

## **CHAPTER 2: FAIR HOUSING AND EQUAL OPPORTUNITY**

### **INTRODUCTION**

This chapter explains the laws and HUD regulations requiring PHAs 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 procedures. The responsibility to further nondiscrimination pertains to all areas of HACCC's public housing operations.

This chapter describes HUD regulations and HACCC policies related to these topics in three parts:

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

Part II: Policies Related to Persons with Disabilities. This part discusses the rules and policies of the public housing 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 HACCC to ensure meaningful access to the HCV program and its activities by persons with limited English proficiency (LEP). This part incorporates the Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons published January 22, 2007, in the *Federal Register*.

## **PART I: NONDISCRIMINATION**

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

Federal laws require PHAs 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, familial status, and disability. In addition, HUD regulations provide for additional protections regarding sexual orientation, gender identity, and marital status. HACCC 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 and 13988
- 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 Act (VAWA)
- Any applicable state laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted

When more than one civil rights law applies to a situation, the laws will be read and applied together.

#### HACCC Policy

California Fair Employment and Housing Act (FEHA)

Unruh Civil Rights Act

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

Federal regulations prohibit discrimination against certain protected classes and other groups of people. State and local requirements, as well as HACCC policies, can prohibit discrimination based on other factors.

HACCC shall not discriminate because of race, color, sex, religion, familial status, age, disability, or national origin (called “protected classes”), marital status, sexual orientation, source of income or any arbitrary basis.

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.

#### HACCC Policy

California Fair Housing law prohibits discrimination in housing discrimination on the basis of:

- Race or color
- National origin or ancestry
- Religion
- Sex (including gender identity)
- Familial status (including children under the age of 18 living with parents or legal custodians; pregnant women and people securing custody of children under 18)
- Disability
- Marital status
- Sexual orientation
- Source of Income
- Genetic information

California Supreme Court has held that protections under the Unruh Act are not necessarily restricted to these characteristics. The Act is meant to cover all arbitrary and intentional discrimination by a business establishment on the bases of personal characteristics similar to those listed above.

State law also prohibits discrimination against persons who are perceived to be a member of a protected class or who associate with a member of, or with a person perceived to be a member of, a protected class (“Unlawful Discrimination: Your Rights and Remedies” 3 ed., 2001 CA Attorney General’s Office).

HACCC will not use any of these factors to:

- Deny any family the opportunity to apply for housing, nor deny any qualified applicant the opportunity to participate in any of HACCC’s programs
- 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 tenant 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 in the provision of residential real estate transactions

- 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

In accordance with Section 504 of the Rehabilitation Act of 1973, as amended, no otherwise qualified individual with disabilities shall, solely by reason of their disability, be excluded from the participation in, be denied the benefit of, or be subjected to discrimination under any program or activity of HACCC. HACCC will take appropriate measures to ensure that individuals with disabilities shall have equal access to available services, programs, and activities offered. Such appropriate measures include, but are not limited to:

1. Provision of telecommunication devices for the deaf;
2. Provision of sign language interpreters;
3. Provision of readers and amanuenses;
4. Utilization of barrier-free meeting places; provision of a discrimination complaint procedure

### **Providing Information to Families**

HACCC must take steps to ensure that families are fully aware of all applicable civil rights laws. As part of the public housing orientation process, HACCC will provide information to public housing applicant families about civil rights requirements.

## **2-I.C. DISCRIMINATION COMPLAINTS**

### **General Housing Discrimination Complaints**

If an applicant or tenant family believes that any family member has been discriminated against by HACCC, the family should advise HACCC. HACCC should make every reasonable attempt to determine whether the applicant or tenant family's assertions have merit and take any warranted corrective action.

In all cases, HACCC will advise the family that they may file a fair housing complaint if the family feels they have been discriminated against under the Fair Housing Act.

#### HACCC Policy

Applicants or tenant families who believe that they have been subject to unlawful discrimination may notify HACCC either orally or in writing.

Within 10 business days of receiving the complaint, HACCC will investigate and attempt to remedy discrimination complaints made against HACCC. HACCC will also advise the family of their right to file a fair housing complaint with HUD's Office of Fair Housing and Equal Opportunity (FHEO). The fair housing poster, posted in conspicuous and accessible locations in HACCC lobbies, will reference how to file a complaint with FHEO. HACCC will also assist families in completing the forms, if requested.

HACCC will keep a record of all complaints, investigations, notices, and corrective actions. (See Chapter 16).

HACCC will attempt to remedy discrimination complaints made against HACCC. HACCC will provide a copy of a discrimination complaint form to the complainant and

provide them with information on how to complete and submit the form to HUD's Office of Fair Housing and Equal Opportunity (FHEO), the California Department of Fair Employment and Housing and local organizations such as Bay Area Legal Aid. In addition to providing the complainant with steps they can take to submit a complaint regarding fair housing law violations, HACCC informs the jurisdiction responsible for the appropriate Consolidated Plan (Contra Costa County Conservation and Development Office) when staff encounter a condition or action that impedes fair housing choice for current or prospective program participants.

### **Complaints under the Equal Access Final Rule [Notice PIH 2014-20]**

Notice PIH 2014-20 requires an articulated complaint process for allegations of discrimination under the Equal Access Final rule. The Equal Access Final Rule requires that PHAs provide equal access regardless of marital status, gender identity, or sexual orientation. HACCC will be informed on these obligations by the HUD Field Office or FHEO when an Equal Access complaint investigation begins.

#### HACCC Policy

Applicants or tenant families who believe that they have been subject to unlawful discrimination based on marital status, gender identity, or sexual orientation under the Equal Access Rule may notify HACCC either orally or in writing.

Within 10 business days of receiving the complaint, HACCC will provide a written notice to those alleged to have violated the rule. HACCC 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).

HACCC will attempt to remedy discrimination complaints made against HACCC and will conduct an investigation into all allegations of discrimination.

Within 10 business days following the conclusion of HACCC's investigation, HACCC 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.

HACCC will keep a record of all complaints, investigations, notices, and corrective actions. (See Chapter 16.)

### **VAWA Complaint Processing [Notice FHEO 2023-01]**

A complainant may, not later than one year after an alleged VAWA violation has occurred or terminated, file a complaint with FHEO alleging such violation. If there is a violation that began prior to a year before the complaint is filed, but it continues into the one-year time period, HUD will accept the complaint. FHEO will investigate the complaint if it is timely and FHEO otherwise has jurisdiction. If a complaint is filed more than one year after the alleged violation occurred or terminated, FHEO may, but is not required to, investigate the allegations under the additional authority and procedures described in FHEO 2023-01.

Complaints do not need to allege a violation of the Fair Housing Act for FHEO to accept and investigate the complaint.

#### HACCC Policy

Applicants or tenant families who wish to file a VAWA complaint against HACCC may notify HACCC either orally or in writing.

HACCC will advise the family of their right to file a VAWA complaint with HUD's Office of Fair Housing and Equal Opportunity (FHEO). HACCC will inform the family that not later than one year after an alleged VAWA violation has occurred or terminated, applicants and tenants who believe they have been injured by a VAWA violation or will be injured by such a violation that is about to occur may file a VAWA complaint using FHEO's online complaint form via mail, email, or telephone.

HACCC will attempt to remedy complaints made against HACCC and will conduct an investigation into all allegations of discrimination.

HACCC will keep a record of all complaints, investigations, 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.

HACCC must ensure that persons with disabilities have full access to HACCC's programs and services. This responsibility begins with the first inquiry of an interested family and continues through every programmatic area of the public housing program [24 CFR 8].

HACCC must provide a notice to each tenant that the tenant may, at any time during the tenancy, request reasonable accommodation of a disability of a household member, including reasonable accommodation so that the tenant can meet lease requirements or other requirements of tenancy [24 CFR 966.7(b)].

#### HACCC Policy

HACCC will ask all applicants and resident families if they require any type of accommodations, in writing, on the intake application, reexamination documents, and notices of adverse action by HACCC, 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 504/ADA Coordinator."
- A specific position and phone number will be provided as the contact person for requests for accommodation for persons with disabilities.

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

The Reasonable Accommodation Policy applies to applicants and tenants who participate in all HACCC programs, including Public Housing, Housing Choice Voucher, and Project-Based Voucher programs.

## **2-II.B. DEFINITION OF REASONABLE ACCOMMODATION**

A reasonable accommodation is a change, exception, or adjustment to a 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 policies 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. [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act]

Federal regulations stipulate that requests for accommodations will be considered reasonable if they do not create an "undue financial and administrative burden" for HACCC, 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.

### **Types of Reasonable Accommodations**

When it is reasonable (see definition above and Section 2-II.E), HACCC shall accommodate the needs of a person with disabilities. Examples include but are not limited to:

- Permitting applications and reexaminations to be completed by mail
- Providing "large-print" forms
- Conducting home visits
- Permitting a higher utility allowance for the unit if a person with disabilities requires the use of specialized equipment related to the disability
- Modifying or altering a unit or physical system if such a modification or alteration is necessary to provide equal access to a person with a disability
- Installing a ramp into a dwelling or building
- Installing grab bars in a bathroom
- Installing visual fire alarms for hearing impaired persons
- Allowing a change in the family's rent due date to correspond with the receipt of the head of household or spouse/cohead's SSI or SSDI benefits
- Allowing HACCC-approved live-in aide to reside in the unit if that person is determined to be essential to the care of a person with disabilities, is not obligated for the support of the person with disabilities, and would not be otherwise living in the unit
- Providing a designated handicapped-accessible parking space
- Allowing an assistance animal
- Permitting an authorized designee or advocate to participate in the application or certification process and any other meetings with HACCC staff
- Displaying posters and other housing information in locations throughout HACCC's office in such a manner as to be easily readable from a wheelchair

## **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 HACCC 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 HACCC's programs and services.

If the need for the accommodation is not readily apparent or known to HACCC, the family must explain the relationship between the requested accommodation and the disability.

### HACCC Policy

HACCC will encourage the family to make its request in writing using the Request for Reasonable Accommodation Form provided by HACCC. However, HACCC will consider an accommodation any time the family indicates that an accommodation is needed, regardless of whether the request is submitted in writing, and regardless of whether the request is submitted on HACCC's Request for Reasonable Accommodation form.

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

If the need for the accommodation is not readily apparent or known to HACCC, 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. Verification of disability and/or disability-related need is not required when the disability and/or disability-related need is obvious or already known to HACCC.

The request need not use a specific written form and need not mention the Fair Housing Act, Section 504, or the ADA, or use the phrase "reasonable accommodation" or "reasonable modification."

HACCC will help the family fill out the form if they choose to use it and if they need assistance.

**While requests for accommodation may be submitted to any Housing Authority employee, requests will be evaluated and decided upon by the Section 504 Coordinator and/or another staff member trained in and knowledgeable about fair housing and reasonable accommodations.**

### **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 which is used for waiting list preferences and income allowances.

Before providing an accommodation, HACCC 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 HACCC's programs and services.

If a person's disability is obvious or otherwise known to HACCC, 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 HACCC, HACCC 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, HACCC 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 (Program Administration). 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, 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 provide verification of a disability [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].
  - Unless the disability is obvious or known to HACCC, in order to be eligible for a reasonable accommodation, the person seeking the accommodation must have an appropriately licensed and knowledgeable professional verify three (3) things:
    - First, that the requestor meets the definition of having a disability.
    - Second, that the requested accommodation is medically necessary in order for the requestor to fully enjoy the housing and other benefits provided by HACCC housing programs, and that the requestor would be unable to fully enjoy those program benefits without the requested accommodation.
    - Finally, that there is an identifiable relationship, or nexus, between the requestor's disability and the requested accommodation(s).
- HACCC must request only information that is necessary to evaluate the disability-related need for the accommodation. HACCC may not inquire about the nature or extent of any disability.
- Medical records will not be accepted or retained in the participant file.
- In the event that HACCC does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity of the disability, HACCC will dispose of it.

In place of the information, HACCC 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 PIH 2010-26]**

HACCC 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 HACCC, OR fundamentally alter the nature of

HACCC's 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 cost of the requested accommodation, the financial resources of HACCC at the time of the request, the benefits that the accommodation would provide to the family, 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, HACCC 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 HACCC may verify the need for the requested accommodation.

#### HACCC Policy

After a request for an accommodation is presented, HACCC will respond, in writing, within 15 calendar days.

If HACCC denies a request for an accommodation because there is no relationship, or nexus, found between the disability and the requested accommodation, the notice will inform the family of the right to appeal HACCC's decision through an informal hearing (if applicable) or the grievance process (see Chapter 14).

If HACCC 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 HACCC's operations), HACCC will discuss with the family whether an alternative accommodation could effectively address the family's disability-related needs without a fundamental alteration to the public housing program and without imposing an undue financial and administrative burden.

If HACCC believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, HACCC 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. The notice will inform the family of the right to appeal HACCC's decision through an informal hearing (if applicable) or the grievance process (see Chapter 14).

## **2-II.F. REASONABLE ACCOMMODATION REASSESSMENT**

#### HACCC Policy

The need for a reasonable accommodation may change over time due to a variety of factors. To ensure program integrity, appropriate use of funds, and continued compliance with fair housing laws, HACCC may conduct periodic reevaluations of previously approved accommodations. Families will be notified in writing if any reassessment of a previously approved accommodation is initiated. The notice will describe the circumstances resulting in the reassessment and will detail how HACCC will assist the family to re-engage the interactive process.

Any family with an approved Reasonable Accommodation will be reengaged in the interactive process when the duration of the disability related to the accommodation is temporary in nature or not known at the time of approval. Such reassessments will

generally be initiated at the “revisit date” indicated upon approval or at the next scheduled reexamination (whichever date is later).

In certain circumstances, withdrawing previously approved accommodation may be necessary without initiating a reassessment. Examples include but are not limited to:

- 1) The death of a household member for which a Live in Aid was provided as an accommodation.
- 2) The removal of a household member for which a single bedroom was provided as an accommodation.
- 3) In response to a request from the family to withdraw a previously approved accommodation.
- 4) A family’s disengagement from the search to fill a vacated Live-in aide position.
- 5) Credible evidence that the accommodation is being used in a way that violates program policies or was based on inaccurate or false information. This includes determinations made during regularly scheduled inspections of the unit where it is confirmed that the extra bedrooms approved for necessary medical equipment are not being used for the intended purpose (PIH 2010-51, OIG 2012-KC-1005).

These circumstances are described in notices to families who have been approved for Reasonable Accommodations. Additionally, families are notified of any subsidy size changes in writing and all participating families reserve the right to request a hearing to appeal any subsidy size determination by HACCC.

Additional circumstances prompting reassessments of previously approved Reasonable Accommodations may be identified in the course of leasing and continued eligibility activities.

When possible, reassessments of previously approved accommodations will be initiated based on general criteria as opposed to individual referrals. Examples include but are not limited to:

- 1) A family seeking tenancy in an apartment complex was approved for an extra bedroom for the storage of medically necessary equipment (oxygen tanks). Years later, the family requests tenancy at a single-family home with additional storage space.

While the need for the accommodation in this scenario will be reassessed, HACCC should as well, initiate a phased reassessment of all accommodations approved for the storage of medical equipment where the family has a later move from a unit type “apartment” to unit type “single family home”.

- 2) A family member is approved to have a Live-in aide. Years later, the family reports that the member approved for a Live-in Aide is working as a merchant marine and is often deployed for several weeks at a time.

While the need for the accommodation in this scenario will be reassessed, HACCC should as well, initiate a phased reassessment of all accommodations approved for members to have a Live-in Aide who also have income from work or self-employment exceeding a certain amount.

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

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

At the initial point of contact with each applicant, HACCC shall inform all applicants of alternative forms of communication that can be used other than plain language paperwork.

### HACCC Policy

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

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 HACCC 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 Contractor of the Authority, a friend, relative or advocate, requested by the applicant) to receive, interpret and explain housing materials and be present at all meetings.

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

HACCC must comply with a variety of regulations pertaining to physical accessibility, including the following.

- Notice PIH 2010-26
- 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

HACCC's policies concerning physical accessibility must be readily available to applicants and resident families. They can be found in three key documents.

- This policy, the Admissions and Continued Occupancy Policy, describes the key policies that govern HACCC's responsibilities with regard to physical accessibility.
- Notice PIH 2010-26 (which must be posted in HACCC offices in a conspicuous place) summarizes information about pertinent laws and implementing regulations related to non-discrimination and accessibility in federally-funded housing programs.
- HACCC Agency Plans provide information about self-evaluation, needs assessment, and transition plans.

The design, construction, or alteration of HACCC facilities must conform to the Uniform Federal Accessibility Standards (UFAS). Notice PIH 2010-26 contains specific information on calculating the percentages of units for meeting UFAS requirements.

Newly-constructed facilities must be designed to be readily accessible to and usable by persons with disabilities. Alterations to existing facilities must be accessible to the maximum extent feasible, defined as not imposing an undue financial and administrative burden on the operations of the public housing program.

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

HACCC'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 966.7].

When applicants with disabilities are denied assistance, the notice of denial must inform them of HACCC's informal review process and their right to request an informal hearing [24 CFR 960.208(a)]. In addition, the notice must inform applicants with disabilities of their right to request reasonable accommodations to participate in the informal review process.

When a family's lease is terminated, the notice of termination must inform the family of HACCC's informal hearing process and their right to request a hearing in accordance with HACCC's grievance process [24 CFR 966.4(1)(3)(ii)] and any reasonable accommodations needed to participate.

When reviewing reasonable accommodation requests, HACCC must consider whether reasonable accommodation will allow the family to overcome the problem that led to HACCC's decision to deny or terminate assistance. If a reasonable accommodation will allow the family to meet the requirements, HACCC must make the accommodation [24 CFR 966.7].

In addition, HACCC must provide reasonable accommodation for persons with disabilities to participate in the hearing process [24 CFR 966.56(h)].

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

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

Language for Limited English Proficiency (LEP) Persons 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 public housing 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 Final Guidance to Federal Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons, published January 22, 2007, in the *Federal Register*.

HACCC 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). Applicants and participants may request an informal hearing if they have not received appropriate language access accommodation.

LEP persons are 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 Admissions and Continued Occupancy Policy, LEP persons are public housing applicants and resident families, and parents and family members of applicants and resident families. During times when the Public Housing wait lists are open or for outreach material that explains how to access the program, the definition of LEP persons will include all potential applicants. In all cases, HACCC will determine language services provided to LEP populations based on data for the County of Contra Costa.

In order to determine the level of access needed by LEP persons, HACCC 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 public housing 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 HACCC and costs. Balancing these four factors will ensure meaningful access by LEP persons to critical services while not imposing undue burdens on HACCC.

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

In a courtroom, a hearing, or situations in which health, safety, or access to important benefits and services are at stake, HACCC will offer, or ensure that the family is offered through other sources, competent interpretation services free of charge to the LEP person.

#### HACCC Policy

HACCC 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, HACCC will make every effort to train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other PHAs, and will standardize documents. Where feasible and possible, HACCC will encourage the use of qualified community volunteers.

HACCC utilizes the Language Line phone service to conduct in-office interpretation if a multilingual staff person is not available to provide translation 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 HACCC. The interpreter may be a family member or friend.

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

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

#### HACCC Policy

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

- HACCC 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;
- If there are fewer than 50 persons in a language group that reaches the 5 percent trigger, HACCC may not translate vital written materials, but will provide 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.

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

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

If HACCC 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 HACCC's public housing program and services.

#### HACCC Policy

If it is determined that HACCC serves very few LEP persons, and HACCC has very limited resources, HACCC will not develop a written LEP plan, but will consider alternative ways to articulate in a reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, grassroots and faith-based organizations, community groups, and groups working with new immigrants will be contacted for input into the process.

If HACCC determines it is appropriate to develop a written LEP plan, 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 LEP plan.

## **2-1: DEFINITION OF A PERSON WITH 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 HACCC) 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 public housing 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 definition of disability is not entitled to 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 allowance for medical expenses, or the allowance for disability assistance expenses.

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 public housing program, yet an accommodation is needed to provide equal opportunity.