

# **Policy on Reasonable Accommodation for the Department of Housing Services (DHS)**

## **Introduction**

DHS complies with 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, and Titles II and III of the Americans with Disabilities Act. DHS will comply with any legislation and implementing rules and regulations, protecting the individual rights of program participants, applicants, or staff, that may subsequently be enacted.

Section 504 stipulates that "no otherwise qualified individual with handicaps in the United States...shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service." The Fair Housing Amendments Act regulations state "It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and private use areas." Title II of the Americans with Disabilities Act and the regulations implementing that title extend the protection of Section 504 to all activities of "public entities," state and local governments, regardless of whether they receive federal funding.

The definition of a person with disabilities for purposes of nondiscrimination is a person who:

1. Has a physical or mental impairment that substantially limits one or more major life activities;
2. Has a record of such impairment; or
3. Is regarded (by DHS) as having such an impairment.

The physical or mental impairment includes practically any condition, disease, illness disfigurement or disorder (e.g., alcoholism, AIDS, emotional disorder, drug addiction, mental retardation, cerebral palsy, cancer, deafness, or HIV infection) if the impairment substantially limits one or more major life activities. Major life activities include caring for oneself, performing manual tasks, walking, seeing, hearing, breathing, learning and working. This is not an exhaustive list; other life activities can also be major.

The requirement to provide reasonable accommodation is intended to provide, for persons with disabilities, equal opportunity to participate in housing programs through modification of policies, procedures, or structures. This policy is not intended to provide greater program benefits to persons with disabilities than to non-disabled program participants or applicants. It may mean, however, that persons with disabilities will sometimes be treated differently, in order to ensure equal access to programs and services.

DHS is committed to providing reasonable accommodations to qualified persons with disabilities so that the choice of living arrangements is, as a whole, comparable to other persons eligible for housing assistance under the same program. The policies and procedures outlined here apply to all properties owned and managed by DHS (including Low Rent Public Housing and other Assisted Housing units), the Section 8 Certificate and Voucher Program, and the Moderate Rehabilitation Program. The terms applicant and program participant apply to applicants and participants in all these programs.

DHS will work with the applicant/program participant to make a reasonable accommodation, giving priority to those methods that offer programs and activities to qualified individuals with disabilities in the most appropriate integrated setting. Accommodations, administrative and structural, are intended to afford the disabled person equal opportunity to use and enjoy the dwelling unit, including public and common use areas; or to provide the qualified individual with disabilities an opportunity to participate in, or benefit from the housing, aid, benefit, or service that is equal to that afforded to others, provided that the accommodation is reasonable (i.e., does not cause undue burdens or cause a fundamental alteration in the nature of the housing program).

Information regarding the availability of reasonable accommodations will be made available to applicants and program participants during the admission and occupancy cycle; specifically, at the time of application; with any notice of rejection; with any notice of lease violation or lease termination and with any notice of an initial determination of ineligibility. This type of information will also be provided at other times DHS deems appropriate and will include educational opportunities for staff and program participants. Forms and other documents used for applicants and program participants will, as much as is feasible, be written in plain, intelligible language. DHS will present documents in alternative formats, provide auxiliary aids, or communicate with a third party designated by the applicant or program participant.

Furthermore, all correspondence to applicants and program participants will contain a standard reasonable accommodation availability statement (i.e. "Any individual with a disability or other medical need who needs accommodation with respect to this correspondence should inform the Department.") in the correspondence.

Reasonable accommodations are made in response to individual requests from a qualified person with disabilities. The request may be made in any manner that is convenient for the person with disabilities. Accommodations will be unique to the individual with disabilities; individuals with the same disability may not need, or desire, the same level of accommodation. There is no standard approach. What works for one person may not work for another in the same situation.

DHS cannot provide supportive services, e.g., counseling, medical, or social services, that fall outside the scope of services offered to program participants. Further, DHS will make modifications in order to enable a qualified applicant/program participant with disabilities to live in the housing, but is not required to offer housing of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant/program participant can live in the housing that DHS offers, not whether the applicant/program participant could benefit from some other type of housing that DHS does not offer.

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## **Auxiliary Aids and Services**

To facilitate communication with persons with disabilities, DHS shall furnish appropriate auxiliary aids. Auxiliary aids means services or devices that enable persons with impaired sensory, manual or speaking skills to have an equal opportunity to participate in, and to enjoy the benefits of programs and activities. However, DHS is not required to provide individually prescribed devices, such as readers for personal use or study, or other devices of a personal nature. In determining what auxiliary aids are necessary, DHS shall give primary consideration to the request(s) of the individual with disabilities.

Types of auxiliary aids and accommodations that DHS readily supplies to applicants and program participants include:

1. Providing additional explanation of program rules and requirements.
2. Offering information in accessible formats (e.g., large type) and in plain language.
3. Permitting rent payments and required communications to be mailed rather than delivered in person.
4. Providing auxiliary aids, such as pencil and paper for those with speech difficulties, Telecommunication Device for the Deaf (TTY), Assisted Listening Device (ALD), a sign language interpreter, or a reader.

5. Sending mail or making phone calls to a person designated, by the individual with disabilities, as a contact person.
6. Allowing the use of service/assistance and/or companion animals.
7. Considering the impact of "mitigating circumstances" regarding the rejection of an applicant for housing or when terminating the lease or terminating housing assistance to a program participant, when the applicant/program participant has asked for such consideration. (In applying this concept, DHS will ask the applicant/program participant to verify (a) that the applicant/program participant does have a disability; (b) that the specific problem(s) is(are) caused by or occurred because of the disability or that the disability substantially contributes to the specific problem(s); and (c) that the present treatment, plan, or circumstances can reasonably be expected to prevent the recurrence of the problem(s).)
8. Reinstating applications of persons with disabilities, if the reason they did not respond in the required time was reasonably related to their disability.

Aids, benefits, and services, to be equally effective, are not required to produce identical results for individuals with disabilities and non-disabled persons, but to afford individuals with disabilities equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement.

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## **Fundamental Alterations to the Program or Undue Financial or Administrative Burden**

DHS will deny reasonable accommodation requests which would require a fundamental alteration in the nature of the program or which represent an undue financial and/or administrative burden. Determining a requested accommodation to be a fundamental alteration does not eliminate The Department's compliance responsibilities. If an action would result in a fundamental alteration, DHS may take any action that would not result in a fundamental alteration but would nevertheless ensure that persons with disabilities have an equal opportunity to receive the program benefits and services. The Department's determinations with respect to fundamental alterations will be made on a case-by-case basis.

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## **Essential Obligations of Tenancy**

To help identify fundamental operations in the programs, five essential obligations of tenancy are listed below:

1. To pay rent and other charges under the lease in a timely manner;
2. To care for and avoid damaging the unit and common areas; to use facilities and equipment in a reasonable way; to create no health or safety hazards and to report maintenance needs;
3. Not to interfere with the rights and enjoyment of others and not to damage the property of others;
4. Not to engage in criminal activity that threatens the health, safety or right to peaceful enjoyment of other program participants or staff; not to engage in drug-related criminal activity on or off the premises (for Public Housing, Section 8 Certificate and Voucher, and Moderate Rehabilitation Programs); not to engage in drug-related criminal activity on or near the premises (for other housing owned and managed by DHS); and,
5. To comply with necessary HUD and DHS reasonable rules and program requirements and to comply with health and safety codes.

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## **Types of Actions Considered to be a Fundamental Alteration**

Types of activities that **would** be considered to be a fundamental alteration to the program include but are not limited to:

1. Actions that require substantial modifications to, or elimination of, essential lease provisions or program eligibility or screening requirements based on the obligations of tenancy (e.g., admission of an unqualified family);
2. Actions that require DHS to add supportive services; e.g., counseling, medical, or social services, that fall outside the scope of existing services offered by housing providers to applicants/program participants in the program;
3. Actions that require DHS to offer housing or benefits of a fundamentally different nature from the type of housing or benefits that DHS does offer;
4. Actions that substantially impair The Department's ability to meet its essential obligations as a landlord, as defined in the DHS Lease Agreement. The Department's obligations under the Lease Agreement include management, administration, maintenance, or other services required for the operation of the program or upkeep of the property.

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## **Reasonable Accommodation Process**

### **Notification to Applicants/Program participants Regarding Reasonable Accommodation Requests**

Information on the availability of The Department's reasonable accommodation procedure will be posted in the DHS business offices and will be provided at application, intake, notice of rejection, notice of lease violation, and notice of lease termination. The applicant or program participant may make a request for reasonable accommodation in any manner which is convenient to her.

Several forms and letters have been developed to conveniently allow an applicant or program participant the opportunity to request a reasonable accommodation. (These forms are listed in the appendix.) If an applicant/program participant cannot use a form, DHS will still respond to the request for a reasonable accommodation and assist the applicant/program participant in acquiring the information needed to make a decision on her request.

Although the process for requesting a reasonable accommodation is standardized, each request will be treated uniquely. The results will be unique to the individual and the property and/or circumstances involved. Whenever possible, reasonable accommodation decisions will be made in a timely manner (within 14 days) and both denials and agreements to make accommodations will be documented in writing. If applicable, forms and notifications will be provided in a format accessible to the program participant or applicant.

Any meetings required by this policy will be held in an accessible location.

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## **Making a Request for a Reasonable Accommodation**

Applicants or program participants may make a request for a reasonable accommodation at any time. A form is provided for this purpose, but if the applicant/program participant is unable to use the form, the request will still be considered. If the accommodation is reasonable, DHS will approve the request. The general procedures are:

1. All applicants, at the time of application, are asked if they need special features in a rental unit, if they want to designate a contact person, or if they need help in filling out the application. The Request for Reasonable Accommodation form is provided upon request.
2. All program participants will be notified of their right to request a Reasonable Accommodation, at the time of re-certification, upon notice of lease violation, and upon notice of lease termination. The Request for Reasonable Accommodation form is provided upon request.

3. All responses to the Request Forms will be in writing and, if appropriate, in an alternative format intelligible to the person making the request.
4. Whenever possible, all decisions to grant or to deny reasonable accommodations will be communicated in writing (in the appropriate format as noted in #3 above) within 14 days of the receipt of the request.

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## Determining Whether to Make the Accommodation

1. Does the applicant/program participant meet the definition of an Individual with Disabilities? (This can be determined through: the applicant's/program participant's eligibility for SSI or SSDI benefits; through the certification of disability, using the standard Verification of Disability Status for Use When Requesting a Reasonable Accommodation form; or when the disability is self-evident to a reasonable person.)
  - a. If NO, DHS is not obligated to make a reasonable accommodation, and may deny the request.
  - b. If YES, go to step 2.
  - c. If more information is needed, it will be requested and the applicant/program participant will be notified of this request, using the standard Notification of Additional Information per Reasonable Accommodation Request form, or a meeting or discussion will be held to obtain additional information.
2. Is the requested accommodation related to the disability?
  - a. If NO, DHS is not obligated to make the accommodation, and may deny the request.
  - b. If YES, go to step 3.
  - c. If more information is needed, either write for more information and notify the applicant/program participant, using the standard Notification of Additional Information per Reasonable Accommodation Request form, or request a meeting or discussion.
3. Is the requested accommodation reasonable? The **Guidelines for Determining Reasonableness** listed below will be followed in determining the reasonableness of the request.
  - a. If YES, DHS will approve the request for reasonable accommodation. A written description of the accommodation will be included in the approval letter.
  - b. If NO, DHS may deny the request or suggest/offer an alternative accommodation. The denial or suggestion/offer will be made in writing (in an accessible format, if requested).
  - c. If more information is needed, either write for more information and notify the applicant/program participant, using the standard Notification of Additional Information per Reasonable Accommodation Request form, or request a meeting or discussion.

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## Guidelines for Determining Reasonableness

1. If DHS does not have enough information to approve or deny the requested accommodation, DHS will request that the person with disabilities verify the need for an accommodation to enable him to access and use the housing program. Using the standard Reasonable Accommodation Verification form (on the reverse side of the Request for Reasonable Accommodation form), the person with disabilities will be asked to have a qualified individual verify that the requested accommodation: (a) is related to the applicant's/program participant's disability; and (b) would provide the applicant/program participant with an equal opportunity to enjoy our housing programs or that the applicant's/program participant's disability restricts them from performing this task. Disabled persons are not required to submit medical records, provide medical test results, or required to have a medical examination when a Reasonable Accommodation request is submitted.
2. In most instances the judgment of the person with disabilities, that the requested accommodation is the most appropriate for him, will be accepted. However, DHS retains the right to investigate alternatives to the requested accommodation, and/or alternative methods of providing the requested accommodation.

3. If a number of potential accommodations will satisfy the needs of the person with disabilities (and are equally effective), DHS retains the right to select the accommodation that is most convenient and cost effective. This includes the option to select a change in procedure or policy, rather than to make a structural change, when the procedure change would be equally effective.
4. Does the requested accommodation constitute a fundamental alteration? If so, the request will be denied.
5. Does the requested accommodation create undue financial and/or administrative burdens? If so, the request will be accommodated up to the extent that it can be met without creating undue burdens.

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## **Denial of a Request for Reasonable Accommodation**

If a request for reasonable accommodation is denied, DHS will inform the applicant/program participant in writing (or other appropriate accessible form of communication) of the denial and the reason for the denial. The notice will also advise the applicant/program participant of her right to appeal the decision to deny the accommodation. Reasons for the denial may include:

1. The individual requesting the accommodation does not meet the definition of an Individual with Disabilities.
2. The requested accommodation is not reasonable. The reason for the decision will be clearly stated.
3. There was no correlation between the requested accommodation and the individual's disability (e.g., a wheelchair ramp requested by an individual who has a mental disability, with no physical impairment).
4. The requested accommodation will create an undue financial and/or administrative burden for DHS.
5. The requested accommodation will change the fundamental nature of the program.
6. The requested accommodation would violate a State or Federal statute or regulation.

**Applicants** for, and **program participants** of, Public housing owned and managed by DHS, who have been denied reasonable accommodations are entitled to the Informal Hearing and procedures currently in place under program regulations for program participants of Public Housing.

Applicants and program participants of Section 8 Certificate, Voucher, and Moderate Rehabilitation Program applicants and participants, who are denied reasonable accommodations are entitled to an Informal Hearing as outlined in the Section 8 Administrative Plan.

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## **Discontinuation of Reasonable Accommodation**

DHS will not unilaterally change or discontinue a particular method of providing a reasonable accommodation without giving notice. Notice of the change or discontinuation of a reasonable accommodation will be given to the program participant with disabilities, including the program participant's right to appeal the decision to change or discontinue the accommodation.

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## **Application and Waiting List**

The application form for all programs contains the following statements:

1. If you have questions about applying for rental assistance from the Washington County Department of Housing Services, or need assistance with your application, please notify the receptionist, or contact us at (503) 846-4794. We will be happy to assist you.
2. If you would like another person to receive copies of your correspondence, to assist you, you may provide his/her name and complete address.

As a part of the intake process, DHS will verify the applicant's disability status as a qualification for eligibility, deductions and allowances. Prior to housing an applicant in a unit with special features, DHS will document the applicant's need for those features.

The application may be mailed to the applicant, picked up at the DHS office, downloaded from the DHS website, or obtained through a service provider in the community. DHS accepts completed applications at each office or through the mail.

Printed information about the various programs and the "Your Right to Request Reasonable Accommodation" and the "Request for Reasonable Accommodation" form are also provided as a part of the application packet.

DHS grants reasonable accommodations by reinstating applicants with disabilities who fail to respond within the required time frame to inquiries regarding updating the waiting list, if the reason they did not respond is reasonably related to their disability.

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## Intake

At the time an applicant's name comes to the top of the waiting list, and before providing assistance, DHS will verify eligibility, income, family composition, need for special features, and other required information. In project-based programs, DHS will also verify the rental and criminal history of all applicants.

If an applicant for DHS project-based programs has a history of behavior or displays behavior which, as a program participant, would result in a serious or repeated violations of the DHS Lease Agreement, DHS may determine the applicant ineligible. The notice of denial will include information regarding the right to request a reasonable accommodation. If the applicant requests it, DHS will consider mitigating circumstances and a reasonable accommodation, which may enable the applicant to become lease compliant. The applicant, not DHS, has the burden of documenting mitigating circumstances and any requests for reasonable accommodation.

If such a request is made by a qualified individual with disabilities, DHS will:

1. Consider the identified mitigating circumstances.
2. Provide a reasonable accommodation that would enable the applicant to be lease compliant, using the Guidelines for Determining Reasonableness, listed above.
3. Consider whether the mitigating circumstances explanation and/or the reasonable accommodation would make lease compliance likely.

DHS does not admit to its project-based housing units individuals whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others, regardless of their disability status. When an applicant with a disability has a history of actions that pose a direct threat to others, or is likely to result in substantial physical damage to the property of others, DHS will document the history of actions and establish the link between the applicant's proposed tenancy and the asserted direct threat and/or likelihood of physical damage, as a part of the determination that the applicant is ineligible to participate in DHS housing program.

Such determination will be based on objective evidence (current conduct or a history of overt acts). If a reasonable accommodation could eliminate or sufficiently reduce the risk to health or safety and/or the property of others, then DHS will, in cases where the accommodation does not represent an undue administrative and/or financial burden, provide the accommodation.

If DHS determines that it is unlikely that the problem will recur with the requested reasonable accommodation in place, and the applicant meets all other screening criteria for the housing program, the applicant will be

determined eligible. If DHS determines that the requested reasonable accommodation is not likely to result in lease compliance, DHS will determine the applicant to be ineligible.

DHS will make the final decision on the adequacy and credibility of any and all documentation provided to substantiate reasonable accommodation requests. When verifications are not acceptable, DHS will explain to the applicant/program participant what is needed and may request that the applicant sign additional releases and/or contact other sources of information. DHS may contact identified sources of information directly, in an effort to obtain objective, verifiable documentation regarding reasonable accommodation requests.

Applicants will be afforded an opportunity for an Informal Hearing regarding denial of eligibility or the denial of a reasonable accommodation request.

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## **Non-Traditional Rental History**

DHS will require all applicants to provide verification of ability to comply with the essential provisions of the DHS Lease Agreement; specifically, an ability to pay rent, an ability to care for rental property, and an ability to get along with neighbors.

In cases where the qualified applicant with disabilities is unable to provide acceptable rental references because he was homeless, in a transitional facility, in a medical facility, living with family, or living in some other non-traditional living situation, and these periods were of significant duration, DHS will ask for alternate references regarding the applicant's ability to comply with lease requirements.

DHS will consider the information presented and, if acceptable, determine the applicant eligible. If there is not enough information to make a reasonable judgement, DHS will ask the applicant for additional information. If the documentation does not substantiate the applicant's ability to uphold the lease provisions, DHS will determine the applicant to be ineligible. DHS retains the right to be the final judge of what constitutes adequate and credible documentation.

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## **Service or Assistance Animals/Companion Animals**

**Service/Assistance Animals** are animals that have been trained to assist persons with a specific disability and that do, in fact, assist the person with the disability. Service/assistance animals include animals trained to assist a physically impaired person with walking, hearing, balance, self-care, communication, transportation and similar things. A Seeing Eye dog or a dog trained to assist a hearing impaired person would be examples of service or assistance animals. Both Federal and Oregon state law prohibits discrimination against a person with a physical disability using a service or assistance animal. Service or assistance animals are considered auxiliary aids, and are not subject to additional requirements beyond those contained in the DHS Lease Agreement. Persons with disabilities may not be required to pay for costs associated with reasonable accommodations; therefore, DHS will not charge a pet deposit or any other associated fees for a service/assistance animal kept in a development or building owned and managed by DHS.

**Companion Animals** are animals that do not have specific disability-related training but are necessary in coping with a disability (for instance, if the animal provides emotional support to a person with disabilities). Requests to keep such an animal will be considered under the Department's standard Reasonable Accommodation procedure. DHS will not charge a pet deposit or any other associated fees for a companion animal kept in a development or building owned and managed by DHS.

Service or Assistance animals are considered auxiliary aids, and are not subject to additional requirements beyond those contained in the DHS Lease Agreement. A seeing eye dog or a dog trained to assist a hearing

impaired person would be examples of service or assistance animals. Persons with disabilities may not be required to pay for costs associated with reasonable accommodations; therefore, DHS will not charge a pet deposit or any other associated fees for a service/assistance animal or companion animal kept in a development or building owned and managed by DHS. However, program participants are responsible for all reasonable expenses incurred by DHS as the result of damages and/or cleaning costs directly attributable to the presence of the animal.

DHS will use the following steps when considering a request for reasonable accommodation, from applicants/program participants with disabilities, to keep companion animals in developments or buildings, owned and managed by DHS:

1. When an applicant/program participant with a disability asserts and can verify that an animal is therapeutic for her disability, the applicant/program participant should make a request for a reasonable accommodation; specifically, to be allowed to keep the animal as a companion animal.
2. The applicant/program participant will be required to qualify a Service/Assistance Animal, which is used to assist persons with disabilities, as an animal to be excluded from the Pet Rules and Policies. Per 24 CFR 5.303(a), the Housing Authority will grant such an exclusion if:
  - a. the applicant/program participant certifies in writing that the applicant/program participant or a member of his or her family is a person with a disability;
  - b. the animal has been trained to assist persons with that specific disability; and
  - c. the animal actually assists the person with a disability.
3. If such verifications are provided, then the animal is a "service animal" as defined under Section 504. Service animals are equivalent to other "auxiliary aids" such as wheelchairs and eyeglasses, and as such will be permitted.
4. If, on the other hand, the animal does not have specific disability-related training but is necessary in coping with the disability (for instance, if the animal provides emotional support to a person with a panic disorder), the animal is considered a "companion animal"--not a "service animal"--and a request to keep such an animal will be considered under The Department's standard reasonable accommodation procedure.
5. The program participant will be responsible for the animal's care and the animal must be kept in a manner that does not violate the DHS Lease Agreement.
6. If, subsequently, the animal or its care poses a public health problem or results in a lease violation, the problem will be addressed, under the terms of the DHS Lease Agreement. DHS may send the program participant a Notice of Lease Violation.
7. Reasonable accommodations to allow animals, other than service or assistance animals, in support of a disability, will be subject to reasonable rules (see The Department's "Pet Rules and Policies"); however, a pet deposit will not be required for authorized companion animals.

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## **Criminal Activity as Grounds for Evictions**

Legislation and Public Housing regulations require that, in the units owned and managed by the Housing Authority, the program participant, any member of the household, a guest, or another person under the program participant's control, shall not engage in:

- Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other program participants or employees; or
- Any drug-related criminal activity on or off Public Housing premises. (Drug-related criminal activity is prohibited on or near the premises for other housing owned and managed by DHS.) Crimes which pose threats to program participants or management staff are grounds for eviction regardless of where they occur.

- Any criminal activity in violation of the preceding statements shall be cause for termination of tenancy, and for eviction from the DHS owned and managed unit. Thus, drug-related activity which does not threaten other program participants is still grounds for eviction if it takes place on or off Low Rent Public Housing premises or on or near other premises owned and managed by DHS.

Other activities, whether or not they are criminal, are grounds for eviction if they constitute a serious violation of the DHS Lease Agreement (or if they constitute repeated minor violations of the DHS Lease Agreement). For example, damages to the property will often be grounds for eviction as a violation of a lease provision requiring program participants to refrain from destroying, defacing, damaging or removing any part of the dwelling unit or project.

One time occurrence of some minor criminal activities may not pose a threat but, if engaged in with frequency or duration, can have a very serious impact on individual program participants or the housing community as a whole.

In deciding to evict for criminal activity, DHS will consider all of the circumstances of the case, including the seriousness of the offense, the extent of participation by family members, and the effects that the eviction would have on family members not involved in the proscribed activity.

If the program participant is an Individual with a Disability and requests a reasonable accommodation which would allow her to comply with her DHS Lease Agreement, DHS will require the program participant to document the request in accordance with the standard reasonable accommodation procedures. In order to prevent the eviction, the program participant would need to prove, to The Department's satisfaction, that the behavior causing the lease termination was substantially related to the program participant's disability, and that, because of some change in treatment, services or other verified facts, the behavior will not recur. DHS must determine if the mitigating circumstances and requested reasonable accommodation outweigh the unfavorable information or action.

If, after receiving approval for a reasonable accommodation, a program participant violates the DHS Lease Agreement, DHS may pursue enforcement of the lease, up to and including eviction (where the action constitutes a serious violation of the lease or repeated minor violations). Where (1) the new lease violation is related to a disability and (2) the previous reasonable accommodation was not intended to overcome this aspect of the disability, another reasonable accommodation may be appropriate.

When giving a program participant a Notice of Eviction/Lease Termination, DHS shall assure that the Notice will:

1. Be given in writing and in an accessible format;
2. Include a clear description of the offense, including how it violates the lease;
3. Describe what, if anything, the program participant can do to cure the problem and prevent the eviction; and,
4. Advise the program participant of his right to request a reasonable accommodation, related to his disability, that would allow him to comply with his lease.

The policy regarding Evictions, Informal Settlement Discussions, and Formal Hearings is outlined in the DHS *Statement of Policies*, "Grievance Procedures for Tenants." Program participants being evicted from housing owned and managed by DHS are entitled to use The Department's grievance procedures. However, these grievance procedures do not apply to:

1. Any attempt to initiate or negotiate DHS policy changes.
2. Any complaint from a participant in the Section 8 Housing Assistance Payment Certificate and Voucher Program or Mod Rehab Program.

3. Any dispute between program participants not involving their rental agreement or any DHS regulation.
4. Eviction for any action or inaction of a program participant, or someone in the program participant's control, that endangers the health or safety or right to peaceful enjoyment of the premises, of DHS employees, neighbors or other program participants. Any program participant or someone in the program participant's control who commits any act outrageous in the extreme.
5. Eviction for any action or inaction of the program participant involving drug-related criminal activity on or off any Public Housing premises (Housing Opportunity Program Extender Act of 1996) or drug-related criminal activity on or near non-public housing premises owned or managed by DHS.
6. Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises or other program participants or DHS employees. [24 CFR 966.51(2)(i)(A)] Program participants grieving the types of activities listed in this section of the CFR may be excluded from all grievance proceedings or from the right to request a Formal Hearing. They may be offered at the Department's discretion, the opportunity to request an Informal Settlement Discussion (ISD).
7. Ineligibility determinations of a program participant applying for the Scattered Site Incentive Transfer Program.

If the program participant believes that her lease violation is related to her disability, she may request a reasonable accommodation that would enable her to comply with her DHS Lease Agreement.

In reviewing the reasonable accommodation request, DHS will consider the following, at a minimum:

- Does the program participant meet the definition of an Individual with a Disability?
- Did the program participant's disability substantially contribute to the lease violation?
- What is the likelihood that the requested reasonable accommodation would result in lease compliance (e.g., not using illegal drugs, paying rent on time, respecting the rights of others, etc.)?
- What is the seriousness of the lease violation? Does the requested reasonable accommodation, in fact, overcome the lease violation?

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## Former Users of Illegal Drugs

Under the Fair Housing Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act, a former user of illegal drugs (recovered or now in recovery) is considered to be a person with disabilities and is protected against discriminatory treatment, but persons engaged in **current** illegal use of controlled substances are not protected.

Drug-related criminal activity does **not** include use or possession, if the applicant/program participant can demonstrate that he:

1. Has an addiction to a controlled substance, has a record of such an impairment, or is regarded as having such an impairment; and
2. has recovered from such addiction and does not currently illegally use or possess controlled substances.

The term "Individual with a Disability" includes an individual who:

1. Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;
2. Is participating in a supervised rehabilitation program and is no longer engaging in such use; or
3. Is erroneously regarded as engaging in such use, but is not engaging in such use.

Individuals who have a history of illegal use of a controlled substance or addiction and do not engage in the current illegal use of a controlled substance are protected by disability discrimination laws if they can otherwise meet the definition of a person with a disability.

When an individual claims recovery, DHS will require the person to present evidence of recovery from a qualified, neutral third party. DHS may require a family member who has engaged in the illegal use of drugs to present evidence of successful completion of a treatment program as a condition to being allowed to reside in a unit owned and managed by DHS or as a condition to being allowed to participate in other DHS housing programs. If it is determined that the individual "has recovered or is in recovery" and is thus an "Individual with a Disability," DHS will consider requests for reasonable accommodations.

DHS will require the applicant/program participant to provide documentation in a manner that would convince a reasonable person that the applicant/program participant is not a current user of illegal drugs. Documentation that an applicant/program participant is not a current user of illegal drugs could include:

- Verification from a reliable drug treatment counselor or program administrator, or other party acceptable to DHS, indicating:
  - that the applicant/program participant is/has been in treatment;
  - that there is a reasonable probability of success in refraining from use of illegal drugs;
  - that the applicant/program participant is complying/has complied with the requirements of the treatment program;
  - that the applicant/program participant is not currently a user of illegal drugs; and for what period of time the applicant/program participant has not been using drugs (this verification may include documentation of the results of urinalyses over a period of time); and/or
- Verification from a probation or parole officer:
  - that the applicant/program participant has met or is meeting the terms of probation or parole;
  - is not currently a user of illegal drugs; and for what period of time the applicant/program participant has not been using illegal drugs (this verification may include documentation of the results of urinalyses over a period of time); and/or
- Verification from a lay third party/parties, indicating:
  - that the applicant/program participant is not currently using illegal drugs and for what period of time the applicant/program participant has not been using illegal drugs;
  - the relationship between the third party/parties and the applicant/program participant (verifications will not be accepted from the applicant's/program participant's relatives);
  - and a description of how the third party/parties knows the status of whether the applicant/program participant is currently using illegal drugs.

When an applicant/program participant has a history of drug rehabilitation/treatment followed by recidivism, or is currently in treatment (as opposed to having completed treatment), more documentation may be necessary to convince a reasonable person that the applicant/program participant is not a current user of illegal drugs.

The applicant/program participant may be required to show in what ways

1. her current situation, and
2. her claim to be a former illegal user of a controlled substance, and
3. her claim to be able to comply with the essential terms of the DHS Lease Agreement or other housing program requirements, is different from previously unsuccessful efforts to stop illegally using a controlled substance.

In all situations, in which an applicant/program participant claims to be an Individual with a Disability, due to former illegal drug use, DHS will determine the reliability and validity of information/verifications provided

with the request for reasonable accommodation. DHS will make a determination of approving or denying the reasonable accommodation request and a determination of eligibility for housing assistance accordingly.

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## **Alcoholism**

DHS will not discriminate against someone solely because he is a person with alcoholism.

However, DHS will deny admission to an applicant for housing owned and managed by DHS, who DHS has reasonable cause to believe abuses alcohol in a way that causes behavior that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other program participants or DHS personnel.

DHS will apply the same standard of performance and behavior (tenant selection criteria) to an individual with alcoholism as it applies to others. If any unsatisfactory performance or behavior is related to the applicant's disability, the behavioral manifestations of the condition may be taken into consideration in determining whether he is qualified. If the individual is unable to meet the tenancy requirements, he may be denied housing on that basis, provided any request for reasonable accommodation has been considered.

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## **Policies Specific to Section 8 Certificates and Vouchers**

DHS will:

1. When providing notice of the availability and nature of housing assistance for low-income families under program requirements, assure that the notice reaches eligible individuals with disabilities.
2. Encourage participation by owners, including encouragement of participation by owners having accessible units.
3. When issuing a Housing Certificate or Housing Voucher to a family, which includes an Individual with a Disability, include a current listing of available accessible units known to DHS and, if necessary, otherwise assist the family in locating an available accessible dwelling unit, to the extent feasible.
4. Take into account the special problem of ability to locate an accessible unit when considering requests by eligible individuals with disabilities for extensions of Certificates or Housing Vouchers; and,
5. If appropriate, DHS will make a determination of whether to request the Secretary of HUD to approve an exception to the Fair Market Rents to allow Section 8 Certificate holders to rent accessible units and/or whether to request an extension of a Certificate or Voucher beyond 120 days. Section 8 Certificate/Voucher holders may request a reasonable accommodation, in the form of an extension beyond 120 days, by following the standard reasonable accommodation request procedure.
6. In programs for which the Housing Authority is the program administrator, it will make reasonable attempts to negotiate with the owner to make modifications to a dwelling unit which are necessary to provide access to a tenant. The Housing Authority will request that the owner make the necessary modifications and will seek HUD approval to increase the reasonable Gross Rent as much as 20 percent above the applicable Fair Market Rent to compensate the owner for such modifications.