discovery—(i) By family.* The family must be given the opportunity to examine before the PHA hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such document at the family's expense. If the PHA does not make the document available for examination on request of the family, the PHA may not rely on the document at the hearing.

(ii) *By PHA.* The PHA hearing procedures may provide that the PHA must be given the opportunity to examine at PHA offices before the PHA hearing any family documents that are directly relevant to the hearing. The PHA must be allowed to copy any such document at the PHA's expense. If the family does not make the document available for examination on request of the PHA, the family may not rely on the document at the hearing.

(iii) *Documents.* The term "documents" includes records and regulations.

(3) *Representation of family.* At its own expense, the family may be represented by a lawyer or other representative.

(4) *Hearing officer: Appointment and authority.* (i) The hearing may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person.

(ii) The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA hearing procedures.

(5) *Evidence.* The PHA and the family must be given the opportunity to present evidence, and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

(6) *Issuance of decision.* The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family shall be based on a preponderance of the evidence presented at the hearing. A copy of the hearing decision shall be furnished promptly to the family.

(f) *Effect of decision.* The PHA is not bound by a hearing decision:

(1) Concerning a matter for which the PHA is not required to provide an opportunity for an informal hearing under this section, or that otherwise exceeds the authority of the person conducting the hearing under the PHA hearing procedures.

(2) Contrary to HUD regulations or requirements, or otherwise contrary to federal, State, or local law.

(3) If the PHA determines that it is not bound by a hearing decision, the PHA must promptly notify the family of the determination, and of the reasons for the determination.

(g) *Restrictions on assistance to noncitizens.* The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR part 5.

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HUD Notices & Federal Documents

5/17/04 HUD/DOJ Joint Statement; Reasonable Accommodations Under the Fair Housing Act



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY**

*Washington, D.C.
May 17, 2004*

**JOINT STATEMENT OF
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND THE DEPARTMENT OF JUSTICE**

***REASONABLE ACCOMMODATIONS UNDER THE
FAIR HOUSING ACT***

Introduction

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the federal Fair Housing Act¹ (the "Act"), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.² One type of disability discrimination prohibited by the Act is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.³ HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable accommodations to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to

¹ The Fair Housing Act is codified at 42 U.S.C. §§ 3601 - 3619.

² The Act uses the term "handicap" instead of the term "disability." Both terms have the same legal meaning. See *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that definition of "disability" in the Americans with Disabilities Act is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

³ 42 U.S.C. § 3604(f)(3)(B).

reasonable accommodations.⁴

Questions and Answers

1. What types of discrimination against persons with disabilities does the Act prohibit?

The Act prohibits housing providers from discriminating against applicants or residents because of their disability or the disability of anyone associated with them⁵ and from treating persons with disabilities less favorably than others because of their disability. The Act also makes it unlawful for any person to refuse “to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling.”⁶ The Act also prohibits housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because those persons may require reasonable accommodations. In addition, in certain circumstances, the Act requires that housing providers allow residents to

⁴ Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability and require recipients of federal financial assistance to provide reasonable accommodations to applicants and residents with disabilities. Although Section 504 imposes greater obligations than the Fair Housing Act, (*e.g.*, providing and paying for reasonable accommodations that involve structural modifications to units or public and common areas), the principles discussed in this Statement regarding reasonable accommodation under the Fair Housing Act generally apply to requests for reasonable accommodations to rules, policies, practices, and services under Section 504. *See* U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Notice PIH 2002-01(HA) (www.hud.gov/offices/fheo/disabilities/PIH02-01.pdf) and “Section 504: Frequently Asked Questions,” (www.hud.gov/offices/fheo/disabilities/sect504faq.cfm#anchor272118).

⁵ The Fair Housing Act’s protection against disability discrimination covers not only home seekers with disabilities but also buyers and renters without disabilities who live or are associated with individuals with disabilities 42 U.S.C. § 3604(f)(1)(B), 42 U.S.C. § 3604(f)(1)(C), 42 U.S.C. § 3604(f)(2)(B), 42 U.S.C. § (f)(2)(C). *See also* H.R. Rep. 100-711 – 24 (reprinted in 1988 U.S.C.A.N. 2173, 2184-85) (“The Committee intends these provisions to prohibit not only discrimination against the primary purchaser or named lessee, but also to prohibit denials of housing opportunities to applicants because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities.”). *Accord:* Preamble to Proposed HUD Rules Implementing the Fair Housing Act, 53 Fed. Reg. 45001 (Nov. 7, 1988) (citing House Report).

⁶ 42 U.S.C. § 3604(f)(3)(B). HUD regulations pertaining to reasonable accommodations may be found at 24 C.F.R. § 100.204.

make reasonable structural modifications to units and public/common areas in a dwelling when those modifications may be necessary for a person with a disability to have full enjoyment of a dwelling.⁷ With certain limited exceptions (*see* response to question 2 below), the Act applies to privately and publicly owned housing, including housing subsidized by the federal government or rented through the use of Section 8 voucher assistance.

2. Who must comply with the Fair Housing Act's reasonable accommodation requirements?

Any person or entity engaging in prohibited conduct – *i.e.*, refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling – may be held liable unless they fall within an exception to the Act's coverage. Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. *See e.g.*, City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); Project Life v. Glendening, 139 F. Supp. 703, 710 (D. Md. 2001), aff'd 2002 WL 2012545 (4th Cir. 2002). Under specific exceptions to the Fair Housing Act, the reasonable accommodation requirements of the Act do not apply to a private individual owner who sells his own home so long as he (1) does not own more than three single-family homes; (2) does not use a real estate agent and does not employ any discriminatory advertising or notices; (3) has not engaged in a similar sale of a home within a 24-month period; and (4) is not in the business of selling or renting dwellings. The reasonable accommodation requirements of the Fair Housing Act also do not apply to owner-occupied buildings that have four or fewer dwelling units.

3. Who qualifies as a person with a disability under the Act?

The Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

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, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

⁷ This Statement does not address the principles relating to reasonable modifications. For further information see the HUD regulations at 24 C.F.R. § 100.203. This statement also does not address the additional requirements imposed on recipients of Federal financial assistance pursuant to Section 504, as explained in the Introduction.

The term "substantially limits" suggests that the limitation is "significant" or "to a large degree."

The term "major life activity" means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.⁸ This list of major life activities is not exhaustive. *See e.g., Bragdon v. Abbott*, 524 U.S. 624, 691-92 (1998)(holding that for certain individuals reproduction is a major life activity).

4. Does the Act protect juvenile offenders, sex offenders, persons who illegally use controlled substances, and persons with disabilities who pose a significant danger to others?

No, juvenile offenders and sex offenders, by virtue of that status, are not persons with disabilities protected by the Act. Similarly, while the Act does protect persons who are recovering from substance abuse, it does not protect persons who are currently engaging in the current illegal use of controlled substances.⁹ Additionally, the Act does not protect an individual with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.

5. How can a housing provider determine if an individual poses a direct threat?

The Act does not allow for exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (*e.g.*, current conduct, or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat. Consequently, in evaluating a recent history of overt acts, a provider must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat (*i.e.*, a significant risk of substantial harm). In such a situation, the provider may request that the individual document

⁸ The Supreme Court has questioned but has not yet ruled on whether "working" is to be considered a major life activity. *See Toyota Motor Mfg. Kentucky, Inc. v. Williams*, 122 S. Ct. 681, 692, 693 (2002). If it is a major activity, the Court has noted that a claimant would be required to show an inability to work in a "broad range of jobs" rather than a specific job. *See Sutton v. United Airlines, Inc.*, 527 U.S. 470, 492 (1999).

⁹ *See, e.g., United States v. Southern Management Corp.*, 955 F.2d 914, 919 (4th Cir. 1992) (discussing exclusion in 42 U.S.C. § 3602(h) for "current, illegal use of or addiction to a controlled substance").

how the circumstances have changed so that he no longer poses a direct threat. A provider may also obtain satisfactory assurances that the individual will not pose a direct threat during the tenancy. The housing provider must have reliable, objective evidence that a person with a disability poses a direct threat before excluding him from housing on that basis.

Example 1: A housing provider requires all persons applying to rent an apartment to complete an application that includes information on the applicant's current place of residence. On her application to rent an apartment, a woman notes that she currently resides in Cambridge House. The manager of the apartment complex knows that Cambridge House is a group home for women receiving treatment for alcoholism. Based solely on that information and his personal belief that alcoholics are likely to cause disturbances and damage property, the manager rejects the applicant. The rejection is unlawful because it is based on a generalized stereotype related to a disability rather than an individualized assessment of any threat to other persons or the property of others based on reliable, objective evidence about the applicant's recent past conduct. The housing provider may not treat this applicant differently than other applicants based on his subjective perceptions of the potential problems posed by her alcoholism by requiring additional documents, imposing different lease terms, or requiring a higher security deposit. However, the manager could have checked this applicant's references to the same extent and in the same manner as he would have checked any other applicant's references. If such a reference check revealed objective evidence showing that this applicant had posed a direct threat to persons or property in the recent past and the direct threat had not been eliminated, the manager could then have rejected the applicant based on direct threat.

Example 2: James X, a tenant at the Shady Oaks apartment complex, is arrested for threatening his neighbor while brandishing a baseball bat. The Shady Oaks' lease agreement contains a term prohibiting tenants from threatening violence against other residents. Shady Oaks' rental manager investigates the incident and learns that James X threatened the other resident with physical violence and had to be physically restrained by other neighbors to keep him from acting on his threat. Following Shady Oaks' standard practice of strictly enforcing its "no threats" policy, the Shady Oaks rental manager issues James X a 30-day notice to quit, which is the first step in the eviction process. James X's attorney contacts Shady Oaks' rental manager and explains that James X has a psychiatric disability that causes him to be physically violent when he stops taking his prescribed medication. Suggesting that his client will not pose a direct threat to others if proper safeguards are taken, the attorney requests that the rental manager grant James X an exception to the "no threats" policy as a reasonable accommodation based on James X's disability. The Shady Oaks rental manager need only grant the reasonable accommodation if James X's attorney can provide satisfactory assurance that James X will receive appropriate counseling and

periodic medication monitoring so that he will no longer pose a direct threat during his tenancy. After consulting with James X, the attorney responds that James X is unwilling to receive counseling or submit to any type of periodic monitoring to ensure that he takes his prescribed medication. The rental manager may go forward with the eviction proceeding, since James X continues to pose a direct threat to the health or safety of other residents.

6. What is a "reasonable accommodation" for purposes of the Act?

A “reasonable accommodation” is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. The Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual’s disability.

Example 1: A housing provider has a policy of providing unassigned parking spaces to residents. A resident with a mobility impairment, who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation. There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first come, first served basis. The provider must make an exception to its policy of not providing assigned parking spaces to accommodate this resident.

Example 2: A housing provider has a policy of requiring tenants to come to the rental office in person to pay their rent. A tenant has a mental disability that makes her afraid to leave her unit. Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation. The provider must make an exception to its payment policy to accommodate this tenant.

Example 3: A housing provider has a "no pets" policy. A tenant who is deaf requests that the provider allow him to keep a dog in his unit as a reasonable accommodation. The tenant explains that the dog is an assistance animal that will alert him to several sounds, including knocks at the door, sounding of the smoke detector, the telephone ringing, and cars coming into the driveway. The housing

provider must make an exception to its “no pets” policy to accommodate this tenant.

7. Are there any instances when a provider can deny a request for a reasonable accommodation without violating the Act?

Yes. A housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability-related need for the accommodation. In addition, a request for a reasonable accommodation may be denied if providing the accommodation is not reasonable – *i.e.*, if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

When a housing provider refuses a requested accommodation because it is not reasonable, the provider should discuss with the requester whether there is an alternative accommodation that would effectively address the requester's disability-related needs without a fundamental alteration to the provider's operations and without imposing an undue financial and administrative burden. If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it. An interactive process in which the housing provider and the requester discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations is helpful to all concerned because it often results in an effective accommodation for the requester that does not pose an undue financial and administrative burden for the provider.

Example: As a result of a disability, a tenant is physically unable to open the dumpster placed in the parking lot by his housing provider for trash collection. The tenant requests that the housing provider send a maintenance staff person to his apartment on a daily basis to collect his trash and take it to the dumpster. Because the housing development is a small operation with limited financial resources and the maintenance staff are on site only twice per week, it may be an undue financial and administrative burden for the housing provider to grant the requested daily trash pick-up service. Accordingly, the requested accommodation may not be reasonable. If the housing provider denies the requested accommodation as unreasonable, the housing provider should discuss with the tenant whether reasonable accommodations could be provided to meet the tenant's disability-related needs – for instance, placing an open trash collection can in a location that is readily accessible to the tenant so the tenant can dispose of his own trash and the provider's maintenance staff can then transfer the trash to the dumpster when they are on site. Such an accommodation would not involve a

fundamental alteration of the provider's operations and would involve little financial and administrative burden for the provider while accommodating the tenant's disability-related needs.

There may be instances where a provider believes that, while the accommodation requested by an individual is reasonable, there is an alternative accommodation that would be equally effective in meeting the individual's disability-related needs. In such a circumstance, the provider should discuss with the individual if she is willing to accept the alternative accommodation. However, providers should be aware that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and an individual is not obligated to accept an alternative accommodation suggested by the provider if she believes it will not meet her needs and her preferred accommodation is reasonable.

8. What is a “fundamental alteration”?

A "fundamental alteration" is a modification that alters the essential nature of a provider's operations.

Example: A tenant has a severe mobility impairment that substantially limits his ability to walk. He asks his housing provider to transport him to the grocery store and assist him with his grocery shopping as a reasonable accommodation to his disability. The provider does not provide any transportation or shopping services for its tenants, so granting this request would require a fundamental alteration in the nature of the provider's operations. The request can be denied, but the provider should discuss with the requester whether there is any alternative accommodation that would effectively meet the requester's disability-related needs without fundamentally altering the nature of its operations, such as reducing the tenant's need to walk long distances by altering its parking policy to allow a volunteer from a local community service organization to park her car close to the tenant's unit so she can transport the tenant to the grocery store and assist him with his shopping.

9. What happens if providing a requested accommodation involves some costs on the part of the housing provider?

Courts have ruled that the Act may require a housing provider to grant a reasonable accommodation that involves costs, so long as the reasonable accommodation does not pose an undue financial and administrative burden and the requested accommodation does not constitute a fundamental alteration of the provider's operations. The financial resources of the provider, the cost of the reasonable accommodation, the benefits to the requester of the requested accommodation, and the availability of other, less expensive alternative accommodations that would effectively meet the applicant or resident's disability-related needs must be considered in determining whether a requested accommodation poses an undue financial and administrative

burden.

10. What happens if no agreement can be reached through the interactive process?

A failure to reach an agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation. If the individual who was denied an accommodation files a Fair Housing Act complaint to challenge that decision, then the agency or court receiving the complaint will review the evidence in light of applicable law and decide if the housing provider violated that law. For more information about the complaint process, see question 19 below.

11. May a housing provider charge an extra fee or require an additional deposit from applicants or residents with disabilities as a condition of granting a reasonable accommodation?

No. Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation.

Example 1: A man who is substantially limited in his ability to walk uses a motorized scooter for mobility purposes. He applies to live in an assisted living facility that has a policy prohibiting the use of motorized vehicles in buildings and elsewhere on the premises. It would be a reasonable accommodation for the facility to make an exception to this policy to permit the man to use his motorized scooter on the premises for mobility purposes. Since allowing the man to use his scooter in the buildings and elsewhere on the premises is a reasonable accommodation, the facility may not condition his use of the scooter on payment of a fee or deposit or on a requirement that he obtain liability insurance relating to the use of the scooter. However, since the Fair Housing Act does not protect any person with a disability who poses a direct threat to the person or property of others, the man must operate his motorized scooter in a responsible manner that does not pose a significant risk to the safety of other persons and does not cause damage to other persons' property. If the individual's use of the scooter causes damage to his unit or the common areas, the housing provider may charge him for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

Example 2: Because of his disability, an applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable accommodation. The housing provider may not require the applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep the assistance animal. However, if a tenant's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, the housing provider may charge the tenant for

the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

12. When and how should an individual request an accommodation?

Under the Act, a resident or an applicant for housing makes a reasonable accommodation request whenever she makes clear to the housing provider that she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of her disability. She should explain what type of accommodation she is requesting and, if the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and her disability.

An applicant or resident is not entitled to receive a reasonable accommodation unless she requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time. A person with a disability need not personally make the reasonable accommodation request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable accommodation request does not need to mention the Act or use the words "reasonable accommodation." However, the requester must make the request in a manner that a reasonable person would understand to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability.

Although a reasonable accommodation request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

Example: A tenant in a large apartment building makes an oral request that she be assigned a mailbox in a location that she can easily access because of a physical disability that limits her ability to reach and bend. The provider would prefer that the tenant make the accommodation request on a pre-printed form, but the tenant fails to complete the form. The provider must consider the reasonable accommodation request even though the tenant would not use the provider's designated form.

13. Must a housing provider adopt formal procedures for processing requests for a reasonable accommodation?

No. The Act does not require that a housing provider adopt any formal procedures for reasonable accommodation requests. However, having formal procedures may aid individuals with disabilities in making requests for reasonable accommodations and may aid housing providers in assessing those requests so that there are no misunderstandings as to the nature of the request, and, in the event of later disputes, provide records to show that the requests received proper consideration.

A provider may not refuse a request, however, because the individual making the request did not follow any formal procedures that the provider has adopted. If a provider adopts formal procedures for processing reasonable accommodation requests, the provider should ensure that the procedures, including any forms used, do not seek information that is not necessary to evaluate if a reasonable accommodation may be needed to afford a person with a disability equal opportunity to use and enjoy a dwelling. See Questions 16 - 18, which discuss the disability-related information that a provider may and may not request for the purposes of evaluating a reasonable accommodation request.

14. Is a housing provider obligated to provide a reasonable accommodation to a resident or applicant if an accommodation has not been requested?

No. A housing provider is only obligated to provide a reasonable accommodation to a resident or applicant if a request for the accommodation has been made. A provider has notice that a reasonable accommodation request has been made if a person, her family member, or someone acting on her behalf requests a change, exception, or adjustment to a rule, policy, practice, or service because of a disability, even if the words “reasonable accommodation” are not used as part of the request.

15. What if a housing provider fails to act promptly on a reasonable accommodation request?

A provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.

16. What inquiries, if any, may a housing provider make of current or potential residents regarding the existence of a disability when they have not asked for an accommodation?

Under the Fair Housing Act, it is usually unlawful for a housing provider to (1) ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or (2) ask about the nature or severity of such persons' disabilities. Housing providers may, however, make the following inquiries, provided these inquiries are made of all applicants, including those with and without disabilities:

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability; and
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability.

Example 1: A housing provider offers accessible units to persons with disabilities needing the features of these units on a priority basis. The provider may ask applicants if they have a disability and if, in light of their disability, they will benefit from the features of the units. However, the provider may not ask applicants if they have other types of physical or mental impairments. If the applicant's disability and the need for the accessible features are not readily apparent, the provider may request reliable information/documentation of the disability-related need for an accessible unit.

Example 2: A housing provider operates housing that is legally limited to persons with chronic mental illness. The provider may ask applicants for information needed to determine if they have a mental disability that would qualify them for the housing. However, in this circumstance, the provider may not ask applicants if they have other types of physical or mental impairments. If it is not readily apparent that an applicant has a chronic mental disability, the provider may request reliable information/documentation of the mental disability needed to qualify for the housing.

In some instances, a provider may also request certain information about an applicant's or a resident's disability if the applicant or resident requests a reasonable accommodation. See Questions 17 and 18 below.

17. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable accommodation?

A provider is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information

about the requester's disability or the disability-related need for the accommodation.

If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.

Example 1: An applicant with an obvious mobility impairment who regularly uses a walker to move around asks her housing provider to assign her a parking space near the entrance to the building instead of a space located in another part of the parking lot. Since the physical disability (*i.e.*, difficulty walking) and the disability-related need for the requested accommodation are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested accommodation.

Example 2: A rental applicant who uses a wheelchair advises a housing provider that he wishes to keep an assistance dog in his unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent but the need for an assistance animal is not obvious to the provider. The housing provider may ask the applicant to provide information about the disability-related need for the dog.

Example 3: An applicant with an obvious vision impairment requests that the leasing agent provide assistance to her in filling out the rental application form as a reasonable accommodation because of her disability. The housing provider may not require the applicant to document the existence of her vision impairment.

18. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested accommodation?

A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability (*see* Answer 16, above). However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation. Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself (*e.g.*, proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits¹⁰ or a credible statement by the individual). A doctor or other

¹⁰ Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI") benefits in most cases meet the definition of disability under the Fair Housing Act, although the converse may not be true. *See e.g.*, Cleveland v. Policy Management Systems Corp., 526 U.S. 795, 797 (1999)

medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable accommodation request or unless disclosure is required by law (*e.g.*, a court-issued subpoena requiring disclosure).

19. If a person believes she has been unlawfully denied a reasonable accommodation, what should that person do if she wishes to challenge that denial under the Act?

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for reasonable accommodation, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed with HUD, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;
- By completing the "on-line" complaint form available on the HUD internet site: <http://www.hud.gov>; or
- By mailing a completed complaint form or letter to:

Office of Fair Housing and Equal Opportunity
Department of Housing & Urban Development
451 Seventh Street, S.W., Room 5204
Washington, DC 20410-2000

(noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section – G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section's website at <http://www.usdoj.gov/crt/housing/hcehome.html>.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

7/26/04 Notice PIH 2010-26 (HA); Non-Discrimination and Accessibility for Persons with Disabilities



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

SPECIAL ATTENTION OF:

Regional Directors; State and Area Coordinators; Public Housing Hub Directors; Program Center Coordinators; Troubled Agency Recovery Center Directors; Special Applications Center Director; Public Housing Agencies; Housing Choice Voucher/Section 8 Public Housing Agencies; Resident Management Corporations

NOTICE PIH 2010-26 (HA)

Issued: July 26, 2010

Expires: July 31, 2011

Cross Reference: Notice
PIH 2003-31 (HA)
PIH 2006-13 (HA)
PIH Letter L-2007-05
PIH Notice 2009-5

Subject: Non-Discrimination and Accessibility for Persons with Disabilities

1. **PURPOSE:** The purpose of this Notice is to remind recipients of Federal funds of their obligation to comply with pertinent laws and implementing regulations which mandate non-discrimination and accessibility in federally funded housing and non-housing programs for persons with disabilities.

Additionally, this Notice provides information on key compliance elements of the relevant regulations and examples and resources to enhance recipients' compliance efforts. However, specific regulations must be reviewed in their entirety for full compliance.

2. **APPLICABILITY:** This Notice applies to all public housing programs and activities receiving Federal financial assistance either directly or indirectly from the Office of Public and Indian Housing. This Notice is not applicable to ONAP programs, Tribes or TDHEs.

Federal financial assistance and programs or activities are both defined very broadly. See 24 CFR 8.3 for the regulatory definitions.

Contractors or other agents of public housing agencies (PHAs) performing covered work or conducting covered activities on behalf of PHAs are subject to the requirements of this Notice.

3. **BACKGROUND:** Although the Department is aware that many HUD recipients are doing an excellent job of providing accessibility in their programs for persons with disabilities, it has been brought to the Department's attention that other HUD recipients may not be in compliance with the subject laws and implementing regulations. As part of an effort to

achieve maximum compliance, this Notice will serve to emphasize the importance of compliance.

4. **NOTIFICATIONS:** It is recommended that PHAs and other recipients of Federal PIH funds provide this Notice to all current and future contractors, agents and housing choice voucher program owners participating in covered programs/activities or performing work covered under the above laws referenced below and implementing regulations.

I. STATUTORY/REGULATORY REQUIREMENTS

Some statutory and regulatory provisions overlap others. Where there is a conflict, the most stringent provision applies including any state or local laws/regulations/codes which may be more stringent than Federal requirements.

A. SELF-EVALUATIONS/NEEDS ASSESSMENTS/TRANSITION PLAN

1. Section 504 of the Rehabilitation Act of 1973 (Section 504)¹; Title II of the Americans with Disabilities Act of 1990 (ADA)²:
Initially, with the issuance of the Section 504 implementing regulations at 24 CFR Part 8 on June 2, 1988, PHAs were required to conduct needs assessments and develop transition plans to address the identified needs of residents and applicants with disabilities. The transition plan and the needs assessment are required to be available for public review pursuant to 24 CFR § 8.25(c).

Likewise, PHAs were required to conduct a self-evaluation their current policies and practices to determine whether, in whole or in part, they do not or may not meet the requirements of Section 504. PHAs must then modify any policies and practices that do not meet the requirements and take appropriate corrective steps to remedy the discrimination revealed by the self-evaluation. See 24 CFR § 8.51.

The Department's Office of Fair Housing and Equal Opportunity (FHEO) will continue, as a matter of routine, to request copies of any self-evaluations, needs assessments or transition plans in every compliance review and complaint investigation conducted of a HUD recipient. These documents may also be reviewed by other HUD offices in conjunction with funding applications and in addressing non-compliance issues that may arise. In addition, effective January 26, 1992, Title II of the ADA required PHAs to conduct a self-evaluation of their current services, policies and practices. See 28 CFR §§ 35.105 and 35.150 (d).

PHA-Plan regulations pursuant to the U.S. Housing Act of 1937 at 24 CFR § 903.7(a)(1)(ii) require the submission of a statement addressing the housing needs of low-income and very low-income families, including such families with disabilities, who reside in the jurisdiction served by the PHA and families who are on the public housing and housing choice voucher program waiting list.

¹ 29 U.S.C. § 794; 24 CFR Part 8

² 42 U.S.C. §§ 12101 *et seq.*; 28 CFR Part 35

Additionally, to ensure continued compliance with Section 504 and Title II of the ADA, PHAs are encouraged to conduct needs assessments and self-evaluations, at least yearly, working with persons/residents with disabilities and local advocacy groups for persons with disabilities. (see 24 CFR §§ 8.25(c) and 8.51 for additional information). Transition plans should be updated as a result of such needs assessments and self-evaluations. The transition plan must be made available for public review.

B. SECTION 504/24 CFR 8 – MAJOR PROVISIONS

[see <http://www.hud.gov/offices/fheo/disabilities/504keys.cfm>]

1. New Construction [see 24 CFR § 8.22 (a) and (b)]. A minimum of 5 percent of the total dwelling units, or at least one unit (whichever is greater), must be made accessible for persons with mobility impairments. An additional minimum of 2 percent of the units, or at least one unit (whichever is greater) must be made accessible for persons with hearing or vision impairments. In circumstances where greater need is shown, HUD may prescribe higher percentages than those listed above. [see 24 CFR 8.22(c).] Accessible units must be on an accessible route from site arrival points and connected by an accessible route to public and common use facilities located elsewhere on the site. Also, see visitability recommendations in Section I. of this Notice.
2. Calculating the Required 5% and 2%. PHAs and all other HUD recipients must calculate and provide the proper number of accessible units consistent with the applicable requirements of Section 504. As noted above for New Construction, 24 CFR § 8.22 (b), requires a minimum of 5 percent of the total dwelling units be made accessible for persons with mobility impairments. An additional 2 percent of the total units must be made accessible for persons with hearing or vision impairments.

For example, if a recipient newly constructs a 41 -unit development, 24 CFR § 8.22 (b), requires a minimum of 5 percent of the total dwelling units be made accessible for persons with mobility impairments. That is $41 \text{ total units} \times 5 \text{ percent} = 2.05$ accessible units. However, to provide the minimum of 5 percent requires that any fraction of a whole number, in this example .05 units, be rounded up to 3 units. If the recipient instead rounded the fraction down to 2 units ($2 \text{ accessible units} \div 41 \text{ total units} = 4.8 \text{ percent}$), the recipient would not comply with the requirement that there be a minimum of 5 percent.

Since 24 CFR § 8.22 (b) requires an additional 2 percent of the total units be made accessible for persons with hearing or vision impairments, the recipient must provide one such unit as prescribed by the regulation because $41 \text{ total units} \times 2 \text{ percent} = .82$ such units.

This method of calculating the required number of accessible units also applies to developments subject to the Substantial Alterations requirements of 24 CFR § 8.23 (a).

3. Substantial Alterations [see 24 CFR § 8.23 (a)]. If alterations are undertaken to a project that has 15 or more units and the cost of the alterations is 75 percent or more

of the replacement cost of the completed facility, then the provisions of 24 CFR 8.22 (a) and (b) for new construction apply, with the sole exception that load bearing structural members are not required to be removed or altered. If alterations of single elements or spaces of a dwelling unit when considered together, amount to an alteration of a dwelling unit, the entire dwelling unit shall be made accessible. Once 5 percent of the dwelling units in a project are readily accessible to and usable by individuals with mobility impairments, then no additional elements of dwelling units or entire dwelling units are required to be accessible under this paragraph.

4. Other Alterations [see 24 CFR § 8.23 (b)]. When other alterations are undertaken, including, but not limited to modernization, such alterations are required to be accessible to the maximum extent feasible, up until a point where at least 5 percent of the units in a project are accessible unless HUD prescribes a higher number or percentage pursuant to 24 CFR § 8.23 (b)(2). PHAs should also include up to 2 percent of the units in a development accessible for persons with hearing and vision impairments. See 24 CFR. § 8.32 (c) for exception regarding removing or altering a load-bearing structural member. (Note: these exceptions do not relieve the recipient from compliance utilizing other units/buildings/developments or other methods to achieve compliance with Section 504.)
5. Adaptable Units: Section 504 permits recipients to construct or convert adaptable units. A dwelling unit that is on an accessible route, as defined by Section 504 and UFAS, and is adaptable and otherwise in compliance with the standards set forth in 24 C.F.R. § 8.32 is “accessible”. Adaptable or adaptability means the ability of certain elements of a dwelling unit, such as kitchen counters, sinks and grab bars to be added to, raised, lowered, or otherwise altered to accommodate the needs of persons with or without disabilities, or to accommodate the needs of persons with different types or degrees of disabilities. An accessible route is defined as a continuous, unobstructed UFAS-compliant path as prescribed in 24 CFR §§ 8.3 and 8.32; UFAS. § 4.3. See 24 CFR §§ 8.3 & 8.32; UFAS §§ 4.34.3-4.34.6.

Adaptable units may be appropriate when the PHA has no immediate demand for accessible units since adaptable units may be more marketable to families without disabilities. **[NOTE: A unit that meets the requirements of the Fair Housing Act Design & Construction requirements is NOT equivalent to an Adaptable or Accessible Unit as defined by UFAS and Section 504.]**

6. Uniform Federal Accessibility Standards (UFAS) 24 CFR § 8.32 –

Compliance with UFAS shall be deemed to comply with the accessibility requirements of Section 504, 24 CFR §§ 8.21, 8.22, 8.23 and 8.25. Departures from the technical and scoping requirements of UFAS are permitted where substantially equivalent or greater access and usability of the building is provided. See 24 CFR § 8.32 (a). The United States Access Board promulgates the minimum guide lines and requirements for accessible design upon which UFAS is based. The UFAS may be found at: <http://www.access-board.gov/ufas/ufas-html/ufas.htm>
See also Section I.C., below.

NOTE: On July 23, 2004, the U.S. Access Board issued new Americans with Disabilities Act (ADA) and Architectural Barriers Act (ABA) Guidelines which cover new construction and alteration of a broad range of facilities in the private and public sectors and serve as the basis for enforceable accessibility standards issued by Federal Agencies, including HUD. These Guidelines, once adopted by HUD, will replace the current UFAS. However, they will only apply to new construction and planned alterations and generally will not apply to existing facilities except where altered. HUD recipients are not required to comply with the new Guidelines until such time as HUD adopts them as enforceable standards. Information about the new Guidelines may be obtained from the Access Board website at <http://www.access-board.gov/ada-aba/final.cfm>.

7. Reasonable Accommodations [see 24 CFR §§ 8.20, 8.21, 8.24 and 8.33]. PHAs and other recipients of Federal financial assistance are required to make reasonable adjustments to their rules, policies, practices and procedures in order to enable an applicant or resident with a disability to have an equal opportunity to use and enjoy the housing unit, the common areas of a dwelling or participate in or access programs and activities conducted or sponsored by the PHA and/or recipient. When a family member requires a policy modification to accommodate a disability, PHAs must make the policy modification unless doing so would result in a fundamental alteration in the nature of its program or an undue hardship on the PHA's programs. Factors to be considered include:

- The overall size of the (PHA's) program with respect to the number of employees, number and type of facilities and size of budget;
- The type of (PHA's) operation, including the composition and structure of the (PHAs) workforce and;
- The nature and cost of the accommodation needed.

See discussion on Screening/Reasonable Accommodations in Section 2F(6) and reasonable accommodation under the Fair Housing Act in Section 1E(3). Note: A recipient is not required to accommodate an individual with a disability by modifying a rule or policy that is required by statute. Such a change would be a fundamental alteration of a program.

For example:

- A PHA that does not allow residents to have pets must modify its policies and allow a tenant with a disability to have an assistance animal if the animal is needed to provide the resident with a disability an equal opportunity to use and enjoy the housing.
- If the recipient provides transportation to PHA sponsored/funded functions or activities then a recipient must ensure that accessible transportation is provided to accommodate persons with disabilities and their aides including the reasonable accompaniment of relative(s) or acquaintance(s).

PHAs and other recipients of Federal financial assistance are also required to provide reasonable accommodations to tenants and applicants with disabilities who need

structural modifications to existing dwelling units and public use and common use areas in order to make effective use of the recipient's program. Under the regulations, this obligation may be met either by making and paying for requested structural modifications or by using other equally effective methods. See 24 CFR §§ 8.20, 8.21(c), 8.24. However, when the PHA is accommodating a resident's disability-related needs without making structural changes, the PHA shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate. See 24 CFR §§ 8.21 (c), 8.24 (b) for a variety of suggested, but not all inclusive compliance methods. As with other requested reasonable accommodations, PHAs and other recipients are not required to provide requested structural modifications if doing so would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden. However, the PHA or other recipient is required to provide any other reasonable accommodation up to the point that would not result in an undue financial or administrative burden on the particular recipient and/or constitute a fundamental alteration of the program.

For example:

- A PHA may be required to pay for and install a ramp to allow a resident who is a wheelchair user to have access to a dwelling unit that has a step at the front door if the resident cannot be accommodated by relocation to a different unit that meets the resident's needs.
- A PHA may be required to pay for and install grab bars in the resident's dwelling unit in order to accommodate a resident who has a mobility disability.
- A PHA may be permitted to transfer a resident with disabilities who needs an accessible unit to an appropriate available accessible unit or an appropriate accessible unit that can be modified in lieu of modifying the tenant's current inaccessible unit.

Note: This requirement to accommodate individual tenant's requests for accessible features is separate from the PHA's affirmative obligation to have an inventory of accessible units available for persons with disabilities pursuant to 24 CFR §§ 8.22, 8.23 and 8.25.

8. Distribution of Accessible Dwelling Units (see 24 CFR § 8.26). Required accessible dwelling units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities so that persons with disabilities have choices of living arrangements comparable to that of other families eligible for assistance under the same program.
9. Occupancy of Accessible Dwelling Units (see 24 CFR § 8.27). PHAs shall adopt suitable means including providing information in its application packets, providing refresher information to each resident during annual re-certifications and posting notices in its Admissions & Occupancy Offices to ensure that information regarding

the availability of accessible dwelling units reaches eligible persons with disabilities. The PHA shall also modify its Admissions, Occupancy and Transfer policies and procedures in order to maximize the occupancy of its accessible units by eligible individuals whose disability requires the accessibility features of the particular unit.

PHAs shall also take reasonable non-discriminatory steps to maximize the utilization of accessible units by eligible individuals whose disability requires the accessibility features of the particular unit. To this end, when an accessible unit becomes vacant, the PHA shall:

- a. First, offer the unit to a current occupant with disabilities in the same development that requires the accessibility features of the vacant accessible unit and occupying a unit not having those accessibility features. The PHA must pay moving expenses to transfer a resident with a disability to an accessible unit as an accommodation for the resident's disability.
- b. Second, if there is no current resident in the same development who requires the accessibility features of the vacant, accessible unit, the PHA will offer the unit to a current resident with disabilities residing in another development that requires the accessibility features of the vacant, accessible unit and occupying a unit not having those accessibility features.
- c. Third, if there is no current resident who requires the accessibility features of the vacant, accessible unit, then the PHA will offer the vacant, accessible unit to an eligible, qualified applicant with disabilities on the PHA's waiting list who can benefit from the accessible features of the available, accessible unit.
- d. Fourth, if there is not an eligible qualified resident or applicant with disabilities on the waiting list who wishes to reside in the available, accessible unit, then the PHA should offer the available accessible unit to an applicant on the waiting list who does not need the accessible features of the unit. However, the PHA may require the applicant to execute a lease that requires the resident to relocate, at the PHA's expense, to a non-accessible unit within thirty (30) days of notice by the PHA that there is an eligible applicant or existing resident with disabilities who requires the accessibility features of the unit. *See* 24 CFR § 8.27. Although the regulation does not mandate the use of the lease provision requiring the nondisabled family to move, as a best practice, the Department strongly encourages recipients to incorporate it into the lease. By doing so, a recipient may not have to retrofit additional units because accessible units are occupied by persons who do not need the features of the units. In addition, making sure that accessible units are actually occupied by persons who need the features will make recipients better able to meet their obligation to ensure that their program is usable and accessible to persons who need units with accessible features. *See* 24 CFR 8.20.

Note: A PHA may not prohibit an eligible disabled family from accepting a non-accessible unit for which the family is eligible that may become available before an accessible unit. The PHA is required to modify such a non-accessible unit as needed, unless the modification would result in an undue financial and administrative burden.

10. Most Integrated Setting Appropriate (see 24 CFR Part 8 and 28 CFR Part 35). Section 504 regulations at 24 CFR § 8.4(d) require that recipients administer programs and activities receiving Federal financial assistance in the most integrated setting appropriate to the needs of qualified individuals with disabilities. The regulations provide that a specific class of individuals with disabilities may not be excluded from a program unless the program is limited by Federal statute or executive order to a different class of individuals. Section 504 regulations (see 24 CFR § 8.4(b)(1)(iv)) also state that recipients cannot limit benefits to a particular category of people with disabilities unless it is necessary in order to provide housing services that are as effective as those provided to others. Further, the regulations (see 24 CFR § 8.4(5)(i)) state that in determining the site or location of a federally assisted facility, an applicant for assistance or a recipient may not make selections the purpose or effect of which would exclude qualified individuals with disabilities from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity that receives Federal financial assistance.
11. While Section 504 requires such integration only in programs that are Federally-assisted, Title II of the ADA similarly requires public entities to provide **all** their services in the most integrated setting appropriate to the needs of qualified individuals with disabilities regardless of Federal assistance. The concept of community integration is at the heart of Section 504 and the ADA. Consistent with the standards of Section 504 and the ADA, in most instances, separate programs for individuals with disabilities will not be permitted.
12. PHA Requirements for the Housing Choice Voucher Program (see 24 CFR § 8.28). [see Notice PIH 2005-05 and subsequent reinstatements by Notice PIH 2006-21 and PIH Letter L-2007-1: New Freedom Initiative, Executive Order 13217: “Community-Based Alternatives for Individuals with Disabilities,” and the Housing Choice Voucher Program.]

In carrying out the requirements of 24 CFR § 8.28, the PHA or other recipient administering a Housing Choice Voucher Program shall:

- (1) In providing notice of the availability and nature of housing assistance for low-income families under program requirements, adopt a suitable means to ensure that the notice reaches eligible individuals with disabilities and that they can have an equal opportunity to participate in the application process for the Housing Choice Voucher Program;
 - I. In its activities to encourage participation by owners, include encouragement of participation by owners having accessible units;
 - II. When issuing a Housing Choice Voucher to a family which includes an individual with disabilities, include a current listing of available accessible units known to the PHA and, if necessary, otherwise assist the family in locating an available accessible dwelling unit;

- III. Take into account the special problems of locating an accessible unit when considering requests by eligible individuals with disabilities for extensions of Housing Choice Vouchers; and
 - IV. In order to ensure that participating owners do not discriminate in the recipient's federally assisted program, a recipient shall enter into a HUD-approved contract with participating owners, which contract shall include necessary assurances of non-discrimination.
 - V. If necessary as a reasonable accommodation for a person with disabilities, approve a family request for an exception payment standard under Sec. 982.505(d) for a regular tenancy under the Section 8 voucher program so that the program is readily accessible to and usable by persons with disabilities.
13. Non-housing Facilities (see 24 CFR § 8.21). Newly constructed non-housing facilities shall be designed to be readily accessible to and usable by people with disabilities. Alterations to existing facilities shall be made accessible to the maximum extent feasible – defined as not imposing an undue financial and administrative burden on the operations of the recipient's program or activity. For existing non-housing facilities, PHAs shall operate each program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. There are a number of methods included in the regulation at 24 CFR § 8.21(c)(2) which may be used to accomplish accessibility in existing non-housing programs and activities.

For example:

- A PHA operates a community center. The PHA wishes to provide a tutoring program and the only available space available after school is on an inaccessible second floor. A child who uses a wheelchair and lives in the PHA development served by the community center wishes to participate in the tutoring program. The PHA may provide space on the first floor for the child to work with his tutor or make tutoring available at another location that is accessible and convenient to the child as an alternative to installing an elevator or chair lift to get the child to the second floor tutoring site.

Departures from UFAS are permitted as outlined in Section I. B, item 5 of this Notice.

14. Accessibility Standards Accessibility Standards (see 24 CFR § 8.32). The design, construction or alteration of buildings in conformance with sections 3-8 of the UFAS shall be deemed to comply with the accessibility requirements of §§ 8.21, 8.22, 8.23, and 8.25 with respect to those buildings. Departures from the requirements of UFAS are permitted where substantially equivalent or greater accessibility is provided. The Section 504 requirements at 24 CFR § 8.32 do not require that building alterations be made when such alterations have little likelihood of being accomplished without removing or altering a load-bearing structural member.

15. Common Areas. Section 504 and Title II of the ADA require that a PHA operate each existing housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. See 24 CFR § 8.24(a) and 28 CFR § 35.150 (a).

Therefore, the PHA must ensure that its common areas and public spaces serving its designated accessible units, including, but not limited to, community buildings, management offices, meeting rooms, corridors, hallways, elevators, entrances, parking, public transportation stops, social service offices, mail delivery, laundry rooms/facilities, trash disposal, playgrounds, child care centers, training centers and recreational centers, are accessible to individuals with disabilities. In the alternative, the PHA may offer the program, service or activity, currently located in an inaccessible location, in an equivalent, alternate accessible location.

Specifically, a PHA may comply with the requirements of 24 CFR § 8.24 through such means as reassignment of services to accessible buildings, assignment of aides to beneficiaries, provision of housing or related services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. In choosing among available methods, the PHA shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate. See 24 CFR § 8.24 (b).

C. ARCHITECTURAL BARRIERS ACT (ABA) OF 1968/24 CFR 40 – MAJOR PROVISIONS

Accessibility Standards for Design, Construction and Alteration of Publicly Owned Residential Structures (see 24 CFR § 40.4) - The Architectural Barriers Act applies to certain buildings financed with Federal funds to ensure that they are designed, constructed or altered so as to be accessible to persons with disabilities. The Act applies to buildings, other than a privately owned residential structure, which are (1) constructed or altered by or on behalf of the United States; (2) leased in whole or in part by the United States after August 12, 1968, if constructed or altered in accordance with plans and specifications of the United States; or (3) financed in whole or in part by a grant or loan made by United States after August 12, 1968, if the structure is subject to standards for design, construction, or alteration issued under authority of the law authorizing such grant or loan. See 24 CFR § 40.2.

The United States Access Board has issued updated guidelines for the Architectural Barriers Act, as well as the Americans with Disabilities Act. These standards are the *ADA/ABA Accessibility Guidelines*. While other Federal agencies have adopted these updated guidelines as their standards, at present HUD uses the Uniform Federal Accessibility Standards (UFAS).

UFAS Notes:

- Under the Architectural Barriers Act, four standard setting agencies —the General Services Administration, HUD, the Department of Defense, and the United States Postal Service (USPS) are responsible for development of the standards for Federal facilities. UFAS is HUD’s current standard. See Note in Section I.B.5. The UFAS is available at <http://www.access-board.gov/ufas/ufas-html/ufas.htm>.
- Figure 47(a) in UFAS does not permit the water closet to encroach on the clear, unobstructed (*see* UFAS §3.5) floor space required to provide an unobstructed 60° turning circle. *See* UFAS § 4.34.2(2).
- UFAS includes a definition of structural impracticability that does not require changes if such changes would result in the removal or alteration of a load - bearing structural member and/or an increased cost of 50 percent or more of the value of the element of the building or facility. *See* UFAS § 3.5. This does not alleviate the recipient’s responsibility for making its programs and housing units accessible to persons with disabilities. Recipients instead should look to HUD’s regulations for Section 504 at 24 CFR Part 8 in order to ensure compliance.
- The exception for bathrooms found at Section 4.22.3 of UFAS is not applicable to dwelling unit bathrooms.
- UFAS Section 4.34.2(15)(c) requires at least two bedrooms in dwelling units with two or more bedrooms to be accessible and located on an accessible route. PHAs need to be mindful that new construction or substantial rehabilitation of multistory dwelling units must be in compliance with this requirement. Further, the Department wishes to encourage designs that provide persons with disabilities access to all parts of their dwelling units, and therefore encourages PHAs to take advantages of the strategies outlined in the PIH guidebook, *Strategies for Providing Accessibility and Visitability for Hope VI and Mixed Finance Homeownership.*” This guidebook may be found at the following link: <http://www.hud.gov/offices/pih/programs/ph/hope6/pubs/index.cfm>.
- Because UFAS does not fully address accessibility of units for persons with impaired hearing, for the 2 percent units that are required to be accessible for persons with hearing impairments, it is recommended that PHAs follow the July 2004 ADA/ABA Accessibility Guidelines, Section 809.5, Residential Dwelling Units with Communication Features. The ADA/ABA Accessibility Guidelines are available from the U.S. Access Board. *See* <http://www.access-board.gov/ada-aba/>. PHAs may also follow the 2003 edition of ICC/ANSI A117.1 Standard for Accessible and Usable Buildings and Facilities, Chapter 10, Section 1005. These Standards are available through the International Code Council, 500 New Jersey Avenue NW, Washington, DC 20001. *See* also ICC’s Website at <http://www.iccsafe.org>

Note: The U. S. Access Board issued new ADA and ABA Accessibility Guidelines in July 2004. See the note about this on Page 4, Item B.5.

D. AMERICANS WITH DISABILITIES ACT OF 1990/28 CFR 35 FOR TITLE II (SEE WWW.ADA.GOV) –

1. Applicability. Title II of the ADA prohibits discrimination on the basis of disability by public entities. Public entity means any state or local government; or any department, agency, special purpose district or other instrumentality of a State or States or local government, including a PHA. See 28 CFR §§ 35.102 and 35.104.
2. Maintenance of Accessible Features. A public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. (see 28 CFR § 35.133).
3. Non-discrimination. A public entity shall operate each service, program or activity so that when viewed in its entirety, each service, program or activity is readily accessible to and usable by individuals with disabilities. (see 28 CFR § 35.150).
4. Design and Construction. Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such a manner that the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992 (see 28 CFR § 35.151(a)).
5. Alterations. Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that effects or could effect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities if the alteration was commenced after January 26, 1992. (see 28 CFR § 35.151(b)).
6. Accessibility standards. Design, construction, or alteration of facilities in conformance with the UFAS or with the ADA Accessibility Standards (ADA Standards) shall be deemed to comply with requirements of 28 CFR § 35.151 except that the elevator exemption contained at §§ 4.1.3(5) and 4.1.6(1)(j) of the ADA Standards shall not apply. (see 28 CFR § 35.151(c)).
7. Common Areas. Section 504 and Title II of the ADA require that a PHA operate each existing housing program or activity, including those receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. See 24 CFR § 8.24(a) and 28 CFR § 35.150 (a). (**Note:** The title II regulations at 28 CFR Part 35 contain extensive requirements that apply to public entities, including PHAs, and should be reviewed in their entirety to ensure compliance with the ADA.)

Therefore, the PHA must ensure that its common areas and public spaces serving its designated accessible units, including, but not limited to, community buildings, management offices, meeting rooms, corridors, hallways, elevators, entrances, parking, transportation stops, social service offices, mail delivery, laundry rooms/facilities, trash disposal, playgrounds, child care centers, training centers and recreational centers, are accessible to individuals with disabilities. In the alternative,

the PHA may offer the program, service or activity, currently located in an inaccessible location, in an equivalent, alternate accessible location.

Specifically, a PHA may comply with the requirements of 28 CFR § 35.150(a) through such means as reassignment of services to accessible buildings, assignment of aides to beneficiaries, provision of housing or related services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. In choosing among available methods, the PHA shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate. (See 24 CFR § 8.24 (b)).

E. THE FAIR HOUSING ACT/24 CFR PART 100

[see <http://www.usdoj.gov/crt/housing/title8.htm>;

see also http://www.access.gpo.gov/nara/cfr/waisidx_00/24cfr100_00.html]

1. Illegal Inquiries (24 CFR § 100.202) – The Fair Housing Act makes it unlawful for a housing provider to:
 - Ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or
 - Ask about the nature or severity of a disability of such persons.

Housing providers may make the following inquiries, provided these inquiries are made of all applicants, regardless of whether the applicant appears to have a disability or says he or she has a disability;

- An inquiry into an applicant’s ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is involved in current, illegal use of drugs;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability. A PHA may inquire whether an applicant has a disability for determining if that person is eligible to live in mixed population (elderly/disabled) housing or housing designated for persons with disabilities;
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability. This means a PHA may ask applicants if they need units with accessible features, including units designed to be accessible for persons with hearing and/or visual impairments, or if they qualify for a housing choice voucher designated for persons with disabilities only.

Verification of eligibility for PHA programs and benefits for persons with disabilities:
PHAs are required to verify that an applicant qualifies as a person with a disability

before permitting them to move to housing designated for persons with disabilities, or granting the \$400 rent calculation deduction, disability expense allowance, or deduction for unreimbursed medical expenses. Applicants and residents cannot be compelled to reveal that they have a disability; however, if they do not, they may not receive any of the benefits that such status confers. The wisest course is to ask **all** applicants whether they wish to claim disability status or need any special unit features or methods of communication for persons with disabilities.

Note: The PHA should explain the consequences of the disclosure of one's disability as having possible benefits in rent calculation or an accessible unit, and required verification of disability prior to receipt of the particular benefit at issue. The verification issue is discussed in greater detail in Chapter 4 of the *Public Housing Occupancy Guidebook* (June 2003).

Verification of disability and need for requested reasonable accommodation(s): To verify that an applicant is a person with a disability, PHA staff can first check to see whether the applicant is under age 62 and receives either Social Security Disability Income (SSDI) or Supplemental Security Income (SSI) income. Receipt of such disability income is sufficient verification that an individual qualifies as a person with a disability. However, individuals with disabilities who do not receive SSI or SSDI may still qualify as a person with a disability under the statutory definitions of disability. In these cases, the individual with a disability may need to provide supporting documentation. (**Note:** Refer to Chapter 4 of the *Public Housing Occupancy Guidebook* (June 2003) for further information.)

If a person requests a reasonable accommodation, then the PHA may need to verify that the person is a qualified individual with a disability and whether a requested accommodation is necessary to provide the individual with an equal opportunity to use or enjoy a dwelling unit, including the public and common areas. In doing so, PHAs should only ask for information that is actually necessary to verify that the person has a disability and that there is a reasonable nexus between the individual's disability and the requested accommodation(s). PHAs are not permitted to inquire about the nature or severity of the person's disability. Further, PHA staff may never inquire about an individual's specific diagnosis or details of treatment. If a PHA receives documentation from a verification source that contains the individual's specific diagnosis, information regarding the individual's treatment and/or information regarding the nature or severity of the person's disability, the PHA should immediately dispose of this confidential information; this information should never be maintained in the individual's file. If the information needs to be disposed of, the PHA should note in the individual's file that verification of a disability (as opposed to a specific disability), and special features required was received, the date received and the name and address of the person/organization that provided the verification. Under no circumstances should a PHA request an applicant's or resident's medical records, nor should PHAs require that applicants or residents submit to physical examinations or medical tests such as TB testing or AIDS testing as a condition of occupancy. For further information about verification of disability related to requests for reasonable accommodation, see HUD and the Department of Justice (DOJ) *Joint Statement on Reasonable Accommodations under the Fair Housing Act* (May 17, 2004).

<http://www.hud.gov/utilities/intercept.cfm?/offices/fheo/library/huddojstatement.pdf>

Note: It is a violation of Section 504 and the Fair Housing Act for a PHA to inquire whether an applicant or tenant is capable of “living independently.” Courts have consistently held that this is not a legitimate inquiry to make of applicants or residents in HUD-assisted housing and PHAs should ensure that their screening materials do not include questions related to such an inquiry.

2. Reasonable Modification to Existing Premises (see 24 CFR § 100.203) – Applies to private owners participating in housing choice voucher programs or other tenant -based programs, as well as to PHA owners of existing public housing units . (see Note below.)

Under the Fair Housing Act, it is unlawful for an owner to refuse to permit a person with a disability, at their own expense, to make reasonable modifications of existing premises occupied or about to be occupied by a person with a disability if such modification may be necessary to afford the person with a disability full enjoyment of the premises. Under certain circumstances the owner may require the tenant to pay into an escrow account funds necessary to restore the interior of the unit to its original condition if the modification would interfere with the owner or next resident’s full enjoyment of the premises (see regulation for further requirements and guidance.) An owner may require that a resident restore modifications to the interior of the unit.

Note: PHAs must follow the more stringent reasonable accommodation requirements of 24 CFR §§ 8.4, 8.20, 8.24 and 8.33, which require PHAs to pay the cost of structural changes to facilities unless the PHA can accommodate the individual with a disability by equally effective means, or unless such structural changes would result in an undue financial and administrative burden (in such cases, the PHA must provide other alternative reasonable accommodation(s).) See also the discussion of reasonable accommodation under Section 504 above. For further information about the reasonable modifications provisions of the Fair Housing Act, see the HUD and DOJ Joint Statement on Reasonable Modifications Under the Fair Housing Act, issued May 5, 2008. This statement is available at:

http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf

3. Reasonable Accommodation (see 24 CFR § 100.204) - Applies to private owners participating in Housing Choice Voucher programs, PHAs and all housing providers that are recipients of Federal financial assistance. PHAs are also covered under Section 504. (see Section I.B. above.) The Fair Housing Act makes it unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling unit, including public and common use areas (see regulation for further requirements and guidance). See HUD and DOJ *Joint Statement on Reasonable Accommodations under the Fair Housing Act* (May 17, 2004).

<http://www.hud.gov/utilities/intercept.cfm?/offices/fheo/library/huddojstatement.pdf>

4. **Design and Construction Requirements** (see 24 CFR § 100.205) - applies to housing regardless of whether it receives Federal financial assistance. The Fair Housing Act requires that “covered multifamily dwellings” (see definition below) built for first occupancy after March 13, 1991, shall be designed and constructed so that:
 - a. At least one building entrance is on an accessible route unless it is impractical due to terrain or unusual characteristics of the site [see 24 CFR § 100.205(a)],
 - b. Public and common use areas are accessible [see 24 CFR § 100.205(c)(1)],
 - c. All doors into and within all premises are wide enough for passage by persons using wheelchairs [see 24 CFR § 100.205(c)(2),
 - d. All premises within covered multifamily dwelling units contain the following features of adaptable design:
 - (i) An accessible route into and through the dwelling unit [see 24 CFR § 100.205(c)(3)(i)]
 - (ii) Light switches, electrical outlets, thermostats and other environmental controls, are in accessible locations [see 24 CFR § 100.205(c)(3)(ii)]
 - (iii) Reinforcements in bathroom walls for later installation of grab bars [see 24 CFR § 100.205(c)(3)(iii)]
 - (iv) Usable kitchens and bathrooms for people using wheelchairs [see 24 CFR § 100.205(c)(3)(iv)]

The Act defines covered multifamily dwelling as:

- (A) buildings consisting of 4 or more units if such buildings have one or more elevators; and
- (B) ground floor units in other buildings consisting of 4 or more units.

In most cases, multistory dwelling units are not covered by the Fair Housing Act’s design and construction requirements. There are two exceptions: (1) If an interior elevator provides access within an individual multistory dwelling unit, that unit is covered, and all floors of the multistory unit must meet the Fair Housing Act’s design and construction requirements; and (2) If a multistory townhouse is located in a building that has one or more public elevators, the primary entrance level of the multistory townhouse must be the story served by the elevator, and that story must comply with the Fair Housing Act requirements, including providing an accessible bathroom or powder room on that story.

On March 6, 1991, the Department published Fair Housing Accessibility Guidelines to give the building industry a safe harbor for compliance with the accessibility requirements of the Act. See 56 Federal Register 9472-9515, March 6, 1991. [see <http://www.hud.gov/offices/fheo/disabilities/fhefhag.cfm>.] These Guidelines were supplemented by the following notice, “Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines”, published in the Federal Register on June 28, 1994 (59 Federal Register 33362-33368, June 28,

1994). These Guidelines and the Supplemental Notice apply ONLY with respect to the accessibility requirements of the Fair Housing Act.

Following reviews of certain building code documents and three subsequent editions of the ANSI A117.1 standard, the Department currently recognizes ten documents as providing a safe harbor for meeting the accessibility requirements of the Fair Housing Act. **NOTE:** Once again, these safe harbors only apply to the Fair Housing Act. They do not apply to the accessibility requirements mandated under Section 504 of the Rehabilitation Act for HUD-assisted housing. The ten safe harbors are:

1. HUD's March 6, 1991 Fair Housing Accessibility Guidelines (the Guidelines) and the June 28, 1994 Supplemental Notice to Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines;
2. ANSI A117.1-1986 – Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD's regulations and the Guidelines;
3. CABO/ANSI A117.1-1992 – Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD's regulations, and the Guidelines;
4. ICC/ANSI A117.1-1998 - Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD's regulations, and the Guidelines;
5. HUD's Fair Housing Act Design Manual;
6. Code Requirements for Housing Accessibility 2000 (CRHA), approved and published by the International Code Council (ICC), October 2000;
7. International Building Code (IBC) 2000, as amended by the IBC 2001 Supplement to the International Codes; and
8. 2003 International Building Code (IBC), with one condition. Effective February 28, 2005 HUD determined that the IBC 2003 is a safe harbor, conditioned upon ICC publishing and distributing a statement to jurisdictions and past and future purchasers of the 2003 IBC stating, "ICC interprets Section 1104.1, and specifically, the Exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site impracticality is addressed under Section 1107.7."
9. ICC/ANSI A117.1-2003 – Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD's regulations and the Guidelines; and
10. 2006 International Building Code, with a January 31, 2007, erratum to correct the text missing from Section 1107.7.5 and interpreted in accordance with the relevant 2006 IBC Commentary.

Note: It should be noted that the ANSI A117.1 standard contains only technical criteria, whereas the Fair Housing Act, HUD's regulations, and the Guidelines contain both scoping and technical criteria. Therefore, in using any of the ANSI standards, it is necessary to also consult the Fair Housing Act, HUD's regulations, and the Guidelines for the scoping requirements. The CRHA and the IBC contain both scoping and technical criteria and are written in building code language.

In many cases, properties constructed with Federal financial assistance from HUD must meet both Section 504 new construction requirements applicable to PHAs at 24 CFR § 8.22 and the Fair Housing Act design and construction requirements. For example:

- A new construction project consisting of a building with a central public elevator is constructed with Federal financial assistance from HUD is required to have 100 percent of the dwelling units meet the Fair Housing Act design and construction requirements (see 24 CFR 100.205), and of this 100 percent, 5 percent, or at least one unit, whichever is greater, is also required to comply with the stricter accessibility requirements of Section 504 and 24 CFR 8.22. In addition, Section 504 requires that an additional 2 percent of the units, or at least one unit, whichever is greater, be made accessible for persons with visual or hearing impairments. *See* 24 CFR § 8.22 (b).
- In a newly-constructed 100-unit two-story walk-up apartment building with no elevator that is constructed with Federal financial assistance, Section 504 requires a total of five accessible units for persons with mobility disabilities (5 percent of 100 units = 5 accessible units). Further, these 5 units must be located on the ground floor, and be built to comply with the Section 504 accessibility requirements at 24 CFR §§ 8.22 and 8.32. In addition, if half of the 100 units are on the ground floor, all 50 of these ground floor units must comply with the Fair Housing Act's design and construction requirements. In addition, Section 504 requires that an additional 2 percent of the units must be accessible for persons with vision or hearing impairments. *See* 24 CFR § 8.22 (b). These units can be located on either floor.

Note: Section 504 requires that an additional 2 percent of the units must be accessible for persons with vision or hearing impairments. These units can be located on either floor of the two-story walk-up, non-elevator building. *See* 24 CFR § 8.22 (b).

- A development consisting entirely of attached multistory dwelling units is not a covered multifamily dwelling for purposes of the Fair Housing Act's design and construction requirements at 24 CFR § 100.205. However, if any of the multistory dwelling units has an internal elevator, that dwelling unit and any public and common use spaces would be required to be accessible under the Fair Housing Act. On the other hand, a development of four or more single-story, attached dwelling units would be covered by the Fair Housing Act's accessibility requirements. In addition, if the development receives Federal financial assistance from HUD, Section 504 requires that 5 percent of the multistory units, or at least one unit, whichever is greater, be accessible for persons with mobility disabilities

and an additional 2 percent of the units, or at least one unit, whichever is greater, be accessible for persons with hearing or vision impairments. *See* 24 CFR § 8.22. For those units required to be accessible for persons with mobility disabilities, this may be accomplished by making 5 percent of the multistor y units accessible or by building 5 percent of the development as single-story accessible units.

F. UNIVERSAL DESIGN

Universal Design is a design concept that encourages the construction or rehabilitation of housing and elements of the living environment in a manner that makes them usable by all people, regardless of ability, without the need for adaptation or specialized design. The intent of universal design is to simplify life for everyone by making products and the building environment more usable to as many people as possible at little or no extra cost. Universal design should strive for social integration and avoidance of discrimination, stigma, and dependence. By designing housing that is accessible to all there will be an increase in the availability of affordable housing for all, regardless of age or ability. *See* <http://www.design.ncsu.edu/cud>.

Note: Universal Design concepts do not typically reach all of the requirements of accessibility laws like Section 504 and the Fair Housing Act , therefore, care must be taken to ensure that the requirements of all applicable laws are met in projects promoting universal design.

II. PROGRAM SPECIFIC COMPLIANCE/ACTIVITIES

A. HOUSING CHOICE VOUCHER PROGRAM

[*see* Notice PIH 2005-05 and subsequent reinstatements by Notice PIH 2006-21 and PIH Letter L-2007-1: New Freedom Initiative, Executive Order 13217: “Community-Based Alternatives for Individuals with Disabilities,” and the Housing Choice Voucher Program.]

1. PHAs may give preference in admission to applicants with disabilities based on local needs and priorities. However, the PHA may not give a preference for admission of persons with a specific disability. *See* 24 CFR § 982.207(b)(3).
2. A person with disabilities may choose a suitable unit from among units available for rent in the local rental market.

A PHA has the discretion to approve exception payments standards up to 110 percent of the Fair Market Rent when requested as a reasonable accommodation. *See* 24 CFR § 982.505(d). The HUD field office may approve an exception payment standard amount within the upper range (between 110 -120% of the Fair Market Rent) if required as a reasonable accommodation for a family that includes a person with disabilities. Any exceptions to the payment standards would be granted as a reasonable accommodation after the family with a person with disabilities locates a unit if needed as a reasonable accommodation. *See* 24 CFR § 982.503(c)(2)(ii) and 24 CFR § 8.28(a)(5). Requests for exception rents above 120% that are needed as a reasonable accommodation for a person with a disability to allow the person to rent an

appropriate unit must be submitted to HUD headquarters for regulatory waiver and approval.

3. A PHA may approve the leasing of a unit from a relative to provide reasonable accommodation for persons with disabilities. See 24 CFR § 982.306(d) also see <http://www.hud.gov/offices/pih/publications/notices/09/pih2009-22.pdf> for additional guidance on live-in aides.
4. Owners of private rental units leased with voucher assistance must make reasonable accommodations in rules, policies, practices or services if necessary for a person with disabilities to use the housing and must allow the person with a disability to make reasonable modifications in accordance with 24 CFR § 100.203. See also 24 CFR § 100.204 (a).

B. SECTION 8/HOMEOWNERSHIP OPTION 24 CFR § 982.625 – THRU § 982.643

1. A disabled family meets the first-time homeowner requirement even if the family owned a home within the last three years if use of the homeownership option is needed as a reasonable accommodation so that the housing choice voucher program is readily accessible to and usable by the family member with a disability. See 24 CFR § 982.627 (b)(3)
2. The PHA must count welfare assistance for a disabled family in determining whether the family meets the minimum annual income used to determine if a family member qualifies for commencement of home ownership assistance. See 24 CFR § 982.627(c)(2)(i).
3. The full-time employment eligibility requirement does not apply to a family with a disability. See 24 CFR § 982.627(d)(3).
4. The limit on the length of time a family may receive homeownership assistance does not apply to families with disabilities. See 24 CFR § 982.634(c).
5. Covered homeownership expenses may include principal and interest on mortgage debt incurred by the family to finance the cost of making the home accessible for a family member with a disability if the PHA determines the allowance of such costs is needed as a reasonable accommodation. See 24 CFR § 982.635(c)(vii).

C. PROJECT-BASED VOUCHER PROGRAM

1. PHAs, at their discretion, may choose to use up to 20 percent of their tenant-based assistance for project-based subsidies to encourage the development of projects for persons with disabilities.
2. Under the new law governing project-based assistance, only 25 percent of the units in a project may be subsidized. However, the law allows an exception for units for families with disabilities, elderly families and for families who receive supportive services.

NOTE: 24 CFR § 983.251(d) states that PHAs may give preference to disabled families who need services offered at a particular project in accordance with certain limits. Limits include: families with disabilities that significantly interfere with the ability to obtain and maintain themselves in housing; families who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and for families whom such services cannot be provided in a non-segregated setting. Disabled persons cannot be required to accept the particular services offered in a project. In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from the services provided in the project.

D. CAPITAL FUND PROGRAM

Planning. Regulations governing the Capital Fund at 24 CFR 968 require compliance with statutory and regulatory requirements prohibiting discrimination against persons with disabilities. PHAs must ensure that all work is in compliance with these requirements in conducting Capital Fund activities.

- a. **Substantial Alterations.** The requirements for new construction at 24 CFR § 8.22(a) and (b) are applicable for all units that are substantially altered. [see definition of *substantial alteration* at 24 CFR § 8.23(a)].
- b. **Other Alterations.** If alterations are not substantial, then PHAs are required to provide accessible units up to 5 percent of the units in the development or replace the elements being modernized with accessible elements in all units of the project. PHAs should provide an additional 2 percent of the units for persons with hearing or vision impairments. See 24 CFR § 8.23 (b).
- c. **Reasonable Accommodations.** PHAs should include in their projections of modernization needs amounts to cover known and projected alterations to units and facilities to address reasonable accommodation requests on a case-by-case basis.
- d. **Residents/Advocacy Consultation.** PHAs are encouraged to ensure that, at least yearly, residents with disabilities and advocates for persons with disabilities have an opportunity to provide input on modernization plans and activities.

The housing needs of persons with disabilities, accessible units and compliance with Section 504, the ADA, and the FHA are required to be addressed in accordance with 24 CFR § 903.7. Also, see 24 CFR Part 903 for additional related requirements.

Note: Modernization activities covered by statutory civil rights requirements such as Section 504, the ABA, the FHA and the ADA take precedence over non-emergency modernization activities.

E. HOPE VI

1. HOPE VI Notice of Funding Availability (NOFA) Accessibility Requirements.

The design of proposed new construction and/or rehabilitation of housing must conform to the civil rights statutes and regulations delineated in each Grantee's Grant Agreement.

2. Accessible For-Sale Units. The HOPE VI Program encourages PHAs to include 5 percent of for-sale units accessible for persons with mobility impairments and 2 percent for persons with hearing and vision impairments.
3. Visitability. The HOPE VI Program strongly encourages making as many "visitabile" units as possible. Visibility standards recommended by HUD apply to units that are not otherwise covered by accessibility requirements. The elements of visitability are also described in the Glossary of HOPE VI terms, which are posted to the HOPE VI website. See <http://www.hud.gov/hopevi>.
4. Advocacy Consultation/Participation. The HOPE VI Program encourages PHAs to work with local advocacy groups that represent persons with disabilities, the elderly and other special needs populations in developing HOPE VI plans.
5. Relocation Units. HOPE VI funds can be used to modify units to be occupied by families in the Housing Choice Voucher Program to make them accessible for residents with disabilities. The Department has determined that the costs of accessibility modification in rental units which are necessary for persons with disabilities who receive tenant-based relocation assistance under the voucher program in connection with a HOPE VI project are eligible HOPE VI expenditures. The method of implementation is to be determined by each individual locality.
6. Homeownership Design Handbook. To order a copy of strategies for providing accessibility and visitability for HOPE VI and mixed finance homeownership, go to the publications and resources page of the HOPE VI website at <http://www.hud.gov/offices/pih/programs/ph/hope6/pubs/index.cfm>.
7. Designated Housing Plans. All allocation plan applications for designated housing are now published on HUD's web site at www.hud.gov/pih.
8. Single People with Disabilities. The HOPE VI program encourages 1 bedroom units for single people with disabilities.
9. Accessible Townhouse Design. In addition to the designs already available and in use, HOPE VI will continue to explore design alternatives for townhouse dwellings.

F. CHOICE NEIGHBORHOOD PROGRAM

1. Choice Neighborhood Notice of Funding Availability (NOFA) Accessibility Requirements. Must meet all applicable accessibility standards.

G. ADMISSION/OCCUPANCY

1. Application Process. PHAs must ensure that all employees who are involved in the application process understand how to conduct tenant selection and screening without

discriminating on the basis of any protected class, in particular applicants with disabilities. All application offices must be accessible. The PHA must provide accessible materials for persons with sight and hearing impairments and otherwise provide effective communication, upon request. *See* 24 CFR § 8.6 and § 8.54(c). A PHA must make special arrangements to take the application of persons who are unable to come to the PHA's offices because of a disability. At the initial point of contact with each applicant, the PHA must inform all applicants of alternative forms of communication. *See* 24 CFR § 8.6.

2. Effective Communication/Provision of Auxiliary Aids & Services :

The PHA shall provide appropriate auxiliary aids and services, where necessary, to afford an individual with disabilities an equal opportunity to participate in the PHA's programs, services and activities. In determining what auxiliary aids are appropriate, the PHA shall give primary consideration to the request(s) of the individual with disabilities unless doing so would result in a fundamental alteration of the PHA's programs or in undue financial and administrative burden. If an action would result in such an alteration or burdens, the PHA shall take any other action up to the point that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the PHA's program or activity.

The PHA is not required to provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature. *See* 24 CFR § 8.6, 28 CFR §§ 35.160 and 35.161.

When the PHA has initial contact with the applicant, resident, or member of the public, the PHA staff should ask whether the applicant, resident, or member of the public requires an alternate form of communication. Examples of alternative forms of communication might include, but are not limited to: the provision of a qualified sign language interpreter; having written materials explained orally by staff either in person or by telephone; provision of written materials in large/bold font; information on audiocassette; permitting applicants to file applications by mail; and permitting alternative sites for the receipt of applications.

In addition, the PHA may never require the applicant to provide, or pay for, his/her own sign language interpreter. Rather, it is always the PHA's responsibility to provide, upon request, a qualified sign language interpreter. However, the PHA's responsibility to provide a qualified sign language interpreter does not preclude an individual's right to have a friend, relative or advocate accompany him/her for purposes of conducting business with the PHA.

3. Live-in-Aides. In some cases, individuals with disabilities may require a live-in-aide. A PHA should consider a person a live-in-aide if the person: (1) is determined to be essential to the care and well being of a family member with a disability; (2) is not obligated to support the family member; and (3) would not be living in the unit except to provide the supportive services. A live-in-aide should not be required to share a bedroom with another member of the household. *See* 24 CFR §§ 966.4(d)(3) and 982.316, 982.402(b).

4. Verification The PHA may verify a person's disability only to the extent necessary to ensure that applicants are qualified for the housing for which they are applying; that applicants are qualified for deductions used in determining adjusted income; that applicants are entitled to any preference they may claim; and that applicants who have requested a reasonable accommodation have a need for the requested accommodation. A PHA may not require applicants to provide access to confidential medical records in order to verify a disability nor may a PHA require specific details as to the disability. A PHA may require documentation of the manifestation of the disability that causes a need for a specific reasonable accommodation or accessible unit. A PHA may not seek the individual's specific diagnosis, nor may the PHA seek information regarding the nature, severity or effects of the individual's disability.
5. Vacant Accessible Units. In order to maximize the use of accessible features of the unit, if an appropriate size accessible unit is not available, a PHA may consider over-housing an applicant with a disability who needs an accessible unit. *See* 24 CFR § 8.27. If there is not an eligible, qualified resident or applicant with disabilities on the waiting list who wishes to reside in the available, accessible or adaptable unit, then the PHA may offer the unit to an applicant on the waiting list or another resident who does not need the accessible features of the unit. *See* 24 CFR § 8.27. However, the PHA may require the applicant or resident to execute a Lease/Lease Addendum that requires the resident to relocate at the PHA's expense to a vacant, non-accessible unit within thirty (30) days of notice by the PHA that there is an eligible applicant or existing resident with disabilities who requires the accessibility features of the unit. See discussion in Section I.B(8).

In addition, the PHA should maintain an adequate pool of eligible applicants with disabilities who require accessible or adaptable units so that when such a unit becomes available, there is an eligible applicant with disabilities ready and willing to rent the unit. *See* 24 CFR § 8.27. The PHA should also conduct outreach activities for income-eligible persons with disabilities. The outreach activities may include, but are not limited to publicity/advertising in local print media, contacts with advocacy groups representing persons with disabilities and other entities that come into contact with persons with disabilities such as social service agencies, medical providers, etc.

Reminder – As noted previously in Section I.B.8 – “Occupancy of Accessible Dwelling Units” – Section 504 requires that accessible units must be offered first to a current PHA resident in need of the accessible features of the available accessible unit and second to a qualified applicant with a disability on the PHA's waiting list who requires the accessibility features of the vacant, accessible unit. *See* 24 CFR § 8.27.

6. Screening/Reasonable Accommodations. Many applicants with disabilities will pass screening, will not need a reasonable accommodation, will not need special accessibility features, and will be admitted in exactly the same manner as applicants without disabilities. Applicants who fail screening will receive a rejection letter. This letter must provide all applicants with information concerning the PHA's informal review process and their right to request a hearing. The letter must also state that applicants with disabilities have the right to request reasonable accommodations to participate in

the informal hearing process. The PHA is obligated to provide such reasonable accommodation unless doing so would result in a fundamental alteration in the nature of the PHA's program.

If requested by the applicant, a PHA must consider verifiable mitigating circumstances that explain and/or overcome any prior misconduct related to a previous tenancy. If a reasonable accommodation would allow an applicant with a disability to meet the eligibility requirements for housing, a housing provider must provide the requested accommodation.

A reasonable accommodation allows the applicant with a disability to meet essential requirements of tenancy; it does not require the PHA to reduce or waive essential eligibility or residency requirements. Examples of reasonable accommodations include, but are not limited to: physical alteration of units; making services and programs currently located in an inaccessible location in an alternate, accessible location; and revising the PHA's policies and procedures. The PHA should focus on finding a reasonable accommodation that will permit the applicant with a disability to comply with the essential obligations of tenancy. A PHA is not required to excuse the applicant from meeting those requirements. The PHA should provide all applicants with information regarding the PHA's Reasonable Accommodation Policy and Procedures at the time they apply for admission and at every annual recertification. Each PHA must have a reasonable accommodation policy. The PHA's responsibility to provide reasonable accommodations for applicants and residents is present at all times, including during lease enforcement. See discussion in Section I.B.(7).

7. Unit Size. In public housing, a family with a disability may need a unit that is larger than the PHA's permitted occupancy standards. It is unlawful to fail to provide a reasonable accommodation which denies such a family the opportunity to apply for and obtain a larger unit if the disability of the family member requires this type of accommodation.
8. Unit Location. In public housing, a family applying for a unit or requesting a transfer may need a first floor unit due to a disability.

Note: Persons with disabilities cannot be required to occupy first floor units in elevator buildings, or in non-elevator buildings if the person is able to and wishes to use stairs.

9. Pets: Regular PHA pet policies do not apply to animals that are used to assist persons with disabilities and are necessary as a reasonable accommodation. [An "assistance animal" is an animal that is needed as a reasonable accommodation for persons with disabilities. An assistance animal is not considered a "pet" and thus, is not subject to the PHA's pet policy. Assistance animals are animals that work, provide assistance, perform tasks for the benefit of a person with a disability or provide emotional support that alleviates one or more identified symptoms or effects of a person's disability.] See regulation published on October 27, 2009, 24 CFR Part V, Pet Ownership for the Elderly and Persons with Disabilities, Final Rule.

A PHA may not refuse to allow a person with a disability to have an assistance animal merely because the animal does not have formal training. Some, but not all animals that assist persons with disabilities are professionally trained. Other assistance animals are trained by the owners and, in some cases, no special training is required. The question is whether or not the animal performs the assistance or provides the benefit needed by the person with a disability.

Assistance animals are exempt from a PHA's "pet" restrictions or a PHA's policy requiring pet deposits or monthly pet fees. However, all reasonable lease provisions relating to health and safety apply to assistance/service animals such as maintaining the premises in a clean and sanitary condition and ensuring that neighbors enjoy their premises in a safe and peaceful manner.

H. VISITABILITY

1. Visitability Concept. Although not a requirement, it is recommended that all design, construction and alterations incorporate, whenever practical and economical, the concept of visitability in addition to the requirements under Section 504, the Architectural Barriers Act, Title II of the Americans with Disabilities Act and the Fair Housing Act.

Visitability is a design concept, for very little or no additional cost, that enhances the ability of persons with disabilities to interact with their neighbors, friends and associates in the community. *See* www.huduser.org/publications/pubasst/strategies.html.

2. Design Considerations. Visitability design incorporates the following in all new construction or alterations, in addition to other requirements mandated by the accessibility laws discussed in this Notice, whenever practical, for as many units as possible within a development :
 - a. Provide at least one entrance grade (no steps) approached by an accessible route such as a sidewalk; and
 - b. Provide an entrance door, and all interior passage doors, that are at least 2 feet 10 inches wide allowing 32 inches of clear passage space.
3. Benefits of Visitability. Visitability also expands the availability of housing options for individuals who may not require full accessibility. It will assist PHAs in making reasonable accommodations and reduce, in some cases, the need for transfers when individuals become disabled in place. Visitability will also improve the marketability of units.

I. ACCESSIBILITY FUNDING SOURCES

PHA Capital Fund, PHA operating budgets, PHA operating reserves, PHA Housing Choice Voucher administrative fees and administrative fee reserves, State or local Community Development Block Grant funds, State and local HOME Program funds, Corporate donations, non-profit contributions from organizations such as Rotary Clubs, Lions Clubs, sororities/fraternities, etc., subject to applicable program requirements.

8/20/14 Notice PIH 2014-20; Program Eligibility Regardless of Sexual Orientation, Gender Identity or Marital Status as Required by HUD's Equal Access Rule



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

SPECIAL ATTENTION OF:
Regional Managers; Office of Public Housing
Directors; Program Center Coordinators;
Public Housing Agencies; Resident
Management Corporations

NOTICE PIH 2014-20 (HA)
Issued: August 20, 2014
This notice remains in effect until
amended, superseded or rescinded.

SUBJECT: Program Eligibility Regardless of Sexual Orientation, Gender Identity or Marital Status as Required by HUD's Equal Access Rule

1. **Purpose:** On February 3, 2012, HUD published a final rule entitled Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity (77 FR 5662) ("Equal Access Rule" or "rule"). The final rule requires HUD's assisted and insured housing programs are open to all eligible individuals regardless of sexual orientation, gender identity or marital status. The rule revises HUD's general program requirements by adding the following provisions at 24 CFR 5.105(a)(2):
 - (a) A determination of eligibility for housing that is assisted by HUD or subject to a mortgage insured by the Federal Housing Administration shall continue to be made in accordance with the eligibility requirements provided for such program by HUD, and such housing shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status, and
 - (b) No owner or administrator of HUD-assisted or HUD-insured housing, approved lender in an FHA mortgage insurance program, or any other recipient or sub-recipient of HUD funds may inquire about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted or HUD-insured housing for purposes of determining eligibility or otherwise making such housing available. (See Permissible Inquiries in item 6 herein.)

Through this notice, the Office of Public and Indian Housing (PIH) provides guidance on how the Equal Access Rule applies to PIH-assisted housing programs administered by public housing agencies (PHAs). The rule does not create any additional protected classes under the Fair Housing Act or any other civil rights law. Although the Fair Housing Act does not include sexual orientation, gender identity, or marital status as protected classes, complaints involving LGBT persons may raise claims that are actionable under one or more of the Fair Housing Act's protected classes (See section 10 of this notice).

2. **Applicability:** The Equal Access Rule applies to all HUD-assisted and HUD-insured housing. This notice applies to all PIH programs administered by PHAs, affiliates,

instrumentalities and mixed-finance owner-entities, specifically the Public Housing, Section 8 Housing Choice Voucher (HCV), Project-Based Voucher (PBV), Project-Based Certificate (PBC) and Moderate Rehabilitation programs (collectively PIH-assisted housing programs). This notice also applies to PHAs under Moving to Work (MTW) and Rental Assistance Demonstration (RAD). This notice describes requirements and provides examples applicable to all PIH-assisted housing programs.

In addition, the Equal Access Rule applies to private owners that participate in housing programs funded under section 8 of the U.S. Housing Act of 1937, 42 U.S.C. § 1437, who must make housing available without regard to actual or perceived sexual orientation, gender identity, or marital status.

A private owner that participates in the HCV program becomes subject to the rule when the owner executes a housing assistance payments (HAP) contract with the PHA. It is at that point the owner becomes subject to the rule.

All housing providers are also subject to applicable state and local fair housing laws prohibiting discrimination because of sexual orientation, gender identity and/or marital status.

Individual offices within HUD are providing their own guidance on how the Equal Access Rule affects their programs and program participants. In addition, HUD's Native American programs will incorporate the requirements of making housing available regardless of sexual orientation, gender identity, or marital status and prohibiting inquiries on the basis of sexual orientation and gender identity after conducting tribal consultation.

3. Terms and Definitions. PHAs must use federal definitions and follow federal eligibility requirements in their administration of PIH-assisted housing programs. Accordingly, PHAs are required to update their admissions and continued occupancy policies (ACOP) and/or Administrative Plans consistent with the Equal Access Rule. The rule defines "sexual orientation" and "gender identity" at 24 CFR 5.100 and clarifies the term "family" at 24 CFR 5.403. *Sexual orientation* means homosexuality, heterosexuality or bisexuality. *Gender identity* means actual or perceived gender-related characteristics.

The term "*family*" includes, but is not limited to the following, **regardless of actual or perceived sexual orientation, gender identity, or marital status**:

- (1) A single person, who may be an elderly person, displaced person, disabled person, near-elderly person or any other single person; or
- (2) A group of persons residing together and such group includes, but is not limited to:
 - (i) A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);
 - (ii) An elderly family;
 - (iii) A near-elderly family;
 - (iv) A disabled family;
 - (v) A displaced family; and

(vi) The remaining member of a tenant family.

In addition, for categorizing family as defined above, the terms disabled family, elderly family and near-elderly family (per 24 CFR 5.403) are:

Disabled family means a family whose head (including co-head), spouse or sole member is a person with a disability.

Elderly family means a family whose head (including co-head), spouse or sole member is a person who is at least 62 years of age.

Near elderly family means a family whose head (including co-head), spouse or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62.

4. Required Revisions to PHA Plans and Policies: PHAs are required to review and update, if necessary, their ACOP and/or Administrative Plans to ensure consistency with the Equal Access Rule.
 - a. Annual Plan: In accordance with 24 CFR 903.7(b), a PHA's Annual Plan includes a statement of the PHA's policies governing eligibility, selection and admissions. The PHA's definition of family as provided in the admissions and continued occupancy policies will have to be amended as a result of the rule and this notice. Thus, the next Annual Plan submitted by the PHA subsequent to the posting of this notice must include a statement in the section on eligibility, selection and admissions to reflect the change in the definition of family and the requirement to provide equal access regardless of sexual orientation, gender identity or marital status.
 - b. Section 8 Administrative Plan: In accordance with 24 CFR 982.54, PHAs must revise their Administrative Plans to reflect the definition of "family" at 24 CFR 982.4 and the definition of "family composition" at 24 CFR 982.201(c):
 - i. *Family*. A person or group of persons, as determined by the PHA consistent with 24 CFR 5.403, approved to reside in a unit with assistance under the program. See discussion of family composition at section 982.201(c).
 - ii. *Family Composition*. See definition of "family" in 24 CFR 5.403.
 - c. Public Housing Tenant Selection Policies: In accordance with 24 CFR 960.202, PHAs must revise their tenant selection policies to reflect the definition of "family" at 24 CFR 945.105:
 - i. *Family*. A person or group of persons, as determined by the PHA consistent with 24 CFR 5.403, approved to reside in a unit with assistance under the program.

PHAs and owners are prohibited from inquiring about an applicant's or participant's sexual orientation or gender identity for the purpose of determining eligibility or otherwise making housing available. This does not prohibit an individual from voluntarily self-identifying sexual orientation or gender identity.

6. Permissible Inquiries: The Equal Access Rule does not prohibit all inquiries concerning an applicant's or participant's sex. For example, the rule permits a PHA to ask an applicant's or participant's sex in order to determine the number of bedrooms for which a household may be eligible based on the PHA's written occupancy standards.

In addition, PHAs must collect and report on a program participant's sex through form HUD-50058 and submit the data electronically to the Information Management System/PIH Information Center (IMS/PIC)

(http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/systems/pic/50058.) HUD does not require reporting on sexual orientation through form HUD-50058 or in any other form. As noted above, sexual orientation means homosexuality, heterosexuality or bisexuality.

PHAs may maintain voluntary and anonymous reporting of sexual orientation or gender identity for compliance with data collection requirements by state and local governments or other federal assistance programs so long as information obtained pursuant to such reporting has no bearing on eligibility for housing or program participation.

7. Program Compliance: A PHA's or owner's actions or policies that are inconsistent with the rule could result in HUD's determination that the PHA or owner has failed to comply with program requirements. HUD may pursue any available remedy, including sanctions or corrective action plans that it deems appropriate to remedy the violation. HUD may review a PHA's or owner's policies and performance to determine if it is complying with the Equal Access Rule. This may include monitoring by PIH or HUD's Office of Fair Housing and Equal Opportunity (FHEO). It may also include requests for information concerning allegations of noncompliance. The PHA or owner must cooperate with HUD and provide access to staff, records and beneficiaries as needed.

Typically, HUD seeks voluntary corrective action in the event a PHA or owner violates a requirement under the Equal Access Rule. Applicants and participants may request corrective action directly from the PHA if they believe they have been denied housing or subjected to improper inquiries in violation of the rule.

8. Complaints to PHAs: Upon receipt of a complaint from an applicant or participant alleging a violation of the Equal Access Rule, the PHA must determine if a program violation occurred and implement appropriate corrective action(s). The PHA may seek assistance from its local HUD Field Office of Public Housing in order to make this determination. In all cases, the PHA may advise the family to file a fair housing complaint if the family feels they have been discriminated against under the Fair Housing Act (see sections 10 and 11).

In addition, the PHA must follow its written policies for responding to complaints; policies must include that the PHA provide written notice of receipt of the complaint to those alleged to have violated the rule and that the complainant be informed that such notice was made. Following an investigation of the allegations, the PHA must provide the complainant and those alleged to have violated the rule with findings from the investigation and either a proposed corrective action to resolve any violation or an explanation as to why corrective action is not warranted. The PHA must keep records of all complaints, investigations, notices and corrective actions consistent with its current record-keeping obligations.

9. Examples of Program Violations under the Equal Access Rule:
 - a. A PHA asks a woman who has applied for assistance under a PHA's HCV program to update her eligibility information prior to the PHA issuing a voucher. She brings another woman with her to the PHA office. While completing program verifications, her companion puts her arm around her. The PHA's occupancy specialist believes that the women are lesbians and denies the woman's application because of perceived sexual orientation. The actions taken by the PHA's occupancy specialist constitute a violation of 24 CFR 5.105(a)(2)(i) by the PHA because the denial of housing assistance was based on perceived sexual orientation.
 - b. A gay man who currently receives rental assistance under the PBV program contacts the property owner and requests to add his male partner, who is also income-eligible, to the lease so they may live together. The owner seeks approval from the PHA. The PHA denies the request stating that the couple does not meet the PHA's definition of "family," which requires that family members be related either through blood or marriage. The owner informs the family of the denial. The PHA's restrictive definition of "family" violates the rule's prohibition on considering sexual orientation or marital status when determining who qualifies as a "family" and who may occupy HUD-assisted housing. A PHA must determine whether a family is eligible for assistance without regard to the sexual orientation, gender identity, or marital status of any of its members. *See* 24 CFR 983.8 ("The PBV program requires compliance with all equal opportunity requirements under federal law and regulation, including the authorities cited at 24 CFR 5.105(a)"). In addition, the denial is a violation of 24 CFR 5.105(a)(2)(i) because the denial was based on sexual orientation and/or marital status.
 - c. A gay man who currently receives rental assistance under the PBV program contacts the property owner to request to add his male partner, who is also income-eligible, to the lease so they could live together. The owner asks "Are you gay?" and denies the request when the tenant confirms that he is gay. The actions taken by the owner constitute a

violation of 24 CFR 5.105(a)(2)(i) and (ii) because the owner inquired about sexual orientation for the purpose of determining eligibility and making housing available, and the denial was based on sexual orientation and/or marital status.

10. Fair Housing Act Implications: The Fair Housing Act does not include sexual orientation, gender identity or marital status as protected classes. However, complaints involving LGBT persons may raise claims that are covered by one or more of the Fair Housing Act's protected classes. For example, courts have recognized that the Fair Housing Act's prohibition against discrimination because of sex includes discrimination based on non-conformance with sex stereotypes. Therefore, under certain circumstances, complaints involving sexual orientation or gender identity may be investigated under the Fair Housing Act.

When reviewing alleged violations of the Equal Access Rule, FHEO determines whether the Fair Housing Act is implicated. If HUD lacks jurisdiction to investigate a complaint from an LGBT person, an applicant or beneficiary may still be protected under state and local laws that include sexual orientation, gender identity and/or marital status as protected classes. Many states and local jurisdictions prohibit housing discrimination on the basis of sexual orientation, gender identity and/or marital status, and HUD may refer complaints or other information concerning these protected classes to appropriate state and local fair housing enforcement agencies.

Below are examples of actions that may violate both the Fair Housing Act and the Equal Access Rule:

- a. A gay man applies for public housing, but the PHA denies his application because he is gay and it presumes that, because he is gay, he is HIV-positive and may infect other tenants. This action violates 24 CFR 5.105(a)(2)(i) because the man is denied HUD-assisted housing based on sexual orientation. This action also violates the Fair Housing Act because the man is regarded as having a disability, HIV/AIDS. Disability, which includes a record of having a disability, or being regarded as having a disability, is a protected class under the Fair Housing Act.
- b. A lesbian tenant who dresses in masculine clothes alleges the PHA's property manager at the public housing complex where she resides refuses to make necessary repairs to her apartment. She alleges the property manager tells her that he "only does repairs for real ladies." An investigation confirms that the property manager refused to make the repairs because the tenant is a lesbian and did not conform to gender stereotypes. This action violates 24 CFR 5.105(a)(2)(i) because the action of the PHA's representative is based on sexual orientation and/or gender identity and is affecting the habitability of the tenant's housing. The rule requires that housing be made available regardless of the actual or perceived sexual orientation, gender identity, or marital status of a resident. This complaint may also raise a claim under the Fair Housing Act as discrimination based on sex, because the property manager's actions are based on the tenant's nonconformance with gender stereotypes.

- c. A gay man alleges he was harassed by the PHA's maintenance worker at the public housing complex where he resides. The maintenance worker routinely told the tenant "you walk like a girl" and "you should man up," whistled at him and made sexual gestures. The tenant reported the harassment to the PHA, but the PHA made no effort to stop it. Therefore, as a result of inaction by the PHA, the tenant moved out. Due to the continued harassment, the PHA violated the requirement at 24 CFR 5.105(a)(2)(i) to make housing available without regard to actual or perceived sexual orientation, gender identity, or marital status. The rule prohibits consideration of a person's sexual orientation throughout the tenancy, not just at the time of application. This conduct may also be considered sex discrimination under the Fair Housing Act because the actions of the maintenance worker may constitute discrimination based on gender non-conformity and/or sexual harassment.

In the example above, the tenant moved out of the assisted housing unit as a result of the harassment by the PHA maintenance work. Please note; a program participant is not required to leave the assisted housing unit, or terminate participation in the HCV program, for the purpose of filing a complaint for violation under the Equal Access Rule.

11. Further information: For further information about this Notice, contact your local HUD Office of Public Housing. Contact information is available through the PIH Customer Service Center, 1-800-955-2232 (toll free), and is available on HUD's website at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/about/field_office. Fair Housing questions may be directed to appropriate Fair Housing Field Offices. Complaints may be filed electronically at http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-complaint. Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877-8339.

/s/

Jemine A. Bryon, Acting Assistant Secretary
for Public and Indian Housing

Non-Prohibition of Children in Public Housing Mixed Population Projects

From Code of Federal Regulations Part 945:

945.105 Definitions.

Disabled family means a family whose head or spouse or sole member is a person with disabilities. The term “disabled family” may include two or more persons with disabilities living together, and one or more persons with disabilities living with one or more persons who are determined to be essential to the care or well-being of the person or persons with disabilities. A disabled family may include persons with disabilities who are elderly.

Elderly family means a family whose head, spouse, or sole member is an elderly person. The term “elderly family” includes an elderly person, two or more elderly persons living together, and one or more elderly persons living with one or more persons who are determined to be essential to the care or well-being of the elderly person or persons. An elderly family may include elderly persons with disabilities and other family members who are not elderly.

From the proposed rule, 1/7/94:

Since the designation process, however, provides for elderly-only housing and disabled-only housing, there is the possibility that the designation process authorized by section 622 of the 1992 Act would limit the availability of housing for (1) disabled families (if a PHA designates elderly family-only housing), (2) elderly families (if a PHA designates disabled family-only housing) or (3) families with children (if a PHA designates disabled families and/or elderly family-only housing), and thus adversely impact the maintenance and well-being of these families. **(Although it should be noted that PHAs would be required to admit eligible elderly families with children to designated projects for elderly families, and admit eligible disabled families with children to projects designated for disabled families.)** The proposed rule, however, would provide certain protections for all family types, including the protection provided by HUD’s review and approval of a PHA’s housing allocation plan. The purpose of this review is to ensure that the availability of public housing, and other housing resources available to the PHA, is not reduced for any of these families, especially non-elderly disabled families. Thus, the impact on family maintenance and well being that may result from the designation process, as proposed to be implemented by the Department through this rule, would not be significant within the meaning of the order.

And the final rule, 4/13/94:

“Elderly family” is defined to clarify that an elderly family may include one or more elderly persons with disabilities, and members of the family who are not elderly.

Comment: One commenter stated that the age distinction for “near-elderly person” is too low and should be raised to 55. Two commenters stated that the definition of “disabled families” should include an age restriction, such as 55 or 50 years of age. Another commenter stated that the definition of “elderly family” should exclude any child under the age of 55.

Response: The statute defines all of these terms (“near-elderly person,” “disabled family” and “elderly family”) and the Department is without authority to adopt the recommendations made by these commenters.

Section 621 defines “near-elderly person” as a person who is at least 50 years of age, but below the age of 62.

The statute does not provide for an age restriction in the definition of “disabled family” nor does it exclude as an “elderly family” a family with children who are neither elderly or near-elderly. In fact in the final rule, the definition of “disabled family” rule clarifies that this term includes persons and other members of the family who may be elderly, near-elderly, or who are neither elderly, or near-elderly. The definition of “elderly family” clarifies that this term includes persons and other members of the family who may be persons with disabilities or who are neither elderly nor near-elderly.



Audi alteram partem

Nemo iudex in causa sua