

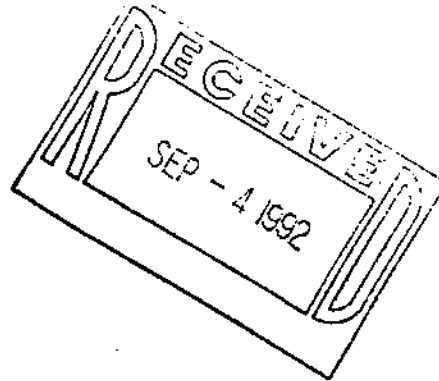


U.S. Department of Housing and Urban Development

Chicago Regional Office, Region V
77 W. Jackson Blvd.
Chicago, Illinois 60604-3507

SEP - 2 1992

Ms. Nancy Sohn
Prairie State Legal Services, Inc.
10 East State Avenue, Suite 102
St. Charles, Illinois 60174



Dear Ms. Sohn:

SUBJECT: HUD Policy — Foster Children
Aurora Housing Authority
Your Correspondence Dated August 20, 1992

Your August 20th letter asked us to write a clarification of HUD policy concerning the status of foster children in Public Housing Agencies.

1) OCCUPANCY STANDARDS

- A) "For the purpose of determining unit size, PHAs [Public Housing Agencies] are required to include, as members of the household, all children anticipated to reside in a dwelling unit."

— HUD Handbook 7465.1 REV-2 CHG-1, Chapter 5, §5-1/a/(6), page 5-1.

A copy of the respective page, and related pages, are enclosed for your convenience. We bring your attention to other paragraphs on page 5-1 which directly address your concerns.

- B) Also enclosed is a copy of occupancy standards used by another PHA in the greater Chicago area; we sent a copy to the Aurora Housing Authority suggesting these standards for adoption by their Board.

2) FOSTER CHILDREN

- A) As indicated above, foster children must be counted as members of the household, as must every other person on the lease (and every resident must be named on the lease) in determining the size dwelling unit for which a family is qualified. ¶(7), page 5-3, says: "Foster children are normally included in determining unit size. [Our underline]. There are many extenuating circumstances which occur in public housing and the use of the word 'normally' must not be construed to mean that a PHA can exclude foster children just because they are foster children.

- B) PHAs may not categorically exclude foster children. To do so would treat them as a class, an act which is explicitly prohibited. See the Handbook at Chapter 4, ¶(5), page 4-2, copy enclosed.
- C) HUD regulations at 24CFR966.4 (d) say:

"The lease shall provide that the tenant shall have the right to exclusive use and occupancy of the leased premises which shall include reasonable accommodation of the tenant's guests or visitors and, with the consent of the PHA, may include care of foster children and live-in care of a member of the tenant's family." [Our underline]

We consider the qualifying phrase to mean that a PHA can prevent foster children from living in the unit for good cause; for instance, a child with a history of violent behavior, use of drugs, etc.. "With the consent of the PHA" also means that the PHA must know about the arrangement and the person must be properly recorded as an authorized tenant, etc.. The phrase does not grant the PHA the authority to arbitrarily deny a family the right to take on a foster child.

3) TRANSFERS

When the size of a resident family changes so that the unit they are in is no longer appropriate, HUD policy advocates that the family be transferred to a unit of appropriate size. The most specific declaration of HUD policy is found in our *Occupancy Audit Guide*, where the HUD Occupancy Auditor is asked to consider:

"Are overcrowded families given first priority for units of the correct size? Is a transfer waiting list maintained?" ¶6.c, Page 3 of 5. Form HUD-52376

The assertion is, of course, that the PHA's first responsibility is to the residents the PHA already has, rather than to the families on the waiting list. The same issue is raised on form HUD-52378, *Tenant File Review*, ¶#3 Space Assignment.

4) CONFLICTING AGENCY POLICIES

We are aware that policies between agencies sometimes prevents our serving the people we are trying to help. In this particular, a PHA may have a policy that they will not transfer a family to a larger unit until the additional member (foster child) is actually living with the family, while at the same time the foster care agency has the policy that they will not place a child with a family unless the dwelling is large enough. We think the issue can be easily resolved by agencies that want to work together. If the PHA receives a document from the placing agency clarifying that a foster child will be given to the family when the unit is of adequate size, the PHA has sufficient assurance to proceed in transferring the family to a larger unit.

We must stress that there are often substantial impediments to transferring a family to a larger unit not the least of which is expense. This letter only serves to clarify policy. However, we believe that where agencies have the patience and imagination to work things out that the desired end can usually be obtained.

5) TRANSFER OF POTENTIAL FOSTER PARENTS

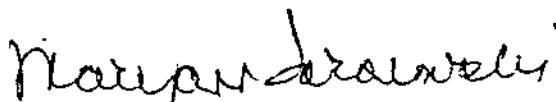
Item #2 in your letter says HUD is dictating

"that the Housing Authority require that current and prospective foster parents move to apartments appropriate for their family size, without taking into account foster children."

This is incorrect. HUD wants the families placed in units appropriate for their needs according to acceptable occupancy standards; occupancy standards take into consideration the addition or subtraction of family members in the immediate future.

Questions concerning these matters may be directed to HUD Housing Management Specialist, Gloria Purvis, (312) 353-0916.

Sincerely yours,



Maryann Taranowski, Director
Management Division
Office of Public Housing

Attachments

cc: Ms. Joyce Moore, Chairperson
Ms. Clorinda Cordova, Executive Director

CHAPTER 5

CHAPTER 5: TENANT SELECTION

5-1. SIZE OF UNIT NEEDEDa. POLICY

- (1) HUD does not specify the number of persons who may live in public housing units of various sizes.
- * (2) The PHA must set reasonable occupancy standards which will assist as many people as possible without overcrowding the unit or the project and which will minimize vacancies.
- (3) In setting the occupancy standards, the PHA must comply with all reasonable State or local restrictions regarding the maximum number of occupants permitted to occupy a dwelling.
- (4) In assigning families to public housing, a PHA may allow families to occupy units of sufficient size so that persons of opposite sex (other than spouses), persons of different generations, and unrelated adults may have separate bedrooms. Where the PHA permits families to occupy units of sufficient size to enable persons in these categories to have separate bedrooms, the PHA should permit such families to choose whether to opt for the larger or smaller units at the time of application. PHAs may also choose to allow such families to be placed on waiting lists for both the larger and smaller units. A PHA is free to allow families large enough units to enable persons in these categories to have separate bedrooms, without also having to allow families to occupy units of sufficient size for persons of the same sex, persons of the same generation, or related adults to have separate bedrooms.
- (5) PHAs may have different standards for different projects but such standards must not result in or perpetuate patterns of occupancy which would be inconsistent with Title VI of the Civil Rights Act of 1964 or the Fair Housing Act.
- (6) For the purpose of determining unit size, PHAs are required to include, as members of the household, all children anticipated to reside in a dwelling unit. Examples include children expected to be born to pregnant women, children who are in the process of being adopted by an adult, or children whose custody is being obtained by an adult. The PHA should also include children who are temporarily absent from the home due to placement in foster care when considering family composition and family size. *

CHAPTER 5

b. DISCUSSION

- (1) In establishing occupancy standards, PHAs may provide for the assignment of units so that:
 - (a) No more than two persons would be required to occupy a bedroom.
 - (b) Persons of different generations, persons of the opposite sex (other than spouses) and unrelated adults would not be required to share a bedroom.
 - (c) Husband and wife share the same bedroom.
 - (d) Children of the same sex share a bedroom.
 - (e) Children, with the possible exception of infants, would not be required to share a bedroom with persons of different generations, including their parents.

- * (2) These guidelines result in the following range of persons per bedroom:

<u>NUMBER OF BEDROOMS</u>	<u>NUMBER OF PERSONS</u>	
	<u>MINIMUM</u>	<u>MAXIMUM</u>
0	1	1
1	1	2
2	2	4
3	3	6
4	5	8
5	7	10

*

For example, if the PHA has adopted these standards, households with three people generally should not receive apartments with more than three bedrooms. Nor should such households be required to live in apartments with fewer than two bedrooms. A household of three persons should be permitted to live in an apartment with fewer than two bedrooms if the household so desires, unless there is a state or local occupancy law forbidding occupancy of the unit by three or more persons or unless the PHA maintains an occupancy policy forbidding occupancy of the unit by three persons, and such an occupancy policy is reasonable under the circumstances.

- * (3) If, because of a physical or mental handicap of a household member or a person associated with that household, a family may need a unit that is larger than the unit size suggested by the guidelines in paragraph 5-1b (2), it may be an unlawful failure to make reasonable accommodation to deny such a family the opportunity to apply for and obtain such a unit.

-
- * (4) PHAs should consider the size of the unit and the size of the bedrooms as well as the number of bedrooms.
- (5) PHAs with many efficiencies but few one-bedroom units may want to reserve the one-bedroom units for two-person families.
- (6) PHAs may adopt occupancy standards which permit a lower level of occupancy in certain projects in order to help market units in hard-to-rent projects, i.e., projects with high vacancy rates or an absence of larger families on the waiting lists. For example, a PHA may allow two-person families to obtain three-bedroom units in such projects in order to help market units. This does not mean, however, that families with more than two persons may be forbidden from occupying two-bedroom units in such projects subject to reasonable occupancy limits adopted consistent with this section.
- (7) Foster children are normally included in determining unit size.
- (8) A live-in care attendant who is not a member of the family should not be required to share a bedroom with another member of the household.
- (9) A person of a different generation, such as a grandmother, should not be required to share a bedroom with her children or her grandchildren.
- (10) A PHA may provide space for a child who is away at school but who lives with the family during school recesses. A PHA would usually not provide space for a family member who will be absent most of the time, such as a member who is away in the military. A family may need a unit that is large enough to accommodate a member of the family or a person associated with that household who has a physical or mental handicap. Failure to provide reasonable accommodations to such a family may be unlawful. It may also be unlawful to deny such a family the opportunity to apply for and obtain such a unit.
- (11) To avoid vacancies, a PHA may provide a family with a unit that is larger than suggested by the guidelines in paragraph 5.1 b 2, with the provision that the family will move to a smaller unit when another family needs the unit and a suitable smaller unit is available. Any such provision must be in the lease. *

CHAPTER 4: SUITABILITY FOR TENANCY4-1. APPLICANT EVALUATIONa. POLICY

- (1) PHAs must evaluate each applicant to determine whether the applicant would be reasonably expected to have a detrimental effect on the other tenants or on the project environment. The PHA must deny admission to any applicant whose habits and practices may be expected to have a detrimental effect on other tenants or on the project environment.
- (2) The PHA must make an informed judgment about the applicant's suitability as a tenant and must assure that selection among otherwise eligible applicants is objective and reasonable. This includes:
 - (a) examining the applicant's history of meeting financial obligations, especially rent.
 - (b) determining whether the applicant has a history of:
 - o disturbing the neighbors;
 - o destroying property;
 - o living or housekeeping habits which could adversely affect the health, safety, or welfare of other tenants; or
 - o criminal activity, especially involving violence.
- (3) The PHA may also deny admission to applicants who:
 - (a) currently owe rent or other amounts to the PHA in connection with the public housing or Section 8 programs. (But see discussion section, item 6.)
 - (b) have committed fraud in connection with any Federal housing assistance program.

CHAPTER 4

- (4) PHAs may not require that:
 - (a) applicants have a minimum income;
 - (b) applicants work;
 - (c) applicants participate in a job training program; or that
 - (d) those who are eligible for various welfare or benefit programs apply for and receive those benefits (although the PHA may encourage them to apply).
- (5) PHAs must consider only information that is reasonably related to the individual's attributes - not what might be attributed to a particular group or class.
 - (a) Federal law prohibits discrimination based on race, color, creed, religion, national origin, sex, age, or handicap.
 - (b) The PHA may not exclude applicants because they:
 - o have children;
 - o have children born out of wedlock;
 - o are on welfare; or
 - o are students.
- (6) The PHA may not charge the applicant for the costs involved in the evaluation. In particular, the PHA may not charge for processing the application or for doing a credit check.

b. DISCUSSION

- (1) A thorough evaluation of applicants is one of the PHA's most important jobs. It is essential in maintaining well-managed projects.
- (2) If an evaluation of a particular applicant turns up something detrimental, the PHA may need to do a more complete investigation of that applicant.
- (3) Some acceptable forms of applicant evaluation are:
 - (a) interviewing the applicant;

Unit Size Standards

Number and Composition of Family Members

Number of Bedrooms

1 Person	-	0 Bedroom or 1 Bedroom unit
2 Persons:		
a. Husband and wife	-	1 Bedroom unit
b. 1 Parent and 1 child	-	2 Bedroom unit
3 Persons:		
a. Husband, wife and 1 child	-	2 Bedroom unit
b. 1 Parent and 2 children of same sex	-	2 Bedroom unit
c. 1 Parent and 2 children of opposite sex over the age of six (Head of household may accept a 2 bedroom certificate of voucher if it is available sooner and waive the right to a 3 bedroom certificate or voucher unless the family size increases)	-	2 or 3 Bedroom unit
4 Persons:		
a. Husband, wife and 2 children of same sex	-	2 Bedroom unit
b. 1 Parent and 3 children all of same sex	-	3 Bedroom unit
c. 1 Parent and 3 children, 2 of same sex, 1 of opposite sex	-	3 Bedroom unit
d. Husband, wife, and 2 children of opposite sex, both over the age of 6	-	3 Bedroom unit
e. Husband, wife, and 2 children of opposite sex both under the age of 6	-	2 Bedroom unit
5 Persons:		
a. Husband, wife and 3 children of same sex	-	3 Bedroom unit
b. Husband, wife and 3 children, 2 of same sex, 1 of opposite sex	-	3 Bedroom unit
c. 1 Parent and 4 children, all same sex	-	3 Bedroom unit
d. 1 Parent and 4 children, 2 of each sex	-	3 Bedroom unit
e. 1 Parent and 4 children, 3 of same sex, 1 of opposite sex (over the age of 6)	-	3 Bedroom unit

6 Persons:

a. Husband, wife and 4 children all of the same sex	-	3 Bedr
b. Husband, wife and 4 children, 2 of each sex	-	3 Bedroom
c. Husband, wife and 4 children 3 of same sex, 1 of opposite sex (see note)	-	4 Bedroom unit
d. 1 Parent and 5 children, all of same sex	-	4 Bedroom unit
e. 1 Parent and 5 children, 4 of same sex, 1 of opposite sex	-	4 Bedroom unit
f. 1 Parent and 5 children, 3 of same sex, 2 of opposite sex	-	4 Bedroom unit

7 Persons:

a. Husband, wife and 5 children, all of the same sex	-	4 Bedroom unit
b. Husband, wife, and 5 children, 4 of same sex, 1 of opposite sex	-	4 Bedroom unit
c. Husband, wife and 5 children, 3 of same sex, 2 of opposite sex	-	4 Bedroom unit
d. 1 Parent and 6 children, all of same sex	-	4 Bedroom unit
e. 1 Parent and 6 children, 5 of same sex, 1 of opposite sex	-	4 Bedroom unit
f. 1 Parent and 6 children, 4 of same sex, 2 of opposite sex	-	4 Bedroom unit
g. 1 Parent and 6 children, 3 of each sex	-	4 Bedroom unit

8 Persons:

a. Husband, wife and 6 children, all of same sex	-	4 Bedroom unit
b. Husband, wife and 6 children, 5 of same sex, 1 of opposite sex (see note)	-	5 Bedroom unit
c. Husband, wife and 6 children, 4 of same sex, 2 of opposite sex	-	4 Bedroom unit
d. Husband, wife and 6 children, 3 of each sex	-	5 Bedroom unit
e. 1 Parent and 7 children, all of same sex	-	5 Bedroom unit
f. 1 Parent and 7 children, 6 of the same sex, 1 of opposite sex	-	5 Bedroom unit
g. 1 Parent and 7 children, 5 of same sex, 2 of opposite sex	-	5 Bedroom unit
h. 1 Parent and 7 children, 4 of same sex, 3 of opposite sex	-	5 Bedroom unit

NOTE: In any situation where there are two children of the opposite sex under the age of six, they can be placed in the same bedroom.

August 20, 1992

VIA TELECOPY

Ms. Maryann Taranowski
Director of Management Division
Office of Public Housing
Department of Housing and Urban Development
77 West Jackson
Chicago, IL 60604-3507

Dear Ms. Taranowski:

I am writing this letter at the suggestion of David McMullin of your office. I spoke with Mr. McMullin in Gloria Purvis' absence about questions I have regarding the Aurora Housing Authority's policies toward foster children in public housing. Mr. McMullin advised me about HUD's position on those matters. He also advised me to direct a letter to you in order to obtain such information in writing from one of you or Ms. Purvis or himself. My questions, and what I understand to be HUD's position, are set out below.

Prairie State Legal Services represents several residents of Aurora public housing. Each is a licensed foster parent, and each is either currently caring for foster children or would be caring for foster children but for the Aurora Housing Authority's recently enacted policy of not considering foster children in determining the appropriate number of bedrooms for a resident's apartment. The result of such policy is that the Housing Authority has stated that each of our clients must move to smaller apartments which would not accommodate foster children. Thus, the clients currently caring for foster children are faced with removal of such children and the clients who do not currently have foster children cannot obtain foster children because of those clients' imminent transfer to smaller apartments.

The information about which we would like clarification in writing is as follows:

1. Is the Aurora Housing Authority's written policy of not considering foster children in determining the appropriate unit size for a public housing tenant consistent with HUD's policies? I understand from Mr. McMullin that HUD would not support such a

policy, and that HUD's policy is as set out in HUD's transmittal number 7465.1 REV-2, which states that foster children should normally be included in determining a resident's appropriate unit size.

2. The Aurora Housing Authority has told us that HUD's recent occupancy audit dictated that the Housing Authority require that current and prospective foster parents move to apartments appropriate for their family size, without taking into account foster children. Mr. McMullin said that the occupancy audit did suggest such a conclusion. Please confirm this for us.

3. Mr. McMullin stated that HUD's position is that a policy such as the Housing Authority's would violate the Federal Regulations which prohibit denial of public housing to a group or category of otherwise eligible people. Please confirm that HUD considers a policy such as Aurora Housing Authority's to be one which improperly discriminates against the group composed of foster children.

We are in the process of negotiating with the Aurora Housing Authority to obtain their agreement to not move our clients to smaller units. We would therefore appreciate your faxing to us at your earliest convenience a statement of HUD's positions regarding the issues set out above.

Thank you for your time. Do not hesitate to call me if you have any questions or would like me to clarify any of our requests.

Sincerely,

Nancy Sohn
Attorney

cc: Mr. David McMullin
Ms. Gloria Purvis