

**Housing Justice Network Training**  
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## **Public Housing Overview**

### **Key Components**

- **Number of Units**
  - About 1.1.8 million (1.01 million occupied)
  - 31% of households headed by elderly persons
  - 45% headed by African Americans
  - 23% headed by Latinos

Information such as the above is available nationally, by state, Public Housing Agency (PHA) and development at <https://pic.hud.gov/pic/RCRPublic/rcrmain.asp>.

- **Ownership**
  - PHA owns Public Housing. A PHA is
    - Created pursuant to local state enabling legislation.
    - Governed by board of commissioners.
      - With some exceptions, a tenant or other “program participant” must be on the board. 42 U.S.C.A. § 1437(b) (West 2008); 24 C.F.R. §§ 964.400-964.430 (2008).
    - The jurisdiction of the PHA can include entire state, one or more cities or one or more counties or other geographical area.
- **Who’s Involved?**
  - HUD (both Headquarters in Washington, D.C. and the local office) and the PHA.
  - HUD evaluates the PHA in accordance with the Public Housing Assessment System (PHAS). 24 C.F.R. pt. 902 (2008); *see also* pt. 901.
    - Elements evaluated include physical condition, management operation and resident service and satisfaction.
  - PHA consults with a Resident Advisory Board (RAB) and develops annual and five-year plans that HUD approves and may review. 42 U.S.C.A. § 1437c-1 (West 2008); 24 C.F.R. pt. 903 (2008); For a copy of the form PHA plan Template, see <http://www.hud.gov/offices/pih/pha/>.
- **Subsidy Mechanism**
  - Subsidies are provided pursuant to an Annual Contributions Contract (ACC) between HUD and a PHA.
  - HUD provides annual operating subsidies determined by formula. 42 U.S.C.A. § 1437g(e) (West 2008); 24 C.F.R. Part 990 (2008). Recent revisions to the operating subsidy formula took effect in January 2007. *See* NHLP, HUD Housing Programs: Tenants' Rights § 1.3.1 (2006-2007 Supp.).

- Original project debt has been paid for through federal grants or subsidies. HUD now provides capital funds to cover capital improvements. PHAs apply through the PHA plan process for capital funds each year based upon a formula. 42 U.S.C.A. § 1437g(d) (West 2008).
- Other grants are sometimes available:  
*See, e.g.,* HOPE VI (42 U.S.C.A. § 1437v), ROSS (42 U.S.C.A. § 1437z–6) and others listed in Notices of Funding Availability (NOFAs).
- **Key Regulatory Features**
  - Federal statute, regulations and forms.
    - Statute: 42 U.S.C.A. §§ 1437 to 1437e, 1437g to 1437z, 1437z–2 to 1437z–6, 1437aaa-2 to 1437aaa–6 (West 2008).
    - Regulations: 24 C.F.R. Part. 5, and 900 *et seq.* (2008) (especially Parts 960 and 966).
    - PUBLIC HOUSING OCCUPANCY GUIDEBOOK (June 2003), available at <http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebook.cfm>.
    - Annual Contribution Contract, HUD Form 53010 D, E, H, I, etc. (contract between HUD and PHA), available at <http://www.hudclips.org>.
    - HUD notices and forms, available at <http://www.hudclips.org>.
  - Locally developed rules, policies and contracts.
    - State enabling statute for PHAs.
    - PHA plan developed locally and should be available locally. HUD also posts the PHA plans on the HUD web site, <http://www.hud.gov/offices/pih/pha/>.
    - Admission and Continued Occupancy Plan (ACOP) developed locally and should be available locally for review as a supporting document to the PHA plan.
    - Tenant lease is developed locally, but detailed federal regulations must be followed. 24 C.F.R. Part 966 (2008).
- **Finding Out Where this Housing Is Located in Your Community**
  - For each PHA there is a profile listed on the HUD web site which provides basic contact information, the total number of public housing units and the number of developments. See <http://www.hud.gov/offices/pih/systems/pic/haprofiles/>. In the PHA plan materials (available locally), PHAs may provide a list of the name and address of each PHA development. The PHA plan will state whether the development is designated for the elderly, disabled or both. (Element 9 of the PHA plan Template). PHAs must renew designation or the development reverts to serving both elderly and disabled or the general population.
  - HUD's Picture of Subsidized Households dataset also provides some information for individual public housing sites, <http://www.huduser.org/datasets/assthsg/statedata98/index.html>. Also, available for 2002. See also the Resident Characteristics Report.
- **Tips for Determining What Kind of Housing Is Involved**
  - Owned and managed by the PHA, which receives rent. Get the lease.
  - Age of the building, could have been built any time between the 1930s and the present.
  - Tenant is aware that there is a grievance procedure.

- Tenant has income verified and rent recertified annually by the PHA.
- Signage at the development.
- **Getting Information:**
  - Statutes, regulations, handbooks, HUD notices as noted above.
  - NHLP, *HUD Housing Programs: Tenants' Rights* (3d ed. 2004 and 2006-2007 Supp.)
  - NHLP *Housing Law Bulletin*, published monthly.
  - NHLP website, <http://www.nhlp.org>.
  - NHLP maintains a listserv which HJN members may join.
  - National Low Income Housing Coalition's weekly *Memo to Members*
  - Selected other partners.
    - National Training and Information Center, <http://www.ntic-us.org/>.
    - ENPHRONT (Everywhere and Now Public Housing Residents Organizing Nationally Together), <http://www.enphront.org>.
    - National Low Income Housing Coalition, <http://www.nlihc.org/>.
    - Bazelon Center for Mental Health Law (housing resource for individuals with mental disabilities) <http://www.bazelon.org/housing.html>.
- **Related Subprograms or Set-Asides for Special Uses**
  - Some Public Housing may be managed by private management companies.
  - Some newly developed Public Housing, generally using HOPE VI funds, may be “mixed finance,” which means that it may have tax credit or other types of funding, as well as an ACC for public housing operating subsidies. Some mixed finance public housing is also mixed income.
  - A few Public Housing units are designated for home ownership.
  - A few Public Housing developments are managed by the residents.
  - PHAs increasingly are involved with the development or ownership of housing that may not be conventional Public Housing.

## Major Applicant and Tenant Issues

- **ADMISSIONS**
  - **Waiting list:** how compiled and maintained.
    - PHA now may have site-based waiting lists, a central waiting list or any combination. 42 U.S.C.A. § 1437d(r) (West 2008) and 24 C.F.R. § 903.7(b)(2) (2008). Different rules may apply to site based waiting lists.
    - PHA announces in the PHA Plan if the waiting list is open or will be opened in the coming year.
    - PHAs typically advertise when the waiting list is open and adopt a process to provide that getting on the on the list is accessible.
    - Waiting list for Public Housing may be combined with Voucher list.
  - **Eligibility:**
    - Income: Low income (80% of AMI) and very low income (50% of Area Median Income (AMI)).
    - Targeting: at least 40% of all new admissions must be families with Extremely Low Income (ELI) (30% of AMI). 42 U.S.C.A. § 1437n(a) (West 2008). “Fungibility”: if PHA admits more than 75% of ELI families to the Voucher program, less than 40% of the families admitted to PH may be ELI. 24 C.F.R. § 960.202(b)(2) (2008); 42 U.S.C.A. § 1437n(a)(4) (West 2008).

- The AMI 80% and 50% and 30% of AMI for every jurisdiction is available at: <http://huduser.org/datasets/il.html>.
  - Income mix: PHAs have an obligation to deconcentrate Public Housing. Deconcentration is required for non-exempt general occupancy buildings where the average income of families is outside the range of 85–115% of the average income for all general occupancy buildings, except that the upper range is never less than the ELI level for the area. If the building falls outside the range, the PHA must develop a plan for deconcentration and may prefer higher-income families for the low-income developments and lower income families for the higher-income developments. Such preference is also known as “skipping.” Developments that are exempt include: elderly developments and certain HOPE VI developments with contracts in effect prior to Jan. 22, 2001 and developments of PHAs with 100 units or less and PHAs with only one general occupancy development. 42 U.S.C.A. § 1437n(a)(3)(B) (West 2008); 24 C.F.R. § 903.2 (2008).
  - Restrictions on Assistance to Non-Citizens: In general a family must have one member of the household who is a citizen or who has eligible immigration status under one of the categories set forth in 42 U.S.C.A. § 1436a(a) (West 2008). If any members of the household are not citizens or lack eligible immigration status, the assistance for the family is prorated. *Id.*; 24 C.F.R. §§ 5.500–5.528 (2008).
- **Preferences:**

PHAs may adopt local preferences for applicants. The preferences may include preferences for families whose heads are working (which must also include families whose heads are elderly or with disabilities), residency preferences and preferences for victims of domestic violence and families who are homeless or threatened with homelessness. 42 U.S.C.A. § 1437d(c)(4) (West 2008); 24 C.F.R. § 960.206 (2008). Determination of preferences is included in the PHA plan.
- **Screening:**
    - Standards: the information considered for each applicant and the standards adopted by the PHA must be reasonably related to individual attributes of an applicant. When adverse information is received, the PHA must consider the time, nature, extent and seriousness of the offense. PHA may also consider rehabilitation of an applicant. 24 C.F.R. §§ 960.203(a) and (d) (2008).
    - Criminal activity: PHAs must screen and reject applicants for certain criminal behavior, including: if any household member has been evicted from federally assisted housing within past 3 years for drug-related criminal activity (except that applicant may demonstrate changed circumstances), if an applicant is currently engaged in illegal use of a drug, if any household member has ever been convicted of methamphetamine production on federally assisted housing premises and if any member is a registered lifetime sex offender. 24 C.F.R. § 960.204 (2008); 42 U.S.C.A. §§ 13663 (sex offender), 1437n(f) (methamphetamine).
    - Criminal activity: PHA may also screen for a history of criminal activity involving acts of physical violence to persons or property and for abuse of alcohol which may threaten the health and safety of others. 24 C.F.R. §§ 960.203(c)(3) and 960.204(b) (2008).

- Poor tenant history: Local rules control, provided above standards are followed.
- Poor rent paying history or bad credit: Same; see also *Baldwin* cited in the voucher section.
  
- **Notification and opportunity to contest**  
Applicants must be notified of ineligibility and provided an opportunity to contest the determination in an informal hearing. 42 U.S.C.A. § 1437d(c)(3) (West 2008); 24 C.F.R. § 960.208 (2008).
- **Admission policy** must be available locally; admission issues can be addressed in the PHA plan, because the ACOP, which is an attachment to the PHA Plan, should have the PHA's complete admission policy.
  
- **RENTS**
  - **Generally:**
    - HUD has estimated that 60% of tenants pay an incorrect rent, with 24% paying too much. See HUD Notice PIH 2001-15, Improving Income Integrity in Public and Assisted Housing (May 2, 2001). See also information in the section on rents in the voucher program.
    - Public Housing residents usually pay rent based upon a percentage of their adjusted income or occasionally gross income, paying the higher of 30% of adjusted income or 10% of gross. In a few jurisdictions there is also a "welfare rent." Tenants may pay a minimum rent, and they may opt to pay a flat rent or ceiling rent. 42 U.S.C.A. § 1437a (West 2008).
  
  - **Income-based rents**  
Most residents pay monthly rent based upon one-twelfth of 30% of adjusted annual income.
  
  - **Annual Income and Exclusions**  
Annual income includes all income that the family anticipates that it will receive in the coming year. There are many exclusions, deductions and disallowances from anticipated income. Some of these include the Earned Income Disregard/Disallowance (EID); income from full-time students who are not head of household, income for foster care, income of live-in aides, deferred lump sum additions to family income due to the delayed start of SSI or social security payments, etc. 24 C.F.R. § 5.609 (2008); *see also* 42 U.S.C.A. § 1437a(d) (EID).
  
  - **Adjusted Income after Deductions**
    - The standard mandatory deductions include:
      - \$480 for each dependent,
      - \$400 for each elderly or disabled family,
      - For each elderly or disabled family, unreimbursed medical and reasonable attendant care or auxiliary apparatus that exceeds 3% of annual income,
      - Child care expenses that allow a family member to work, and
      - Any other locally adopted deductions. 42 U.S.C.A. § 1437a(a)(5) (West 2008); 24 C.F.R. § 5.611 (2008).

- If a resident loses welfare due to sanctions due to fraud or failure to comply with an economic self-sufficiency program, tenant rent will *not* be adjusted and the lost welfare income will be imputed. 42 U.S.C.A. § 1437j(d) (West 2008); 24 C.F.R. § 5.615 (2008).
- **Minimum Rent and hardship exemptions**  
A PHA may decide to charge no minimum rent or a minimum rent of up to \$50. If a PHA decides to charge a minimum rent it must be stated in the PHA plan. Any tenant who is charged a minimum rent is eligible for a hardship exemption if the tenant is threatened with eviction for failure to pay the minimum rent or there is a reduction in income due to a change in family circumstances. If the family qualifies for the hardship exemption, the minimum rent is suspended for 90 days and the tenant may not be evicted for nonpayment of rent. The tenant may have to repay the minimum rent with reasonable repayment agreement. 42 U.S.C.A. § 1437a(a)(3) (West 2008); 24 C.F.R. § 5.630 (2008).
- **Utility Allowance**  
Residents who pay their own utilities are entitled to an allowance for the consumption of a reasonable level of utilities by an energy conservative household. This allowance is deducted from the tenant portion of the rent. 24 C.F.R. § 5.603 (2008) (definition of utility allowance). If tenant income is so low that the allowance exceeds the tenant portion of the rent, the family is entitled to a utility reimbursement, or the PHA may pay the reimbursement directly to the utility company. Residents are only entitled to the utility reimbursement if their rent is income-based. 24 C.F.R. §§ 5.632 and 960.253(c)(3) (2008).
- **Other Rents (Flat Rents, Ceiling Rents)**  
*Flat rent:* every PHA is required to adopt a flat rent based upon the market rent for the unit, taking into account its location, quality and size. The flat rent should be designed to encourage self-sufficiency. A family paying a flat rent may request a financial hardship to switch to an income-based rent. 42 U.S.C.A. § 1437a(2) (West 2008); 24 C.F.R. § 960.253(f) (2008).  
*Ceiling rents:* While HUD regulations authorized ceiling rents until October 2002, some PHAs still use ceiling rents. 24 C.F.R. § 960.253(d) (2008).
- **Recertification**
  - Annual recertification required.
  - PHA may decide when and how to require interim rent recertification when tenant income increases (information in PHA Plan).
  - Interim recertification required if family reports decrease in income, except for loss of certain welfare income. See above re loss or reduction of TANF benefits. 24 C.F.R. § 960.257 (2008).
- **Right to know various rent levels:** Once a year the PHA must offer residents the opportunity to pay an income-based rent or a flat rent. PHA must inform the tenant of the dollar amounts of the income-based rent and the flat rent. A tenant who chooses flat rent does not have to have income recertified for a 3 year period.

- **Ability to challenge rent level**
  - Public Housing grievance procedures.
  
- **GRIEVANCE PROCEDURES**
  - Public housing residents may request a grievance hearing to dispute PHA action or inaction involving tenant lease or PHA policies. Eviction actions involving criminal activity may be exempt from the grievance process if HUD has issued a due process determination for the specific judicial eviction procedure used by the PHA. 42 U.S.C.A. § 1437d(k) (West 2003); 24 C.F.R. §§ 966.51–966.57 (2008).
  
- **EVICTIONS**
  - **Notice: length and content**
    - 14 days for nonpayment of rent.
    - 30 days or a shorter state law period for all other situations.
    - Notice must specify the grounds, inform resident of the right to examine PHA documents, of the right to a grievance hearing or an explanation of why it is not available, etc. 42 U.S.C.A. § 1437d(l) (West 2003); 24 C.F.R. § 966.4(l)(3) (2008).
  
  - **Good cause required** for any termination, both at end of term and midterm.
  
  - **Good cause defined** as:
    - Serious or repeated violation of material terms, including nonpayment of rent and failure to comply with household obligations under the lease.
    - Drug-related criminal activity that occurs *on or off* the premises.
    - Criminal activity that threatens health, safety or right to peaceful enjoyment of other residents or staff.
    - Other good cause.
    - Cause requirements found in 42 U.S.C.A. § 1437d(l) (West 2008); 24 C.F.R. § 966.4(l) (2008).
  
  - **Pre-judicial administrative review?**  
See Grievance Procedures, *supra*.
  
- **Community Service**
  - Community Service (including self sufficiency activity) is required for adult family members who are not exempt (96 hours of service per year or 8 hours/month). The exempt include those who are working, elderly and disabled, etc. 42 U.S.C.A. § 1437j(c)(4) (West 2008); 24 C.F.R. § 966.4(l)(2)(iii)(D) (2008).
  - A family may be evicted because of the failure of a member to perform Community Service or may be compelled to exclude that family member.
  
- **Other Current Important Issues**
  - PHA plan process. PHA has discretion over many program features, which can be influenced through the Plan process or PHA Board. New statutory provision regarding streamlining rules for small PHAs.

- Loss of Public Housing Units
  - HOPE VI, a program designed to address distressed public housing through demolition, rehabilitation, reconstruction or replacement and to revitalize the sites. 42 U.S.C.A. § 1437v (West Supp. 2008); there are no regulations but there is a Notice of Funding Availability published each year. For current and prior NOFAs, *see* <http://www.housingresearch.org/>
  - Units may also be lost through mandatory and voluntary conversion. 42 U.S.C.A. § 1437z-5 (West 2003) (mandatory conversion); 24 C.F.R. Part 972 (2008).
  - Units may be lost through demolition and disposition. 42 U.S.C.A. § 1437p (West 2008).
  - PHA disinvestment.
  - Lack of funding from HUD (current funding at 82% of the formula need for operating subsidies and there is a large back log of unfunded deferred maintenance) and new funding formulas.
- Some PHAs are not subject to many provisions in the federal statute because they are involved in a demonstration called Moving to Work. *See*: <http://www.hud.gov/offices/pih/programs/ph/mtw/index.cfm>. The rules regarding MTW may change due to legislation proposed in 2009.
- There are programs relating to Public Housing that promote self-sufficiency, such as the Family Self-Sufficiency program (24 C.F.R. Part 984 (2008)) and Section 3 (12 U.S.C.A. § 1701u (West 2008); 24 C.F.R. pt. 135 (2008)).
- There are rules that govern Public Housing Resident councils. 24 C.F.R. Part 964 (2008). There may be proposed rules in the future to amend 964.
- The new operating subsidy rule is expected to result in reduced public housing funding for a number of PHAs.
- Implementation of Violence Against Women Act, which precludes denying admission, terminating subsidy or eviction because of domestic violence. 42 U.S.C.A. § 1437d(c)(3) (admission) (1)(6) (eviction) and (u) (certification and confidentiality); information on what a PHA is doing must be in the PHA Plan. 42 U.S.C.A. § 1437c-1(d)(13).
- Proposed rules regarding streamlining PHA plan and grievance procedure rules.
- New rules regarding use of SSN by PHAs?
- There may be legislation proposed in 2009, such as Section Eight Voucher Reform Act (SEVRA) to revise rent, definition of tenant income, and rules regarding recertification.