

## Chapter 2

### FAIR HOUSING AND EQUAL OPPORTUNITY

#### INTRODUCTION

This chapter explains the laws and HUD regulations requiring IHA to affirmatively further civil rights and fair housing in all federally-assisted housing programs. The letter and spirit of these laws are implemented through consistent policy and processes. The responsibility to further nondiscrimination pertains to all areas of the IHA's housing choice voucher (HCV) operations.

This chapter describes HUD regulations and IHA's policies related to these topics in three parts:

Part I: Nondiscrimination. This part presents the body of laws and regulations governing the responsibilities of the IHA regarding nondiscrimination.

Part II: Policies Related to Persons with Disabilities. This part discusses the rules and policies of the housing choice voucher program related to reasonable accommodation for persons with disabilities. These rules and policies are based on the Fair Housing Act (42.U.S.C.) and Section 504 of the Rehabilitation Act of 1973, and incorporate guidance from the Joint Statement of the Department of Housing and Urban Development and the Department of Justice (DOJ), issued May 17, 2004.

Part III: Prohibition of Discrimination Against Limited English Proficiency Persons. This part details the obligations of the IHA to ensure meaningful access to the HCV program and its activities by persons with Limited English Proficiency (LEP). This part incorporates HUD and DOJ's Notice of Guidance, published January 22, 2007 in the *Federal Register*.

#### PART I: NONDISCRIMINATION

##### 2-I.A. OVERVIEW

Federal laws require IHA to treat all applicants and participants equally, providing the same quality of service, regardless of family characteristics and background. Federal law prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, age, sexual orientation, familial status, and disability. The IHA will comply fully with all federal, state, and local nondiscrimination laws, and with rules and regulations governing fair housing and equal opportunity in housing and employment, including:

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)
- Executive Order 11063
- Section 504 of the Rehabilitation Act of 1973

- The Age Discrimination Act of 1975
- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern)
- The Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Final Rule, published in the *Federal Register* February 3, 2012 and further clarified in Notice PIH 2014-20
- Violence Against Women Reauthorization Act of 2013 (VAWA)
- When more than one civil rights law applies to a situation, the laws will be read and applied together.
- Any applicable state laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted

IHA Policy

No additional state or local nondiscrimination laws or ordinances apply above the federal directives, except as noted.

**Impediments to Fair Housing/Affirmatively Furthering Fair Housing**

It is the policy of IHA to comply fully with all Federal, State, and local nondiscrimination laws; the Americans with Disabilities Act; and the U.S. Department of Housing and Urban Development regulations governing Fair Housing and Equal Opportunity.

No person shall, on the grounds of race, color, sex, sexual orientation, religion, national origin, familial status, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under IHA housing programs.

**A. Analysis of Impediment for Fair Housing**

1. General public is not aware of the laws governing Fair Housing.
2. Very low- and low-income families gravitate to sections of Independence while moderate to high-income families settle to other parts of Independence.
3. There is reluctance on the part of local landlords to rent to persons receiving Government housing assistance.
4. A majority of persons receiving housing assistance are minority.

## **B. Remedy and Promoting Fair Housing**

1. To further its commitment to full compliance with applicable Civil Rights laws, IHA will provide Federal/State/local information to applicants and participants in Independence Housing Authority housing programs regarding discrimination. Such information, including but not limited to the booklet, *A Good Place to Live* and *Fair Housing It's Your Right*, will be made available with the briefing packet, and all applicable Fair Housing Information and Discrimination Complaint forms will be made available at Independence Housing Authority offices. In addition, all written information and advertisement will contain the appropriate Equal Opportunity language and logo.

IHA will assist any family that believes they have suffered illegal discrimination by providing copies of the Housing Discrimination form. IHA will also assist complainants in completing the form, if requested, and will provide the address of the nearest HUD Office of Fair Housing and Equal Opportunity.

IHA has a Section 504 Policy in place to ensure that Fair Housing requirements are met.

IHA ensures equal opportunity and affirmatively furthers fair housing by advertising the availability of Public Housing, Section 8, and other housing in the following area:

- a. Local newspaper
- b. Minority Newspapers
- c. IHA Website

## **C. Recordkeeping**

Race, ethnicity, familial status, and disability status of program participants can be found on the HUD 50058.

## **2-I.B. NONDISCRIMINATION**

Federal regulations prohibit discrimination against certain protected classes. State and local requirements, as well as IHA policies, can prohibit discrimination against additional classes of people.

The IHA shall not discriminate because of race, color, sex, religion, familial status, age, sexual orientation, disability or national origin (called “protected classes”)

Familial status includes children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18.

The IHA will not discriminate on the basis of marital status, gender identity, or sexual orientation [FR Notice 02/03/12].

### IHA Policy

The IHA does not identify any additional protected classes.

The IHA will not use any of these factors to:

- Deny to any family the opportunity to apply for housing, nor deny to any qualified applicant the opportunity to participate in the housing choice voucher program
- Provide housing that is different from that provided to others
- Subject anyone to segregation or disparate treatment
- Restrict anyone's access to any benefit enjoyed by others in connection with the housing program
- Treat a person differently in determining eligibility or other requirements for admission
- Steer an applicant or participant toward or away from a particular area based on any of these factors
- Deny anyone access to the same level of services
- Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program
- Discriminate against someone because they are related to or associated with a member of a protected class
- Publish or cause to be published an advertisement or notice indicating the availability of housing that prefers or excludes persons who are members of a protected class.

### **Providing Information to Families and Owners**

The IHA must take steps to ensure that families and owners are fully aware of all applicable civil rights laws. As part of the briefing process, the IHA must provide information to HCV applicant families about civil rights requirements and the opportunity to rent in a broad range of

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neighborhoods [24 CFR 982.301]. The Housing Assistance Payments (HAP) contract informs owners of the requirement not to discriminate against any person because of race, color, religion, sex, national origin, age, familial status, sexual orientation, or disability in connection with the contract.

### **Discrimination Complaints**

If an applicant or participant believes that any family member has been discriminated against by the IHA or an owner, the family should advise the IHA. HUD requires the IHA to make every reasonable attempt to determine whether the applicant's or participant's assertions have merit and take any warranted corrective action. In addition, the IHA is required to provide the applicant or participant with information about how to file a discrimination complaint [24 CFR 982.304].

Upon receipt of a housing discrimination complaint, the IHA is required to:

- Provide written notice of the complaint to those alleged and inform the complainant that such notice was made
- Investigate the allegations and provide the complainant and those alleged with findings and either a proposed corrective action or an explanation of why corrective action is not warranted

Keep records of all complaints, reviews, notices, and corrective actions  
[Notice PIH 2014-20]

### **IHA Policy**

Applicants or participants who believe that they have been subject to unlawful discrimination may notify the IHA either orally or in writing.

Within ten (10) business days of receiving the complaint, the IHA will provide a written notice to those alleged to have violated the rule. The IHA will also send a written notice to the complainant informing them that notice was sent to those alleged to have violated the rule, as well as information on how to complete and submit a housing discrimination complaint form to HUD's Office of Fair Housing and Equal Opportunity (FHEO).

The IHA will attempt to remedy discrimination complaints made against the IHA and will conduct a review into all allegations of discrimination.

Within ten (10) business days following the conclusion of the IHA's review, the IHA will provide the complainant and those alleged to have violated the rule with findings and either a proposed corrective action plan or an explanation of why corrective action is not warranted.

The IHA will keep a record of all complaints, reviews, notices, and corrective actions.  
(See Chapter 16.)

## **PART II: POLICIES RELATED TO PERSONS WITH DISABILITIES**

## **2-II.A. OVERVIEW**

One type of disability discrimination prohibited by the Fair Housing Act is the refusal to make reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford a person with a disability the equal opportunity to use and enjoy a program or dwelling under the program.

The IHA must ensure that persons with disabilities have full access to the IHA's programs and services. This responsibility begins with the first inquiry of an interested family and continues through every programmatic area of the HCV program.

### IHA Policy

The IHA will ask all applicants and participants if they require any type of accommodations, in writing, on the intake application, reexamination documents, and notices of adverse action by the IHA, by including the following language:

“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 the housing authority.”

A specific name and phone number of designated staff will be provided to process requests for accommodation.

The IHA will display posters and other housing information and signage in locations throughout the IHA's office in such a manner as to be easily readable from a wheelchair.

## **SELF-EVALUATIONS/NEEDS ASSESSMENTS/TRANSITION PLAN (PIH 2010-26)**

### Section 504 of the Rehabilitation Act of 1973 (Section 504); Title II of the Americans with Disabilities Act of 1990 (ADA):

Initially, with the issuance of the Section 504 implementing regulations at 24 CFR Part 8 on June 2, 1988, IHA was 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, IHA was 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. IHA 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.

HUD'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 IHA and families who are on the public housing and housing choice voucher program waiting list.

Additionally, to ensure continued compliance with Section 504 and Title II of the ADA, IHA is 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.

#### IHA Policy

IHA will develop and maintain a transitional plan to remain in compliance with the Fair Housing Requirements. IHA shall update the plan at least every five years as required and made available for public review.

#### **THE FAIR HOUSING ACT/24 CFR PART 100**

**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.

IHA 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. IHA 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 IHA 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 IHA programs and benefits for persons with disabilities:**

IHA is 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 disabled family deduction, disability expense allowance, or deduction for unreimbursed medical expenses, etc. 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. IHA's policy 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. Verification is required. When the Housing Opportunity through Modernization Act of 2016 (HOTMA) Final Rule is published in the Federal Register, the \$400 disabled / elderly family deduction will increase to \$525, which amount will be annually adjusted for inflation and rounded to the next lowest multiple of \$25.

IHA will 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.

**Verification of disability and need for requested reasonable accommodation(s):**

To verify that an applicant is a person with a disability, IHA 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. If a person requests a reasonable accommodation, then the IHA 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, IHA 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).

IHA is not permitted to inquire about the nature or severity of the person's disability. Further, IHA staff may never inquire about an individual's specific diagnosis or details of treatment. If

IHA 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 IHA should immediately dispose of this confidential information; this information should never be maintained in the individual's file. Under no circumstances should IHA request an applicant's or resident's medical records, nor should IHA require that applicants or residents submit to physical examinations or medical tests such as TB testing, or AIDS testing as a condition of occupancy.

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.

**Reasonable Modification to Existing Premises (24 CFR § 100.203)**

Reasonable modifications apply 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.

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 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 unit.

**Reasonable Accommodation (24 CFR § 100.204)**

Reasonable accommodations apply to private owners participating in Housing Choice Voucher programs, PHAs and all housing providers that are recipients of Federal financial assistance. IHA is also covered under Section 504. 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).

**2-II.B. DEFINITION OF REASONABLE ACCOMMODATION AND PROGRAM SPECIFICS**

A person with a disability may require special accommodations in order to have equal access to the HCV program. The types of reasonable accommodations the IHA can provide include changes, exceptions, or adjustments to a rule, policy, practice, or service.

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Federal regulations stipulate that requests for accommodations will be considered reasonable if they do not create an "undue financial and administrative burden" for the IHA, or result in a "fundamental alteration" in the nature of the program or service offered. A fundamental alteration is a modification that alters the essential nature of a provider's operations.

**Reasonable Accommodations [see 24 CFR §§ 8.20, 8.21, 8.24 and 8.33].**

IHA 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 IHA and/or recipient. When a family member requires a policy modification to accommodate a disability, IHAs 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 IHA's programs. Factors to be considered include:

- The overall size of IHA's program with respect to the number of employees, number and type of facilities and size of budget;
- The type of IHA's operation, including the composition and structure of the IHA's workforce and;
- The nature and cost of the accommodation needed.

IHA 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.

As with other requested reasonable accommodations, IHA 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 IHA 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.

**IHA Specific Requirements for the Housing Choice Voucher Program (see 24 CFR § 8.28). 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 IHA administering a Housing Choice Voucher Program shall:

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;

- In its activities to encourage participation by owners, include encouragement of participation by owners having accessible units;
- 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 IHA and, if necessary, otherwise assist the family in locating an available accessible dwelling unit;
- 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
- In order to ensure that participating owners do not discriminate in the recipient's federally assisted program, the IHA shall enter into a HUD-approved contract with participating owners, which contract shall include necessary assurances of non-discrimination.
- 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.

### **Other Specifics to the Housing Choice Voucher Program**

IHA may give preference in admission to applicants with disabilities based on local needs and priorities. However, the IHA may not give a preference for admission of persons with a specific disability. See 24 CFR § 982.207(b)(3).

A person with disabilities may choose a suitable unit from among units available for rent in the local rental market.

IHA 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.

IHA 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 on live-in aides.

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).

**SECTION 8/HOMEOWNERSHIP OPTION- 24 CFR § 982.625 – THRU § 982.643**

If IHA is administering the HCV Homeownership Program, the additional Fair Housing provisions will be applicable:

- 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)
- IHA 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).
- The full-time employment eligibility requirement does not apply to a family with a disability. See 24 CFR § 982.627(d)(3).
- 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).
- 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).

**PROJECT-BASED VOUCHER PROGRAM**

If IHA is administering the Project-based Voucher Program, the additional Fair Housing provisions will be applicable:

- IHA, 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.

- 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.
- 24 CFR § 983.251(d) states that IHA 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.

**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, NHAs 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.

Departures from UFAS are permitted as outlined in Section I. B, item 5 of PIH 2010-26.

**Common Areas**

Section 504 and Title II of the ADA require that IHA 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 IHA 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 IHA may offer the program, service or activity, currently located in an inaccessible location, in an equivalent, alternate accessible location.

Specifically, IHA may comply with the requirements of 24 CFR § 8.24 through such means as

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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).

## **FAIR HOUSING PROVISIONS AS RELATES TO ADMISSION/OCCUPANCY**

### **Application Process**

IHA 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 IHA 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). IHA must make special arrangements to take the application of persons who are unable to come to the IHA's offices because of a disability. At the initial point of contact with each applicant, the IHA must inform all applicants of alternative forms of communication. *See* 24 CFR § 8.6.

### **Effective Communication/Provision of Auxiliary Aids & Services:**

The IHA shall provide appropriate auxiliary aids and services, where necessary, to afford an individual with disabilities an equal opportunity to participate in the IHA's programs, services and activities. In determining what auxiliary aids are appropriate, the IHA shall give primary consideration to the request(s) of the individual with disabilities unless doing so would result in a fundamental alteration of the IHA's programs or in undue financial and administrative burden. If an action would result in such an alteration or burdens, the IHA 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 IHA 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 IHA has initial contact with the applicant, resident, or member of the public, the IHA 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 IHA may never require the applicant to provide, or pay for, his/her own sign language interpreter. Rather, it is always the IHA's responsibility to provide, upon request, a

qualified sign language interpreter. However, the IHA'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 IHA.

**Live-in-Aides**

In some cases, individuals with disabilities, near elderly, and elderly may require a live-in-aide. IHA should consider a person a live-in-aide if the person: (1) is determined to be essential to the care and wellbeing 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).

**Verification**

The IHA 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. IHA may not require applicants to provide access to confidential medical records in order to verify a disability nor may IHA require specific details as to the disability. IHA may require documentation of the manifestation of the disability that causes a need for a specific reasonable accommodation or accessible unit. IHA may not seek the individual's specific diagnosis, nor may the IHA seek information regarding the nature, severity or effects of the individual's disability.

IHA 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.

**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 IHA'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 IHA 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, IHA 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 IHA 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 IHA's policies and procedures. The IHA should focus on finding a reasonable accommodation that will permit the applicant with a disability to comply with the essential obligations of tenancy. IHA is not required to excuse the applicant from meeting those requirements. IHA will provide all applicants with information regarding the IHA's Reasonable Accommodation Policy and Procedures at the time they apply for admission and at every annual re-certification. IHA must have a reasonable accommodation policy which is now contained in the Administrative Plan. The IHA's responsibility to provide reasonable accommodations for applicants and residents is present at all times, including during lease enforcement.

**Service Animals Are Not 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.]

IHA 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 IHA's and the landlords "pet" restrictions or 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.

**Types of Reasonable Accommodations**

When needed, the IHA must modify normal procedures to accommodate the needs of a person with disabilities. Examples include:

- Permitting applications and reexaminations to be completed by mail
- Conducting home visits
- Using higher payment standards (either within the acceptable range or with HUD approval of a payment standard outside the IHA range) if the IHA determines this is necessary to enable a person with disabilities to obtain a suitable housing unit

- May approve the leasing of a unit from a relative to provide reasonable accommodation for persons with disabilities. This provision does not apply to shared housing. *See* 24 CFR §§ 982.306(d), 982.615 (b)(3).
- Providing time extensions for locating a unit when necessary because of lack of availability of accessible units or special challenges of the family in seeking a unit
- Permitting an authorized designee or advocate to participate in the application or certification process and any other meetings with IHA staff
- Displaying posters and other housing information in locations throughout the IHA's office in such a manner as to be easily readable from a wheelchair
- May approve a utility allowance that is higher than the applicable amount on the utility allowance scheduled. IHA will consider requests to approve a utility allowance because of additional equipment that uses an allowable consumption verified by engineering studies and will allow up to twenty-percent (20%) over the published and approved utility allowance.
- Exception to rent reasonableness (up to 10% over rent reasonableness determination).
- Assisted Living Units in the Housing Choice Voucher (HCV) Program- PIH2012-40.

## **2-II.C. REQUEST FOR AN ACCOMMODATION**

If an applicant or participant indicates that an exception, change, or adjustment to a rule, policy, practice, or service is needed because of a disability, HUD requires that the IHA treat the information as a request for a reasonable accommodation, even if no formal request is made [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

The family must explain what type of accommodation is needed to provide the person with the disability full access to the IHA's programs and services.

If the need for the accommodation is not readily apparent or known to the IHA, the family must explain the relationship between the requested accommodation and the disability. There must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

### IHA Policy

The IHA will encourage the family to make its request in writing using a reasonable accommodation request form. However, the IHA will consider the accommodation any time the family indicates that an accommodation is needed whether or not a formal written request is submitted.

## **2-II.D. VERIFICATION OF DISABILITY**

The regulatory civil rights definition for persons with disabilities is provided in Exhibit 2-1 at the end of this chapter. The definition of a person with a disability for the purpose of obtaining a reasonable accommodation is much broader than the HUD definition of disability that is used for

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eligibility, waiting list preferences and income allowances.

Before providing an accommodation, the IHA must determine that the person meets the definition of a person with a disability, and that the accommodation will enhance the family's access to the IHA's programs and services.

If a person's disability is obvious, or otherwise known to the IHA, and if the need for the requested accommodation is also readily apparent or known, no further verification will be required [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

If a family indicates that an accommodation is required for a disability that is not obvious or otherwise known to the IHA, the IHA must verify that the person meets the definition of a person with a disability, and that the limitations imposed by the disability require the requested accommodation.

When verifying a disability, the IHA will follow the verification policies provided in Chapter 7. All information related to a person's disability will be treated in accordance with the confidentiality policies provided in Chapter 16. In addition to the general requirements that govern all verification efforts, the following requirements apply when verifying a disability:

- Third-party verification must be obtained from an individual identified by the family who is competent to make the determination. A doctor or other medical professional, medical service agency, or a reliable third party who is in a position to know about the individual's disability may provide verification of a disability [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act]
- The IHA must request only information that is necessary to evaluate the disability-related need for the accommodation. **The IHA will not inquire about the nature or extent of any disability.**
- Medical records will not be retained in the participant's file, but returned to the individual or destroyed.
- In the event that the IHA does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity of the disability, the IHA will dispose of it. In place of the information, the IHA will note in the file that the disability and other requested information have been verified, the date the verification was received, and the name and address of the knowledgeable professional who sent the information [Notice PIH 2010-26]

**2-II.E. APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION** [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act, Notice 2010-26].

The IHA must approve a request for an accommodation if the following three conditions are met:

- The request was made by or on behalf of a person with a disability.
- There is a disability-related need for the accommodation.
- The requested accommodation is reasonable, meaning it would not impose an undue financial and administrative burden on the IHA, or fundamentally alter the nature of the IHA's HCV operations (including the obligation to comply with HUD requirements and regulations).

Requests for accommodations must be assessed on a case-by-case basis, taking into account factors such as the overall size of the IHA's program with respect to the number of employees, type of facilities and size of budget, type of operation including composition and structure of workforce, the nature and cost of the requested accommodation, and the availability of alternative accommodations that would effectively meet the family's disability-related needs.

Before making a determination whether to approve the request, the IHA may enter into discussion and negotiation with the family, request more information from the family, or may require the family to sign a consent form so that the IHA may verify the need for the requested accommodation.

#### IHA Policy

After a request for an accommodation is presented, the IHA will respond, in writing, after all verifications are received. If a person is denied the accommodation or feels that the alternative suggestions are inadequate, they may request an informal hearing to review the IHA's decision.

If the IHA denies a request for an accommodation because it is not reasonable (it would impose an undue financial and administrative burden or fundamentally alter the nature of the IHA's operations), the IHA will discuss with the family whether an alternative accommodation could effectively address the family's disability-related needs without a fundamental alteration to the HCV program and without imposing an undue financial and administrative burden. IHA will review alternative methods to address the reasonable accommodation request.

If the IHA believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, the IHA will notify the family, in writing, of its determination within 15 business days from the date of the most recent discussion or communication with the family.

#### **2-II.F. PROGRAM ACCESSIBILITY FOR PERSONS WITH HEARING OR VISION IMPAIRMENTS**

HUD regulations require the IHA to ensure that persons with disabilities related to hearing and vision have reasonable access to the IHA's programs and services [24 CFR 8.6].

At the initial point of contact with each applicant, the IHA shall inform all applicants of

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alternative forms of communication that can be used other than plain language paperwork.

### IHA Policy

To meet the needs of persons with hearing impairments, TTD/TTY (text telephone display / teletype) communication will be available. IHA will use the MO Statewide 711.

To meet the needs of persons with vision impairments, large-print and audio versions of key program documents will be made available upon request. When visual aids are used in public meetings or presentations, or in meetings with IHA staff, one-on-one assistance will be provided upon request.

Additional examples of alternative forms of communication are sign language interpretation; having material explained orally by staff; or having a third-party representative (a friend, relative or advocate, named by the applicant) to receive, interpret and explain housing materials and be present at all meetings.

## **2-II.G. PHYSICAL ACCESSIBILITY**

The IHA must comply with a variety of regulations pertaining to physical accessibility, including the following:

- PIH 2002-01 (HA), Accessibility Notice
- Section 504 of the Rehabilitation Act of 1973
- The Americans with Disabilities Act of 1990
- The Architectural Barriers Act of 1968
- The Fair Housing Act of 1988
- PIH 2006-13 (Accessibility Notice)
- PIH 2010-26 (HA) Accessibility Notice and subsequent notices.

The IHA's policies concerning physical accessibility must be readily available to applicants and participants. They can be found in three key documents:

- The Administrative Plan describes the key policies that govern the IHA's responsibilities with regard to physical accessibility.
- PIH Notice 2010-26 (HA) Accessibility Notice summarizes information about pertinent laws and implementing regulations related to non-discrimination and accessibility in federally-funded housing programs.
- The IHA Plan provides information about self-evaluation, needs assessment, and transition plans.

The design, construction, or alteration of IHA facilities must conform to the Uniform Federal Accessibility Standards (UFAS). Newly-constructed facilities must be designed to be readily accessible to and usable by persons with disabilities. Alterations to existing facilities must be

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accessible to the maximum extent feasible, defined as not imposing an undue financial and administrative burden on the operations of the HCV program.

When issuing a voucher to a family that includes an individual with disabilities, the IHA will include a current list of available accessible units known to the IHA and will assist the family in locating an available accessible unit, if necessary.

In general, owners must permit the family to make reasonable modifications to the unit. However, the owner is not required to pay for the modification and may require that the unit be restored to its original state at the family's expense when the family moves.

## **2-II.H. DENIAL OR TERMINATION OF ASSISTANCE**

The IHA's decision to deny or terminate the assistance of a family that includes a person with disabilities is subject to consideration of reasonable accommodation [24 CFR 982.552 (2)(iv)].

When applicants with disabilities are denied assistance, the notice of denial must inform them of the IHA's informal review process and their right to request a hearing. In addition, the notice must inform applicants with disabilities of their right to request reasonable accommodations to participate in the informal hearing process. Any documentation of the reason for the denial of assistance must be sent to the family to allow them time to review and prepare their appeal for an Informal Hearing. All required VAWA forms will need to be sent to the denied applicant.

When a participant family's assistance is terminated, the notice of termination must inform them of the IHA's informal hearing process and their right to request a hearing and reasonable accommodation. Any documentation of the reason for the termination must be sent to the family whose assistance is being terminated to allow them time to review and prepare their appeal for an Informal Hearing. All required VAWA forms will need to be sent along with the Informal Hearing request.

When reviewing reasonable accommodation requests, the HA must consider whether any mitigating circumstances can be verified to explain and overcome the problem that led to the IHA's decision to deny or terminate assistance. If a reasonable accommodation will allow the family to meet the requirements, the IHA must make the accommodation.

## **PART III: IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP)**

### **2-III.A. OVERVIEW**

Language for Limited English Proficiency Persons (LEP) can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by the HCV program. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI against discrimination on the basis of national origin. This part incorporates the Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Persons, published January 22, 2007 in the *Federal Register*.

The IHA will take affirmative steps to communicate with people who need services or information in a language other than English. These persons will be referred to as Persons with Limited English Proficiency (LEP).

LEP is defined as persons who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English. For the purposes of this administrative plan, LEP persons are HCV applicants and participants, and parents and family members of applicants and participants.

In order to determine the level of access needed by LEP persons, the IHA will balance the following four factors: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the Housing Choice Voucher program; (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; and (4) the resources available to the IHA and costs. Balancing these four factors will ensure meaningful access by LEP persons to critical services while not imposing undue burdens on the IHA.

### **2-III.B. ORAL INTERPRETATION**

The IHA will offer, or ensure that the family is offered through other sources, competent interpretation services free of charge, upon request, to the LEP person.

#### IHA Policy

The IHA will utilize a language line for telephone interpreter services.

Where LEP persons desire, they will be permitted to use, at their own expense, an interpreter of their own choosing, in place of or as a supplement to the free language services offered by the IHA. The interpreter may be a family member or friend.

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

Where feasible and possible, according to its language assistance plan (LAP), the IHA will train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other PHAs, and will standardize documents.

### **2-III.C. WRITTEN TRANSLATION**

Translation is the replacement of a written text from one language into an equivalent written text in another language.

#### IHA Policy

In order to comply with written-translation obligations, the IHA will take the following steps:

The IHA will provide written translations of vital documents for each eligible

LEP language group that constitutes 5 percent or 1,000 persons, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

If there are fewer than 1,000 persons in a language group that reaches the 5 percent trigger, the IHA does not translate vital written materials, but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These “safe harbor” provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP persons through competent oral interpreters where oral language services are needed and reasonable.

IHA will use the written documents supplied by HUD, whenever possible. **All documents will be clearly marked “For Informational Purposes Only”**. All documents that will be executed for the files and program requirements will be in English.

## **2-III.D. IMPLEMENTATION PLAN**

After completing the four-factor analysis and deciding what language assistance services are appropriate, the IHA shall determine whether it is necessary to develop a written implementation plan to address the identified needs of the LEP populations it serves.

If the IHA determines that it is not necessary to develop a written implementation plan, the absence of a written plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to the IHA’s Housing Choice Voucher program and services.

### IHA Policy

If it is determined the IHA serves very few LEP persons, and the IHA has very limited resources, the IHA will not develop a written LAP, but will consider alternative ways to articulate in a reasonable manner a plan for providing meaningful access. If IHA determines that it serves or is under-serving LEP persons because of language barriers and IHA has the available resources, the IHA will develop a LAP. IHA will use entities having significant contact with LEP persons, such as schools, grassroots and faith-based organizations, community groups, and groups working with new immigrants. These entities will be contacted for input into the process.

If the IHA determines it is appropriate to develop a written LAP, the following five steps will be taken: (1) Identifying LEP individuals who need language assistance; (2) identifying language assistance measures; (3) training staff; (4) providing notice to LEP persons; and (5) monitoring and updating the LAP.

**PART IV: A SUPPLEMENTAL INFORMATION TO APPLICATION FOR ASSISTANCE REGARDING IDENTIFICATION OF FAMILY MEMBER, FRIEND OR OTHER PERSON OR ORGANIZATION SUPPORTIVE OF A TENANT FOR OCCUPANCY IN HUD ASSISTED HOUSING**

**2-IV.A. OVERVIEW (PIH 2012-22)**

Section 644 of the Housing and Community Development Act of 1992 (42 U.S.C. 13604) imposed on HUD the obligation to require housing providers participating in federally assisted housing programs to give any individual or family applying for occupancy the option to provide additional contact information as part of their application. The contact information included in the application for occupancy is the name, address, telephone number, and other relevant information of a family member, friend, or person associated with a social, health, advocacy, or similar organization. The IHA may not require the applicant to provide such information.

The objective of providing such information, if the applicant becomes a tenant, is to facilitate contact by the housing provider with the person or organization identified to assist in providing any delivery of services or special care to the tenant and to assist with resolving any tenancy issues arising during their tenancy. This supplemental application information is to be maintained by the IHA as confidential information.

**2-IV. B IMPLEMENTATION REQUIREMENTS**

- A. The IHA must implement the requirements of Section 644 and begin using form HUD-92006, Supplement to Application for Federally Assisted Housing.
- B. The IHA must notify applicants at the time of application of their right to include as part of their application the name, address, telephone number and other relevant information of a family member, friend, or social, health, advocacy or other organization. This individual or organization may be contacted by the IHA to help in resolving issues that may arise during the applicant's tenancy or to assist in providing special care or services the applicant may require as a tenant.
- C. Form HUD-92006, Supplement to Application for Federally Assisted Housing.
  - 1. Form HUD-92006 must be included as an attachment IHA's application.
  - 2. Applicants
    - 1. Applicants must be provided the opportunity to complete the information on form HUD-92006, Supplement to Application for Federally Assisted Housing. The form gives applicants the option

to identify an individual or organization that the IHA may contact and the reason(s) the individual or organization may be contacted. The applicants, if they choose to provide the additional contact information, must sign and date the form.

2. IHA **cannot** require any individual or family applying for occupancy to provide the contact information as providing contact information is optional on the part of the individual or family. Those applicants who choose not to provide the contact information should check the box indicating that they “choose not to provide the contact information” and sign and date the form.
  3. IHA will provide applicants the opportunity at time of admission to update, remove or change contact information provided at the time of application, particularly if a long period of time has elapsed between the time of application and actual admission to the program.
  4. If the applicant chooses to have more than one contact person or organization, the applicant must make clear to the IHA the reason each person or organization may be contacted. The IHA will accommodate the applicant by allowing the applicant to complete a form HUD-92006 for each contact and indicating the reason the IHA may contact the individual or organization. For example, the applicant may choose to have a relative as a contact for emergency purposes and an advocacy organization for assistance for tenancy purposes.
3. Tenants.
1. Although it is not required, IHA will provide tenants who were not provided the opportunity to provide contact information at the time of application and admission, the option to complete form HUD-92006 and provide contact information at the time of their next annual reexamination/recertification.
  2. IHA **cannot** require tenants who have not provided contact information to provide the contact information at the time of annual recertification as providing this information is optional on the part of the individual or family.
  3. Tenants may request to update, remove or change the information provided on form HUD-92006 at any time and the IHA must honor this request.

4. IHA will tenants who have provided contact information using form HUD-92006, the opportunity to update, remove or change the information at the time of annual recertification to ensure that current information is on file. This includes allowing tenants who originally chose not to provide contact information the opportunity to provide contact information if they request to do so.

#### **2-IV. C. USE OF THE CONTACT INFORMATION**

IHA will contact the individual or organization provided only for the use or uses indicated by the applicant or tenant on form HUD-92006. This contact information will assist the IHA in providing the delivery of any services or special care to the tenant and assist in any tenancy issues arising during the term of tenancy of the tenant.

#### **2-IV. D. RETENTION OF CONTACT INFORMATION (FORM HUD 92006)**

- a. IHA must retain the form HUD-92006 with the applicant's application.
- b. IHA must retain the information for as long as the tenant is a resident. IHA will follow program retention requirements for retention of tenant files after end of participation in the program or after move-out. IHA is required to retain tenant file information for term of tenancy plus three years.

#### **2-IV. E. CONFIDENTIALITY OF CONTACT INFORMATION**

Section 644 requires that IHA keep the contact information confidential. IHA is allowed to release the information for the stated statutory purpose only which is to assist the IHA in providing services or special care for such tenants, and in resolving issues that may arise during the tenancy of such tenants.

#### **2-V. A. PRIVACY RIGHTS**

Applicants and participants, including all adults eighteen (18) years or older in their households, are required to sign the HUD 9886 Authorization for Release of Information/Privacy Act Notice. This document incorporates the Federal Privacy Act Statement and describes the conditions under which HUD will release family information.

It is the IHA policy that client files as well as participant and owner information are closed to public access to the fullest extent permitted by Missouri law.

The IHA's policy regarding release of information is in accordance with State and local laws which may restrict the release of family information.

- To release pertinent client information only in accordance with a properly executed release form
- To release information relative to claims not reimbursed and/or outstanding over subsidy amounts where there is no current re-payment agreement.
- To release information by the authorization of the Executive Director and written consent of the affected party or pursuant to a court subpoena.

Any and all information which would lead one to determine the nature and/or severity of a person's disability must be kept in a separate folder and marked "confidential". The personal information in this folder must not be released except on an "as needed" basis in cases where an accommodation is under consideration. All requests for access and granting of accommodations based on this information must be approved by the IHA Executive Director or designee.

The IHA's practices and procedures are designed to safeguard the privacy of applicants and program participants. All applicant and participant files will be stored in a secure location that is only accessible only by authorized staff.

IHA staff will not discuss family information contained in files unless there is a business reason to do so.

**EXHIBIT 2-1: DEFINITION OF A PERSON WITH A DISABILITY UNDER  
FEDERAL CIVIL RIGHTS LAWS [24 CFR Parts 8.3 and 100.201]**

A person with a disability, as defined under federal civil rights laws, is any person who:

- Has a physical or mental impairment that substantially limits one or more of the major life activities of an individual; or
- Has a record of such impairment; or
- Is regarded as having such impairment

The phrase “physical or mental impairment” includes:

- Any physiological disorder or condition, cosmetic or disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
- Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term “physical or mental impairment” includes, but is not limited to: such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

“Major life activities” includes, but is not limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, breathing, learning, and/or working.

“Has a record of such impairment” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major live activities.

“Is regarded as having an impairment” is defined as having a physical or mental impairment that does not substantially limit one or more major life activities but is treated by a public entity (such as the IHA) as constituting such a limitation; has none of the impairments defined in this section but is treated by a public entity as having such an impairment; or has a physical or mental impairment that substantially limits one or more major life activities, only as a result of the attitudes of others toward that impairment.

The definition of a person with disabilities does not include:

- Current illegal drug users
- People whose alcohol use interferes with the rights of others
- Persons who objectively pose a direct threat or substantial risk of harm to others that cannot be controlled with a reasonable accommodation under the HCV program

The above definition of disability determines whether an applicant or participant is entitled to any of the protections of federal disability civil rights laws. Thus, a person who does not meet this

disability is not entitled to a reasonable accommodation under federal civil rights and fair housing laws and regulations.

The HUD definition of a person with a disability is much narrower than the civil rights definition of disability. The HUD definition of a person with a disability is used for purposes of receiving the disabled family preference, the \$400 elderly/disabled household deduction, the \$480 dependent deduction, the allowance for medical expenses, or the allowance for disability assistance expenses. When the Housing Opportunity through Modernization Act of 2016 (HOTMA) Final Rule is published in the Federal Register, the \$400 disabled / elderly family deduction will increase to \$525, and this amount will be annually adjusted for inflation and rounded to the next lowest multiple of \$25. The \$480 dependent deduction will also be adjusted by inflation annually and rounded to the next lowest multiple of \$25 when the Final Rule of HOTMA is published in the Federal Register.

The definition of a person with a disability for purposes of granting a reasonable accommodation request is much broader than the HUD definition of disability. Many people will not qualify as a disabled person under the HCV program, yet an accommodation is needed to provide equal opportunity.