

FY2017 MTW PLAN AND SUPPORTING DOCUMENTS COMMENTS & RESPONSES

❖ Short & Long Term Goals

- Residents support MPHA efforts to partner with the Family Housing Fund, Hennepin County, MHFA and the City and other groups to identify funding sources to develop Faircloth units such as the Minnehaha Townhomes initiative for families coming out of shelters. (MHRC Comment)

MPHA Response: Thank you. MPHA and residents have worked together to implement this initiative.

- Residents wholeheartedly support and wish to express their appreciation to MPHA for proposing to rescind MPHA's Absence from Unit initiative. (MHRC Comment)

MPHA Response: Thank you.

❖ FY2017 MTW Plan

- Kudos and congratulations to MPHA on moving forward with the 1) Shelter to Housing (PBV); 2) Prison to Home; and 3) Permanent Supportive Housing for Youth.

MPHA Response: Thank you.

- Regarding the Lease-to-Own Initiative. If someone purchases a unit, do they need to pay interest?

MPHA Response: Right now we only have one unit available to Lease-to-Own and you need to apply and qualify. If you qualify and purchase and the loan is financed through a bank, you would pay interest.

❖ Low Income Public Housing Statement of Policies

- Regarding MPHA's No Smoking policy, residents understand that enforcement of the policy may be difficult, but request that it be a priority for MPHA as residents continue to complain that residents are still smoking in their apartments. (MHRC Comment)

MPHA Response: Thank you for your comment. MPHA encourages residents to report to management when they smell smoke so that management can follow up and enforce the lease. This is an MPHA priority.

- MPHA states that all highrises are now smoke free. My building still has smokers.

MPHA Response: MPHA highrises are non-smoking and residents are not allowed to smoke in the building although they are allowed to smoke in designated smoking areas outside the building.

- How many people can legally live in the apartments?

MPHA Response: Two people in a one-bedroom apartment – 2 adults, 2 children or one adult and 3 children while they wait for a transfer.

- Residents appreciate that MPHA recognizes the extreme financial burden an increase in minimum rent would place on many residents whose only source of income is General Assistance, and that MPHA is not proposing to increase the minimum rent above \$75 a month. (MHRC Comment)

MPHA Response: Thank you.

- Recently, I reported that I got a job but there was no increase to my rent.

MPHA Response: This may be if your income did not go up more than \$100/month we wouldn't increase your rent. If you pay flat rent, your rent wouldn't change. If you were unemployed for a long time and then became employed, the first year MPHA would disregard your income and the next year would disregard 50%. However, if these situations do not apply contact your manager.

- What if a resident gets a seasonal job for three months?

MPHA Response: If a resident gets a job and reports it within five days, but the time the rent is charged the rent would increase for one month and go down again.

- Regarding the Community Space Use Policy, the statement “At MPHA’s discretion the signed user of a Community Room may be responsible to pay MPHA for the cost of a Security Guard during the event” is too vague. Guidelines need to be developed in consultation with MHRC’s Security Advisory and Executive Committees. (MHRC Comment)

MPHA Response: MPHA will take this under consideration.

- Will the cost of a security guard be assessed prior to or after the event?

MPHA Response: It depends on the number of people at the event whether a security guard is needed or not. This will be discussed with the space user prior to the event.

- Horn Towers wants more guard hours. The druggies know the guard's routine and take advantage.

MPHA Response: The 2017 security budget is very tight. MPHA will discuss strategies for varying security guard routines with our security guard company and the Security Advisory Committee. Project Lookout is a good alternative.

- Residents are in strong agreement with the Resident Advisory Board that security continues to be the number one priority for highrise residents, including improving relationships with the MPD, pursuing improvements in security technology, increasing guard coverage in some buildings and funding for Project Lookout. As you may know, Project Lookout volunteers have helped to stave off crime and other security problems since the major guard cuts five years ago. They contribute over 60,000 hours of volunteer security service in 29 highrises a year. We thank you for your support of this essential program. The MHRC has also laid out a strategy, in line with Cora McCorvey's recent request to the Mayor, for convincing the Mayor and City Council Members to reinstate the tax levy to support vital public housing programs.

MPHA Response: Thank you.

- There was general consensus among residents at a recent MHRC board meeting that the highrise bed bug problem is improving. We believe this is due, in part, to the Bed Bug Advisory Committee – a new partnership between MPHA and MHRC's Maintenance, Modernization and Management Committee, to develop new procedures for treatment and prevention of bed bugs including a public awareness campaign designed to support residents in reporting infestations. Unfortunately, despite this good news, some residents have been recently reporting that the cockroach population is on the rise again. Obviously, vigilance is needed in both areas. (MHRC Comment)

MPHA Response: Thank you and the residents for working with us on this problem.

- MPHA is forbidding king size beds and frames in highrise units. What about queen size beds? What about residents who already have these beds in their units?

MPHA Response: MPHA will not restrict king size beds in Public Housing units, but will require enough space in the unit to facilitate ingress and egress, the ability for MPHA

staff to maintain the windows, outlets, heating system, switches and other fixtures, and similar access as necessary, to provide pest control services.

- How can MPHA charge for labor when they are already paying them to fix units?

MPHA Response: MPHA does not charge when there is ordinary wear and tear on the unit or items, or when the resident is not responsible for the damage.

- If someone has a large family and repairs need to be done, will the family be charged for work done by the hour and will it be expensive for the resident?

MPHA Response: If there are charges to the resident, MPHA would create a repayment agreement so the tenant could pay back over time.

- What is the plan for security cameras and guards? Will MPHA scan ID cards?

MPHA Response: The plan is to continue the current levels of security in the next year. MPHA is testing the ID card scanner at 1001 Washington and may consider rolling it out to other buildings.

- How can residents access the Self Help Program and what is the budget for that program?

MPHA Response: Residents should contact their Property Manager regarding participation in the self-help program. The 2016 budget for self-help is \$155,000.

- At Horn Towers there seems to be so much discrepancy as to what and how many pets a resident can have. What is the policy?

MPHA Response: A resident may have only one cat or dog weighing no more than 25 pounds (unless it is an assistance animal or service animal); or two caged birds; or an aquarium of thirty gallons or less for fish only; or two caged gerbils or hamsters. Only domesticated pets will be allowed. Pets of a vicious or aggressive disposition will not be permitted. See MPHA SOP Part XVII.2 to see which pets are prohibited.

- Many who have dogs do not keep them leashed and don't clean up the mess.

MPHA Response: Talk to your property manager and give specific details so that MPHA can enforce the lease.

- It was brought to my attention that there are some discussion happening on rulings on service dogs in public housing. I am not an expert on either so will just say that I am writing to advocate for the dogs and the people who are dependent on this in 'any' form, physically or emotionally.

MPHA Response: MPHA's pet and service animal policies Part XVII of MPHA's SOPs identify the types of animals and pets that residents can have and the specific requirements that must be followed in regard for the keeping and care of these animals at our properties.

- The person that asked me about this issue was concerned because she had witnessed a few encounters between [REDACTED] tenants and people with animals, where the dogs were physically kicked. While I suspect this isn't going on often, it would just bring to mind that education and tolerance would need to be discussed in the public housing setting. It reminded me of the taxi controversy about service dogs, alcohol and the like. [REDACTED]
[REDACTED] At the end of the day, I'm sure you know that many of these people are extremely isolated individuals and are very connected to their animals. It would behoove everyone to find solutions to make it work and not make more homeless animals. Thank you for your time.

MPHA Response: See MPHA response above; if you see abuse of these animals, please report your concerns to your manager.

- I do not agree with the following proposed policy changes at MPHA: denying access to a service animal. There are people in public housing [REDACTED] [REDACTED] that a dog is a bad thing. I have seen (more than once) them kick and yell at dogs in the elevator (just because the dog is present) and the dog has no way to escape the mistreatment. The dog has not initiated the situation. But the dog may learn to respond poorly to others under that kind of aggression from other tenants. I think it is fair to say a badly behaving dog may have to be muzzled in common areas. But that is as far as I would take it, so far as rules that apply to service animals. It is left open to interpretation as to what "poses a direct threat," "out of control," "housebroken". I think it will just waste staff time and energy to try and enforce not allowing a service animal under this policy.

MPHA Response: See MPHA responses above.

- Documents signed by an employee (of MPHA)? Too many employees and volunteers and 3rd party vendors have their own potential agendas in any given situation, and

should not be involved in certifying VAWA's. It should be strictly done by outside parties. This could potentially create waste of time and money for MPHA if, for example, a person's named a perp by a MPHA employee, but they have documentation/witnesses/corroborating record that disputes this. Neither of these potential policy changes simplify things for MPHA. The wording is vague and it is a gray area in most respects that could be challenged, perhaps even creating liability for the housing authority.

MPHA Response: The policies reflect requirements and allowance under Federal Law.

❖ **Section 8 Admin Plan**

- When will the Section 8 Waiting List be open and how will the lottery work?

MPHA Response: The plan is to open the waiting list in late Spring or early summer next year (2017). There will be a lottery selection of new applicants who will be placed on the list.

- 15,000 applicants on the waiting list go to lottery for their place on the list. What is the number of seniors with disabilities on the waiting list? Also, can seniors with disabilities have a separate lottery list?

MPHA Response: The reference to 15,000 applicants was the number of applications received within a 48-hour time frame in June, 2008. MPHA anticipates a similar response when we open our HCV Waiting List for application in 2017; however, we will randomly select a limited number of applicants (this is called a lottery) to place on our List so that we can keep the 'wait time' for admission between 3 to 5 years. We will not have a separate lottery for Seniors with disabilities; the HCV Program does not have a Senior Housing Preference (although Public Housing does). MPHA's HCV Program does operate a Non-Elderly Disabled Program and will outreach to Non-Elderly Disabled Applicants to ensure a sufficient number of applicants on the Waiting List.

- The MPHA Section 8 Department is purging the wait list. I have been on the list since 2008. What do I have to do to remain on the list?

MPHA Response: Every year Section 8 staff sends a letter to everyone on the waiting list to let you know you remain active. If the letter is returned to MPHA as undeliverable, then the applicant is deactivated from the Waiting List. So, if you change addresses or move, it's important to notify MPHA and update your

information to assure you remain active on the Waiting List. You may also call the HCV Waiting List line at 612-335-4404 to see if your application is still current.

❖ Capital Fund Comments

- Residents recognize that the vast majority of limited capital improvement dollars must go toward maintaining and repairing critical building systems. Elevator break-downs continue to be a major resident concern in many buildings. Residents also request that MPHA be mindful of the need for space in the highrises for exercise equipment. Many residents are focused on optimizing their health and areas for exercise in the buildings, especially in the winter months, are in high demand. (MHRC Comment)

MPHA Response: MPHA has a systematic plan in place for preventative maintenance of vertical transportation components (elevator systems). In addition, three high-rises per year, based on severity of need, are earmarked for modernization of elevator controls, cabs, and gears. Despite the heavy use of our elevators, our elevator maintenance contractor has greatly reduced the average downtime of our inventory in the past three years. Elevator downtime is always frustrating, but we are very diligent in our efforts to keep them in good condition and running.

MPHA supports healthy living and will work with residents to designate, when possible, areas in our buildings for exercise.

- How does MPHA prioritize elevator modernization?

MPHA Response: Every year MPHA selects three buildings for modernization of elevators, based on need.

- The Elliot Twins elevators are breaking down and the cockroaches are very bad too.

MPHA Response: MPHA recently upgraded the elevators at the Elliot Twins. We will contact the vendor to find out what is going on. MPHA has an aggressive integrated pest control program. Residents should immediately report infestations through the MPHA Work Order system at (612) 342-1585.

- It never ceases to amaze me how many of MPHA's capital needs are fulfilled even though these are chronically underfunded by both Congress and HUD.

MPHA Response: Thank you.

❖ **Miscellaneous Comments**

- Thank you for providing homes. Are there any other programs for seniors if we are in public housing?

MPHA Response: Through its various partnerships MPHA is able to an array of services to seniors. We have a number of assisted living program, two of which offer acute care and memory care. In addition, through MPHA's partnership with Volunteers of America (VOA), social workers are assigned to each of our highrise buildings. The social workers work with residents to acquire a range of support services from community resources.

- What does MPHA do with its money?

MPHA Response: In 2015, MPHA spent \$42 million on public housing, \$49 million on Section 8 housing programs, and \$15 million on public housing capital improvements.

- MPHA should explore funding and grants to help finance broadband access, high speed internet access and computers for public housing highrises. There is so much information on the internet.

MPHA Response: MPHA is exploring this with local vendors.

- What is MPHA doing to get restoration of the tax levy in full?

MPHA Response: The Executive Director/CEO and CFO met with Mayor Hodges and made the request for restoration of the full tax levy and other funding for public housing. They also passed on the letter from MHRC to the Mayor and the City Council requesting funding.

- Senior designated housing has air conditioning available. There are seniors in other buildings too that do not have air conditioning. We would like to see air conditioners in all buildings. It would pay for itself in a couple of years as residents who use it would pay the \$75.

MPHA Response: Thank you for this suggestion.

- My unit does not have air conditioning. A tree caused damage to my roof a month ago and no one has fixed it.

MPHA Response: You can put in your own air conditioner at a scattered site. MPHA responded immediately to the resident who had tree damage. MPHA also advises that

when a resident experiences damage to their units, that they contact MPHA Work Orders at (612) 342-1515 for family and (612) 342-1585 for Highrises.

- I would like to report an incident that happened during EID. The oven in my father's unit was not working and we were expecting guests for EID. He called Work Orders and told them it was an emergency as they were expecting guests. The person who answered said there are other things you can eat that don't need to be heated. There is abuse at Glendale.

MPHA Response: MPHA review the work order and through a conversation with the complainant confirmed that the stove was repaired on the same day it was reported and apologized to the complainant that his father felt that he was badly treated.

- The problems I have in my home are not getting repaired and no one hears my voice. I call and no one helps.

MPHA Response: MPHA staff visited the home of the resident and found two minor maintenance problems and they were addressed.

- MPHA stated that they are waiting for the Light Rail before making plans to develop the vacant property. What color light rail?

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MPHA Response: The proposed light rail would be the Bottineau Blue Line Extension that will service North Minneapolis.

- The entry system at Heritage Commons does not always work? What can be done?

MPHA Response: Needed repairs have been made, please call the Work Order Department at 612-342-1585 if further repairs are needed.

- We have no internet in our building (1515 Park) and cell phones do not work. Horn Towers also has problems with this.

MPHA Response: It is our understanding that Comcast has a special internet access program for public housing highrise residents. Please talk with your manager about how to access this program. You will need to work with your cell phone provider or perhaps consider switching carriers to improve cell phone reception.

- Thank you for this meeting. The program was great. Oromo families are large. 2-3 bedrooms are available, but does not help large families. We have been hearing the same answer for years and look forward to the time it changes.

MPHA Response: MPHA is aware of the shortage of large bedroom homes. Unfortunately, HUD has not provided funding for new public housing developments for some time.

- There needs to be safe recreational areas for kids so they aren't damaging property. Would it be possible to use the Heritage Park vacant land for this purpose?

MPHA Response: The MPHA Board has authorized staff to explore temporary uses for the Heritage Park vacant land. MPHA is open to discussions with various groups about such uses, including recreational opportunities for youth.

- There should be better maintenance of the vacant property due to weeds and allergies and asthma concerns.

MPHA Response: MPHA has a contracted with a new provider for performing these service so it should be well maintained going forward.

MPHA Response to ‘Defend Glendale’ Communications Regarding Agency’s Draft 2017 Moving To Work Plan & Supporting Documents

MPHA Introduction

The public comments submitted in relation to MPHA’s FY2017 MTW plan included a number from one group of concerned residents from Glendale Townhomes, self-identified as ‘Defend Glendale’. While the MTW plan does not include any new proposals or determinations with regard to Glendale, we are glad to address all comments that arose during the process. Since many of the comments overlap, we will present them all in full, followed by our responses to the points raised. We have organized our responses according to the primary themes that run through the comments: general comments about the potential redevelopment of Glendale, comments about the communications and accessibility of the MTW resident input process, comments about use of certain mechanisms with regard to Glendale, and proposed changes to MPHA’s Statement of Policies (SOPs) - HUD’s Admissions and Continued Occupancy Policy (ACOP) with a potential impact on Glendale families.

Comments from the Defend Glendale Group

RE: Formal response and complaint regarding MPHA FY2017 DRAFT Moving To Work (MTW) Annual Plan process and meeting

Executive Summary: MPHA is planning to push, displace, and demolish Glendale Townhomes through another strategy called Voluntary Conversion according to the FY2017 Draft meeting. This plan has been introduced as another option by MPHA since RAD was unsuccessful and the Sherman Report (the plan to redevelop Glendale to market rate luxury apartments by Sherman Associates) is on pause. MPHA has only held one public meeting on the matter, on their 2017 Financial Year draft Moving To Work, on Tuesday, August, 16 at 10:30 am at Heritage Park Senior Center. The majority of MPHA residents all over Minneapolis could not attend. MPHA is asking for City wide input of their MTW plans which includes Glendale, however MPHA has no plans to have an accessible equitable process for more community input and meetings that include the voices of the residents and concerned citizens of Minneapolis, many of whom care about public housing, gentrification and where public funds go. MPHA has also sent a quick email to a few officials in their network to provide public comments by Sept 2, 2016 and public hearing on by their board on August 24th without inclusive input and outreach the community. There is no process for residents to make public comments at this meeting or after this meeting. MPHA needs to extend the public comments process to 90 days and to hold meetings at their MPHA buildings and at Luxton Park in Glendale so residents have access and can participate. MPHA needs to hold a series of meetings to educate residents of their plans in open and transparent way. MPHA needs to make sure that public comments are collected equally so everyone is heard especially residents who are

not English speakers.

Details:

On August 16, 2016, We, members of the Defend Glendale Campaign as well as Glendale Townhomes' residents attended the MPHA Annual Moving to Work Plan and Capital Fund Review meeting at Heritage Park Health and Wellness Center in North Minneapolis. Many residents could not join us due to the time and location of the meeting.

Overall, this Community meeting from beginning to the end was an uncomfortable, anti-community engagement environment in which Minneapolis Public Housing staff announced their plans and latest information on MPHA Budget Update, their 2017 Moving to Work Plan, and their Capital Fund Presentation with no face to face input activities.

The Set-up of the event was in an "Announce and Authoritative " Approach to community engagement in which MPHA staff presented their information and uninformed residents were expected to either ask their questions to which staff provided defensive answers and no solutions. MPHA staff did not even state there would be a follow-up meeting to answer residents' concerns or questions or a releasing of any final report. The meeting involved MPHA staff reading off legal documents and other forms filled with Public Housing jargon and housing coded concepts. The speakers were hard to hear for senior residents and often MPHA staff did not speak into the microphone. MPHA provided translator services, but the MPHA speakers spoke at such a fast pace that the interpreters could not relay the information to non-English speakers. Even guest attendees with a background in housing stated they had a hard time understanding the poorly delivered MPHA presentation.

The event had no time on the agenda for residents to go into small focus groups with MPHA staff to ask questions or go in-depth with the information. The delivery of the information was so unconnected to residents the environment furthered the idea that the event was merely an MPHA requirement no matter how well residents understood the information. MPHA only seemed to conduct the event as a matter of procedure with no regard for the end result. The event furthered MPHA community engagement practices with no concern for the process of community engagement or the product and outcome. MPHA also has a track record of hiring communication consultants with no concern for the process of community engagement or the product and outcome.

Section 1: FY2017 Moving To Work Plan- Short and Long Term Goals:

The presentation spent between 2 to 4 minutes per slide with over six or more slides in this area with concepts like: "Faircloth ACC Authority", "MHFA", "Local Asset Management Plan", "Unit and Foreclosure Stabilization", "Sponsor Based Voucher

Initiatives", "Rad Conversion", "Project Based Rental Assistance", "CHAP", "Historic Tax Credits" and others. MPHA moved so fast in the delivery of their presentation there was no in-depth conversation or explanation. It was also difficult to impossible to find MPHA staff at the end to ask questions. MPHA did gather questions at the end, but answered audience member's questions in a defensive and intimidating manner.

MPHA staff further stated its fifth "Section I: Short & Long-term MTW Goals" slide that: "At this Time, MPHA is not pursuing, a RAD conversion for Glendale under the portfolio option provided by **HUD** in its 2016 CHAP", but later in the "2017 Capital Fund Program" PowerPoint presentation under the "Development Projects and Activities" area slide 4 it states: "Staff will research possibility of Voluntary Conversion at Glendale". They further said they would be hiring a consultant for the abovementioned Voluntary Conversion. See this link about Voluntary Conversion.
http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/centers/sac/vc

Voluntary Conversion is when public housing units are removed from their public housing status and converted to private development or section 8 project based which will be owned and managed by private developers who will later sell the property, demolish or convert it to market rate since they are the owners. This has the same impact of displacement and demolition as RAD. Here is how HUD explains: *"Voluntary conversion may be undertaken only where it would be beneficial to the residents of the development being taken off public housing and to the surrounding area, and where it would not have an adverse impact on the availability of affordable housing in the area."* Voluntary Conversion would have an adverse impact on residents.

Yet, instead of using the funds to repair Glendale, put it back to the property, they are hiring another consultant to figure out another strategy to convert and profit from Glendale.

MPHA continues disengage and doesn't present information to Glendale residents. MPHA continues hire consultants on our tax dollars to promote displacement and disparate impacts towards Glendale Townhomes' and families. Glendale resident leader spoke out, and said, "MPHA is trying to use Voluntary Conversion to displace us again since they did not succeed in RAD and they continue to contradict themselves in this presentation." Bob Boyd pulled the microphone from the resident and said, "we have advisory council that approves this." The resident said, "we have no idea who this advisory council is and we were never invited," again, the resident was ignored. Cora McCorvey then came in and started giving intimidating looks to residents that were speaking out. This was unprofessional and unacceptable behavior by MPHA leadership. Residents continued to ask questions about where the money is going and MPH, Bob Boyd looked mad, did not answer any of the questions properly.

Section 2: Draft Low Income Public Housing Statement of Policies:

The presentation went over areas such as: "Definitions", "Requirements for Admission", "Preferences", "Waiting List Assignment Plan and Designation of Buildings", "Occupancy Standards and Lease Adds Ons", "Rent Computation & Security & Pet Deposits", "Tenant Transfer", "Re-Examination of Tenant Eligibility & Rent Adjustments", "No Smoking", "Pet Policy", "Death of a Tenant Vacate", "Violence Against

Women Act Policy", "Community Space Use Policy", "Appendix C: Sales & Service Charge Schedule", "Appendix D: Housekeeping Standards", and "Appendix H: Applicant Screening Guidelines".

While MPHA Staff went over these various policy changes, residents had no original documentation of the above policy areas to compare and contrast the various additions and subtractions. Residents were expected to provide comment and questions with no original language documentation provided for them by MPHA staff.

Section 3: Draft Section 8 HCV Admin Plan:

To reiterate, this part of the MPHA presentation was another area in which attending residents were not expected, nor given the opportunity to provide any input. There was also no time built-in for in-depth discussion or questions for all residents especially those who did not speak English.

Section 4: Capital Funds:

This section was another missed opportunity for Minneapolis Public Housing Authority to demonstrate their track record and timeline of accomplishments with their 2017 Capital Fund Program. Instead, MPHA decided to only examine the current year with a 20-year Capital Needs projection. MPHA decided not to provide information from the past 20 years or even the past 5 years of their Capital Fund and Needs.

Defend Glendale requested numerous times from MPHA information and data on Capital Needs reports on Glendale Townhomes to present at community meetings as well as a financial independent audit of MPHA as agency-wide, and MPHA has yet to respond. In addition, we provided a list of fix & repair issues needed in Glendale Townhomes, which MPHA has yet to address. When MPHA took control of the heat from resident control several years ago, they received funds to save energy and to properly insulate the homes. Other properties were insulated but not Glendale. Since February of 20'16, Defend Glendale continued to ask for proper insulation that is routine practice and easily done to protect the health of the families. MPHA has yet to take-to-take action as winter approaches again in few months.

Comments:

Overall, the MPHA August 16 meeting was meant to fulfill an organizational process and not an environment for resident input, questions, or engagement. The meeting agenda was set up with little to no time for questions or input. MPHA staff stated they would write the questions from the presentations, answer the questions, and add the input to their input report. When attending residents asked questions, MPHA staff was dismissive, apathetic, and created a discriminatory environment. Furthermore, MPHA staff at certain points challenged residents' questions in front of the community meeting which created a hostile environment and reduced the number of hands raised to provide more comments. We at Defend Glendale could not only receive answer to our questions about the future of our

homes, but received no follow up discussion with staff, no resolutions; no acknowledgment and no appreciation for bringing our concerns and voices to an official MPHA function. ·

We request:

- For MPHA to extend the comment process to 90 days and hold community meetings at Luxton Park in Glendale and other MPHA buildings during the evening so residents can participate. Provide equal services so residents input are documented.
- To publish all the meetings notices minimum 30 days in advance so all residents, and community members can attend. Provide notice at all channels and networks possible so everyone can have the opportunity to attend.
- MPHA's MTW status should be reviewed, audited, and evaluated and there should be a moratorium on their MTW status until the way MPHA has used their funds under the MTW Status has been reviewed, audited, and evaluated.

In closing, residents of Glendale Townhomes view Moving To Work status Minneapolis Public Housing Authority is viewed by Glendale Townhomes as anti-community engagement redevelopment process to create an environment of Disparate Impacts and furthering disproportionate "adverse impact" against the majority African, Southeast Asian, and African-American residents. MTW has been used a tool to misallocate to fully repair and rehab Glendale Townhomes. MPHA staff leadership has not been accessing local and national sources of funding to maintain and service Glendale Townhomes needs. They have been neglecting standard upkeep and improvements in the name of "Redevelopment by Operational Neglect." The Board of MPHA, Governor Dayton, HUD, and City of Minneapolis need to become aware of how the leadership of MPHA staff is causing a lot of hurt to residents of Glendale.

The Defend Glendale Option:

To fix and repair Glendale Townhomes, zero displacement, and zero privatization of Glendale Public Housing. This is the only option to preserve Glendale as public housing in Prospect Park as it is now, not to convert Glendale to any private development, not to sell it, and not to lease to any private developers such as Sherman Associates for profit. Defend Glendale Option is also zero displacement, and to eliminate systematic gentrification. Glendale has the historic distinction of being one of *very* few low-income public housing developments build as part middle to higher income neighborhood. Glendale is a model that should be replicated not demolished. Therefore, Defend Glendale voted, supports the historic designation, and its application process"to pursue historic designation at the City of Minneapolis.

RE: An Addendum to Formal response and complaint regarding MPHA FY2017 Draft moving To Work (MTW) Annual Plan process and Meeting

On August 23, 2016, Minneapolis Public Housing Authority (MPHA) held a public hearing about MPHA FY 2017 Draft MTW Annual Plan. Residents are asking to extend the comment process and public hearing to evening meetings at Glendale Townhomes and other sites. In order for MPHA staff to explain the draft plans thoroughly, since the process has been confusing and short, majority of residents could not attend the meeting or alternatively could not understand the impact these policies will have on their lives and housing status. Below are several of the many reasons why the public hearing and comment process must be extended.

Lack of interpreting services

MPHA staff did not provide interpreters for Somali, Oromo, or Hmong residents from Glendale Townhomes and other sites that attended the meeting. The residents had concerns and comments to express, and they were not able to express these without interpreters present. Only one resident who was there with another bilingual resident was able to receive some interpretation as both tried to participate in the meeting, and the bilingual resident was not a professional interpreter. This resident stated she did not understand what was going on. Executive Director Cora McCorvey told the board members that an interpreter was available, but no staff member bothered to check to see if residents needed interpreters, and no one tried to explain to residents what was going on after or during the meeting. The interpreter that was pointed out by McCorvey was bilingual staff who was not an independent professional interpreter, and therefore at risk of being biased towards MPHA. As a result, a lot of information was missed, and large portion of the residents who attended the meeting did not receive the information.

Public hearing during work day

The meeting was held at 1:30 p.m. on a Wednesday. It was a small meeting, and not a lot of residents attended because it was in the middle of the work-day. Public hearings are important for MPHA Commissioners and residents. As a result, hearings should be held in many locations and during different times to accommodate residents as well as board members. Specifically, more than one hearing is necessary, and some of these should be in the evenings.

Staff to explain MTW goals, the budget strategy & Public Housing Statement of Policies.

Residents from scattered sites and Defend Glendale found hidden unexplained key policies in the MTW draft. If approved by MPHA Board September 2016, the draft policies below will have an extremely negative financial effect on residents and put families in an undue economic hardship. MPHA leaders such as Cora McCorvey and Bob Boyd who approved such policies need to explain thoroughly and in detail the reasons behind these policies and their impact. Majority of residents have no idea about these changes.

Part I Definitions page 22: *“Insert new language in #4. Annual Income (24 CFR 5.609) - #17: The incremental earnings due to employment during a 24 month period following the date of the initial hire, “the first 12 months will be a 100% disregard and the following 12 months will be a 50% disregard” for families:”*

“Insert new language for #6 – Assets: “Interest, dividends, and other net income of any kind from real or personal property. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD. MPHA shall obtain 3rd party verification of assets upon admitting a family and at least every three years thereafter. During the intervening years MPHA may accept the families declaration of assets where the combined total is less than \$5,000.”

Part X, pg. 29. *“5. Verification of Tenant’s Statements and Income – addition of language as follows: For asset income verification MPHA will seek third party verification of bank accounts “annually” when the total value of all assets is over \$5,000 “and every three years for assets when the combined total is less than \$5,000. Because banks do not timely provide 3rd party verification for bank accounts and other assets,” MPHA will review the “official” documents “provided by Tenants” to determine asset values.”*

It is clear if the MPHA Board approves these policies, families and residents of MPHA will be forced into permanent poverty, will face major financial barriers to move out of public housing, and will not be able to save for their children's, education, or buy a home.

Other sections of the Policy draft changes

include: Part II: Requirements for admission

Part IV: Preferences

Part V: Waiting list assignment plan & designation of buildings, etc.

<http://tinyurl.com/MPHA-MTW2016-mtng>

MPHA Response: General Comments about the Status and Future of Glendale

MPHA is committed to the long-term preservation of affordable housing at Glendale. We look forward to working with Glendale residents and the Prospect Park community to respond to the challenges facing Glendale, and to achieve a vision that preserves this critical housing resource for decades to come.

Glendale is a 184 unit aging townhome property built in 1952, that faces major infrastructure and systems challenges. These are exacerbated by severe cuts Congress has made over the years to public housing operations and capital dollars. HUD has required housing authorities to conduct an independent Physical Needs Assessment (PNA) on all public housing properties.

The recently completed PNA for Glendale identified over \$15 million in unmet capital needs—an amount that would overwhelm the \$10 million annual capital funding MPHA has been awarded for our entire 6,000-unit portfolio.

MPHA is deeply committed to addressing all work-orders and maintaining the quality of life at Glendale at the best level possible. However, the level of need, the fundamental nature of the facilities challenges, and the shortfall of capital and operating funds from HUD require MPHA to identify long-term strategies for preserving affordable housing in Glendale. Current federal, state, and local funding sources for public housing unfortunately do not support a “fix and repair”-only option that some residents understandably prefer. Nor would this represent sustainable or sound stewardship of public dollars, or honor the MPHA’s mission—which includes our duty to the many future Minneapolis families whose housing needs we can meet by making wise investments today. Accordingly, MPHA’s board and executive leadership remain engaged in an extensive, in-depth process to find the best solution for the challenges facing Glendale. While any such change would be years away, should a redevelopment occur, all current families would be guaranteed housing throughout the process and a right to live in Glendale afterward if they choose.

Residents have provided MPHA with a ‘fix and repair’ list and raised concerns about sufficient insulation of their homes. MPHA staff engaged in an expedited annual inspections protocol to identify specific maintenance repairs and identify matters related to residents’ concerns. We addressed the immediate items through issuing work-orders, we forwarded others to the Facilities and Development department to be considered as a part of MPHA’s priorities for use of capital funds.

Throughout its history MPHA has been – and will continue to be – a champion and advocate of cultural diversity and strong communities. At Glendale, MPHA has played a lead role in developing opportunities for residents to enhance and improve their lives: MPHA established the PICA Head Start facility in Glendale, supports Luxton Park, pays for office space at Luxton Park for Eastside Neighborhood Services to offer programing and support to Glendale families, financially supports the Glendale Food Shelf, worked to help preserve Pratt School, and has been a good partner with Prospect Park.

MPHA seeks not only to sustain those achievements but to enhance them as we work with residents and the community to create a vision for Glendale that responds to the current needs and dreams of the community but which also anticipates the future. It is this vision and the very real challenges facing Glendale that requires MPHA to engage with residents and the community. MPHA’s goal is to ensure the preservation of Glendale as place where very low-income families can make their homes for generations to come.

MPHA Response: Comments Related to Community Engagement, Accessibility, and Opportunities for Input on the Draft 2017 MTW

We believe all residents should have an opportunity to understand and to respond to decisions that affect them. MPHA always aims to not just meet but to exceed HUD requirements for resident involvement, and we have done so in this case. Nonetheless, we welcome critical feedback and will always look for reasonable ways to improve within the constraints of our deadlines and resources.

With regard to its Draft 2017 MTW Plan outreach and resident engagement, MPHA has done the following:

- *At its January, 2016 meeting, our Board of Commissioners appointed the MTW Resident Advisory Board (RAB).*
- - *The RAB consists of representatives from: the Minneapolis Highrise Representative Council (MHRC), Minneapolis Scattered Site Resident Council (MSSRC), Glendale Residents Council (GRC), Section 8 Participants, Tenant Advisory Committee (TAC), Security Advisory Committee (SAC), and Management, Maintenance and Modernization(MMM) Committee.*
 - *Representation on RAB is decided by election from the various Resident Councils and their respective committees. The TAC chair is an automatic representative as is the MHRC President.*
 - *The Section 8 Program does not have a formal organization; MPHA looks for volunteers to serve on RAB.*
 - *Glendale does not have a formal resident council at this time. The MPHA has worked and will continue to work with Glendale residents to elect a resident council as defined under HUD regulations.*
- *MPHA MTW RAB meets monthly, then biweekly as the planning process moves forward.*
 - *RAB Actions included:*
 - *Approved Guiding Principles and Priorities (sent to all MPHA Department Heads as part of the Draft MTW Plan process);*
 - *Development and Review of Draft MTW Plan prior to posting;*
 - *Approval of and final comments on the MTW Plan.*
- *In the Minneapolis Star-Tribune (the city's largest and dominant newspaper) MPHA published the Notice of Public Hearing and Comment Period, with Links to the Draft MTW Plan Revised Draft Statement of Policies (ACOP), and Revised Draft Section 8 Administrative Plan.*

- ***Published Notice of Advance Meeting – The “Advance Meeting” is an open meeting for MPHA Residents, Section 8 Participants and others to hear presentations on Draft MTW Plan, proposed changes to the SOP and Section 8 Administrative Plan.***
- ***Notice of Advance Meeting – Public Hearing and Comment Period was included in the August Rent Statements sent to all MPHA Public Housing Residents. The notice was translated into Somali. In addition, on all notices MPHA included a “language block” in 4 languages that states that this is an important document and to contact MPHA for free language assistance. Also MPHA invited residents and participants to contact MPHA at a specific number if they needed interpretation services (including hearing-impaired) during these important meetings.***
- ***A random Selection of 200 Section 8 participants received a letter that included “Notice of Advance Meeting – Public Hearing and Comment Period.” The notice stated that Somali interpreters would be present at the meeting, and provided contact information for requests to have other language interpreters present.***
- ***Advance Meeting Notice stated that MPHA would provide a lunch and fixed transportation stipend to those who attend.***
- ***At the August 16, 2016 Advance Meeting over 95 residents and participants signed in. Prior to the start of the meeting, MPHA introduced interpreters in Hmong, Somali, Oromo, and Hearing Impaired.***
- ***MPHA’s Draft 2017 Moving to Work (MTW) Capital Fund Plan and Policy Review and Meeting Notice: This notice was posted on Bulletin Boards in all MPHA highrises and in Management Offices to provide notice of Advance Meeting, inform residents that copies of the Draft MTW Plan and Revised SOPs are available in the Management office, provide a link to these documents on MPHA’s Website, and inform residents about the Public Hearing before the Board, the comment period, and how to comment in person, in writing, and by e-mail.***
- ***MPHA provided copies of the Draft MTW Plan and summary of changes to the SOPs to all 30+ resident council presidents along with information about the Advance Meeting, Public Hearing and links to the Website where all documents are posted as well as information on how to comment.***
- ***MPHA sent e-notices to various social services agencies, community advocates including Legal Aid and others who have interacted with MPHA with Links to our Draft MTW Plan and Revised Drafts of SOPs and Section 8 Administrative Plan, notice of the public hearing and information on how to comment. This document went to over 250 organizations and individuals, including the Defend Glendale leadership and some 60 attendees of over six community meetings held in Glendale in 2015, who provided their e-mail addresses on the sign-up sheets at those meetings.***

- *In addition, MPHA hosted an Evening Meeting at Heritage Park Health and Wellness Center at 6:30 p.m. on Tuesday – August 23, 2016. Notice was mailed to all 184 Glendale Families, 750 Scattered Site Families and 200 randomly selected Section 8 participants. Prior to the start of the meeting, MPHA introduced interpreters for Hmong, Somali, Oromo, and Hearing Impaired attendees. Seventeen residents of scattered site homes attended the meeting. As has been our experience, MPHA found that the evening meeting was not well attended, whereas daytime Advance meetings often draw between 100 and 175 participants.*

MPHA chose the Heritage Park Health and Wellness Center as the host site for these meetings because it offers the largest meeting space, has the best audio and presentation equipment, and is suitably central to the almost 6,000 public housing units and 5,000 Section 8 Housing Choice Voucher holders who participate in MPHA's programs.

MPHA recognizes that we have a considerable amount of material to cover in these meetings, some of which may be somewhat technical. We have and will continue to work for the right balance between our obligation to present the full plan, and our desire to keep the presentation accessible, useful, and meaningful. All residents have full access to the drafts, and can ask questions of the MPHA directly or via their resident councils. MPHA strives to provide in good faith all materials requested by residents or the public, to the extent allowed by law, and believe we have complied with all requests to-date.

Presenters will make every effort going forward to be heard adequately through the sound system, and move at an appropriate pace that still allows us to cover the material in a reasonable time. For all MPHA employees, including our senior leaders, our goal is always to interact with residents in a context of mutual respect. Even when there are disagreements, we will continue to strive for this standard in every interaction.

As the bullets above convey, we believe MPHA has made reasonable efforts to provide interpretation when participants request it, and to provide Somali interpretation by default in all critical contexts. MPHA employees are well versed in public housing and Section 8 issues and terminology and therefore are the best resource for providing full, accurate, and fair interpretation of our materials.

MPHA faces a strict deadline from HUD to submit our MTW plan each year; it is thus impossible to extend the comment period as some comments request. However, we must update MPHA's MTW plan and submit it for review on an annual basis; residents and others have this recurring opportunity each year to contribute to the process. One comment suggests that MPHA's MTW activities should face a moratorium until its performance is

reviewed; in fact, a review and evaluation of our MTW plan and performance is exactly what we undergo from HUD on an annual basis.

MPHA believes its efforts to promote resident, participant, and community involvement have been and continue to be far-reaching and effective in providing opportunities to impact the Agency's MTW Plan and administrative policies. We are grateful for feedback that will help us continue to improve.

MPHA Response: Comments Related to Short and Long-Term MTW Goals

Some comments expressed concerns about language in MPHA's Draft MTW Plan that it was not pursuing RAD (Rental Assistance Demonstration) for Glendale at this time, and MPHA's subsequent reference to "Voluntary Conversion" during our Capital Fund presentation.

In 2015-16, the MPHA retained a consultant to conduct an analysis of financial models that that could identify possible options for rehabilitation or redevelopment of Glendale. The consultant's report found that the only way any financial models could be feasible was if Glendale was converted to project-base Section 8. HUD has a program "Voluntary Conversion" that could potentially bring significant resources should the MPHA Board consider a major rehabilitation or a redevelopment of Glendale. However, Voluntary Conversion includes a number of requirements before HUD would consider approval; the first of these is a financial test. In order to perform its due diligence on this potential option, MPHA staff informed the MPHA Board that it would conduct the financial test. This is the only action taken to-date. MPHA has not decided to pursue Voluntary Conversion, nor do we know yet whether the option would even be available to us. The only impact of this action by MPHA is to determine if Voluntary Conversion is a tool the Board might be able to consider for improvements to Glendale. Consideration of options for Glendale is at the early stages of a complex process; we have made no determinations with regard to funding mechanisms, design, or timing, and the ability to conduct any work is likely years away.

MPHA Response: Comments Related to Specific Proposed Changes to the SOPs and their Impact on Glendale Families:

One comment expressed concerns about changes to income and asset definitions, and a policy on verification of assets. These changes are necessary to reflect recent changes in HUD regulations. The change in Annual Income reflects the change in regulation regarding the "Earned Income Disallowance" which allows for a phased-in rent increase for a family:

- a) Whose income increases as a result of employment of a family member who was previously unemployed for one or more years;*
- b) Whose income increases during participation of a family member in any economic self-sufficiency or other job training program;*

c) Who are or were, within the last 6 months, assisted under a State TANF or Welfare to Work program.

For the first 12 months MPHA would not take into account when determining rent, any increase in earned income, and for the second 12 months MPHA would only take into account 50% of the increase in earned in when determining rent.

These changes were made to reflect recent changes in HUD regulations. The changes with regard to when MPHA must seek 3rd party verification of assets is a change in HUD requirements that has no new impact on the calculation of rent, and does not change the definition of an asset. The definition of specifically excludes the “value of personal property such as furniture and automobiles.”

None of these changes reflect MPHA use of MTW authority.



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September 2, 2016

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RE: MPHA Draft FY2017 Annual Moving To Work Plan
MPHA Draft FY2016-2017 Low-Income Public Housing Statement of Policies
MPHA Draft FY2016-2017 Section 8 Housing Choice Voucher Administrative Plan

Dear Chairman Tyler, Director McCorvey and Ms. Abrahamson:

Mid-Minnesota Legal Aid of Minneapolis assists over 5,000 low-income residents of Hennepin County annually. Many of our clients apply to and participate in Minneapolis Public Housing Authority (MPHA) housing programs. As such, we are writing to you on behalf of our clients about MPHA's Draft FY2016 Moving To Work Plan (MTW Plan), MPHA Draft FY2016-2017 Low-Income Public Housing Statement of Policies (ACOP) and MPHA Draft FY2016-2017 Administrative Plan for the Section 8 Housing Choice Voucher Program (Admin Plan).

We encourage MPHA to make the following changes to its Plans and related policies and documents to enhance its current policies in order to better serve applicants, participants and owners; as well as to comply with applicable laws.

In some instances, we have noted policies that do not comply with applicable law. This letter provides notice to the MPHA that if a particular policy, practice or procedure remains uncorrected and an applicant, resident or participant seeks our assistance with the resulting harm, we will not provide further notice to the MPHA of the offending policy, practice or procedure. We will advise our client of his or her administrative and/or judicial remedies and assist them as appropriate since the MPHA has had prior notice of the issue and repeated opportunities to change course.

If our comments raise any questions, please do not hesitate to contact us for clarification.

DRAFT FY2017 ANNUAL MOVING TO WORK PLAN (“MTW PLAN”)

P.10-13

Why don't any of the MPHA's strategic directions or the multiple goals set for each strategic direction address the MPHA's legal obligations to affirmatively further fair housing or what the MPHA plans to do to facilitate public policies favoring deconcentrating areas of race and poverty in Minneapolis?

MPHA Response: Affirmatively Furthering Fair Housing (AFFH) is part of the fabric of MPHA's operations and informs all of the agency's actions. MPHA will be conducting an Assessment of Fair Housing (AFH) and developing a AFH plan in accordance with the requirements under the AFFH rule.

P.20

The MPHA describes its use of rent based on 20%, rather than 30%, of annual income to respond to its leasing barriers at 1710 Plymouth high-rise. Has the lowered rent for those units perceived to be less desirable improved vacancy rates at the 1710 Plymouth building?

Why is the MPHA unable to assess the success or failure of its strategy of filling 1 BR units in a building with current residents who have lived the longest in the less desirable efficiency units in the building after 2 years? A major national criticism of the Moving to Work Demonstration is the lack of evaluation or assessment of the various experiments carried out on public housing applicants and residents by participating PHAs. How does the MPHA propose to determine if this particular strategy effectively addresses the problem it identified as the cause of its vacancy rate in these units? If a strategy cannot be assessed for success or failure to resolve a problem, why is that strategy still in use?

MPHA Response: MPHA's decision to charge 20% of income at 1710 was approved by HUD over 10 years ago and has produced the desired result: lessening the vacancy rate for those units.

The filling of the one bedroom units by transferring from studio units is not an MTW initiative and does not require a formal evaluation as may be required for MTW initiatives. It is a policy change that MPHA implemented and we are allowing more time to determine whether or not we should continue with this change.

P.21

On September 14, 2015, the MPHA stated that it expected to hire its Coordinator for its (then) new Mobility Voucher Program at the start of Fiscal Year 2016. It appears that this did not happen and the Mobility Voucher Program has been redesigned again with a different configuration of staff to be hired. What date is now projected for this new plan to begin serving participants? *See also infra* P.48.

MPHA Response: We have revised the Mobility Voucher Program and the job description and added another position, Community Engagement Coordinator (Owner Recruitment) for this program. We anticipate posting before the end of 2016.

The design/redesign of the Mobility Voucher Program needs to be more engaged with the community. The difficulties encountered by participating families in placing their Vouchers in areas of their choice is a significant subject of concern for participants, owners, community advocates and community stakeholders. It is a topic under discussion in a variety of contexts in our city and the metropolitan area as we all try to improve affordable housing. The MPHA's obligation to affirmatively further fair housing is bound up in all of these discussions. The MTW Plan says a consultant was not hired for the redesign. Who did have input on the redesign? We urge the MPHA to engage all of the parties described above within the next six (6) months about the Mobility Voucher Program and its goals, design, operation, progress and effectiveness. *See also our comments infra* P.49.

MPHA Response: Thank you for your comments.

P.36

In paragraph 9, the MPHA has deleted the RCAP criterion used to determine permissible moves out of Minneapolis under the restricted porting rights of the Rent Reform Initiative. MPHA has replaced it with two new criteria. The first is a criterion in which moving to an "Area of Opportunity" is an approved reason for porting outside Minneapolis. The MPHA defines an Area of Opportunity as a census tract where less than 40% of the population is at or below 185% of the federal poverty level.

The second new criterion MPHA proposes prohibits porting out of Minneapolis to a census tract of concentrated poverty with 50% or more people of color. This limitation must be deleted. Voucher participants should be given the widest possible choice for their housing search. This will serve the MPHA's obligation to affirmatively further fair housing and to avoid disparate impact under the Fair Housing Act when families' choices are restricted with this race-based criterion.

MPHA Response: The change in language from “Racially Concentrated Areas of Poverty” (or “RCAP”) to “Area of Opportunity” was made to promote participant family moves to communities of greater opportunity. The definition of RCAP is actually the same as the definition of Area of Opportunity. We have reworked the language for clearer meaning.

How many MTW Voucher holders requested to port based on the RCAP criterion after it was added to the Rent Reform experiment in September 2015? How many of those requests to port based on this criterion were granted?

After the MPHA added the RCAP criterion to its 2015 Annual Plan, the MPHA assured us in its responses to our 2015 comments that the RCAP criterion would be added to the MPHA website and the Admin Plan. The RCAP criterion never made it on the MPHA Section 8 website, or into many of the porting materials used in the MPHA Section 8 Program. As recently as August 29, 2016, <http://www.mphaonline.org/section-8/participants/hcv/moving-with-assistance/> informed participants that “In order to be approved to port out of Minneapolis, you must have a reason related to employment, education, safety/VAWA, medical/disability, or housing affordability. Housing affordability means the family will be approved to port out if their rent portion is greater than 40% of their monthly adjusted family income and they are moving to a jurisdiction in which the FMR is at least 5% less than the FMR in Minneapolis.” The RCAP criterion is notably missing. The Participant Forms listed on the MPHA website at <http://www.mphaonline.org/section-8/forms/> accessed on August 29, 2016, did not include a Portability Request Form. By searching the Moving with Assistance page one can eventually get to a “Portability Request Form 2016” that contains the draft integrative move criterion from the Draft FY 2017 MTW Plan.

MPHA Response: Thank you. MPHA will assure that the correct portability criterion and forms are added to the MPHA website and placed in all appropriate sections of the Admin Plan.

The criteria for porting out of Minneapolis discussed in this section of the Draft FY2017 MTW Plan do **not** appear in the Draft FY2016-2017 Admin Plan on P.10-9 where “MTW Policy—Eligibility for Port Out” is described. The very important criterion related to integrative moves is not mentioned at all. Whatever the Board finally adopts for this important issue this year, it must broadcast it to all participants and describe with specificity consistently throughout the MPHA’s Administrative Plan, the MPHA website and the MPHA’s policies, practices and procedures.

In its response to our 2015 comments the MPHA said the RCAP criterion would not go into effect until January 1, 2016. Why was it not effective upon adoption by the MPHA Board on September 23, 2015, or upon submission of the Annual Plan to HUD on October 15, 2015? When will the new criterion “Area of Opportunity” proposed in the FY2017 Annual Plan be effective?

MPHA Response: HCV’s policies go into effect on January 1 of the new fiscal year and after HUD approval.

P.39

We have previously asked for a shorter than 30-day period for a decision by the Hardship Review Committee, explaining why such a long period for a decision puts tenancies at risk. The response

we received is the MPHA has not seen it happen so has no reason to anticipate it will. This response fails to recognize that the consequences we described for our clients in hardship situations waiting 30 days for a decision from the MPHA staff are going to end up evicted or in dire financial straits and stressful situations that will not be brought to the MPHA's attention. We ask again that you recognize the fact that the hardship involves critical time factors and shorten the time period for your staff to reach a decision on a hardship request. A time period of 10 business days for the MPHA's committee decision does not seem unreasonable considering the risks for the resident.

MPHA Response: MPHA will make the change.

P.48

In September 14, 2015, the MPHA responses to comments stated that it was hiring a Coordinator for the Mobility Voucher Program at the start of FY2016 and apparently did not. The MPHA also stated in its 2015 responses that it did not plan to change the criteria for this Program but it appears that it clearly has. Why did the MPHA decide to change the criteria for this program? See also *supra* P.21.

MPHA Response: We revised the Mobility Voucher Program to include monetary incentives, added an additional staff person, and will incorporate an evaluation component.

Additional Comment – No P. Number

There is nothing in the Draft MTW Plan describing the criteria the MPHA will use to determine “substantial deviation” and “significant amendment or modification” of its Plan as required by 24 C.F.R. § 903.7 (r)(2) (2015).

MPHA DRAFT FY2016-2017 LOW-INCOME PUBLIC HOUSING STATEMENT OF POLICIES (“ACOP”)

P.1

In paragraph 2, the MPHA states it has adopted a Policy Against Discrimination, Harassment and Retaliation. This Policy is not in the Draft FY2016-2017 ACOP. Although noted in the final ACOP adopted for FY 2015-2016 (Board approved 9/23/2015), this Policy does not appear there either. Please tell us where this Policy is located for public access and provide us with a copy by US mail or an electronic version by e-mail.

MPHA Response: Thank you for your comment. The statement speaks for itself. There reference to the policy has been removed.

P.13

The definition of “Formal Repayment Agreement” is incomplete. The definition is drafted to describe the terms of a repayment agreement so the definition must include those terms mandated by HUD in PIH 2010-19. The definition must include the limitation on the amount of the monthly payment that MPHA may require: “The monthly retroactive rent payment plus the amount of rent

the tenant pays at the time the repayment agreement is executed should be affordable and not exceed 40% of the family's monthly adjusted income." HUD Notice PIH 2010-19 "Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System", p.15 (May 17, 2010), extended in HUD Notice PIH 2015-2 (January 9, 2015). The HUD Notice is not discretionary on this point. If the MPHA chooses not to make the necessary revisions to comply with the law it risks use of MPHA's resources to defend legal challenges to its choice.

MPHA Response: While HUD guidance states that the amount should be affordable and not exceed 40 percent of the family's monthly adjusted income, this is not a requirement.

P.13

The definition of "Head of Household" is incorrect unless the final sentence of the paragraph is deleted. While the family must use the public housing unit solely as its private dwelling, 24 C.F.R. § 966.4 (f) (2016), there is no legal authority for eviction of the family when the Head of Household is temporarily away from home for more than 90 days. There is no statute or regulation equating a temporary absence of a Head of Household for more than 90 days with a change of residence by the Head of Household. This is an individual fact issue in which the MPHA must make an individual determination if a particular person has changed his/her residence and then deal with the remaining family members as the federal regulations dictate. A blanket ground for eviction as formulated in the final sentence of this definition is overly broad.

When the need to revise this definition was raised with the MPHA in the past, the MPHA did not provide any legal support for its position. Perhaps this definition is rooted in the MPHA's former policies and enforcement actions around its "Absence from Unit Initiative" that it has now recommended to its Board be "closed out", Draft FY2017 MTW Plan P.56. If this definition is not revised the MPHA risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: Thank you for your comment. We have moved the language to the Lease Termination section.

P.17

The definition of "Notice" is extremely confusing as written. At best it appears to be an effort to preclude a tenant's exercise of her due process rights during adverse actions by the MPHA by essentially starting the appeal clock ticking at some point arbitrarily designated by the MPHA "notwithstanding" provisions of its own Lease or SOP provisions. Questions raised about this in the past brought the responses from the MPHA that HUD does not define notice or reasonable and the MPHA's definition is reasonable. If the MPHA chooses not to revise this section it risks use of MPHA's resources to defend legal challenges to its choice.

MPHA Response: Thank you for your comment.

P.18

The reference "see page 58" at the conclusion of definition 80 appears to be erroneous.

The definition of “Retroactive Rent” attempts to shifting responsibility to the resident for loss of rent revenues resulting from MPHA error. If rent calculations are incorrect due to the actions or inactions of the resident, then the resident ought to bear responsibility for payment of the correct amount of rent owed. If the rent calculation is incorrect due to action or inaction by the MPHA then there is no rationale for collecting payment from the resident. In fact, 24 C.F.R. § 966.6 (2015) specifically prohibits exculpatory clauses in public housing leases. The MPHA cannot insert such a clause through its ACOP definition. The MPHA’s choice to adopt this policy without necessary revisions risks use of MPHA’s resources to defend legal challenges to it.

MPHA Response: The reference “see page 58” has been removed and revised. Thank you for your comment regarding the definition of “Retroactive Rent.”

P.20

The definition of “Homeless Family” is incorrectly included within the unrelated definition of “Substandard Housing” at subparagraph D. The definition of homeless family should be a separate term in Part 1 of the ACOP. If the definition of homeless family the MPHA intends to use is the federal definition, as found in the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act), the text must be revised. The final rule implementing the HEARTH Act is at 76 F.R. 75995 (December 5, 2011).

MPHA Response: Thank you for your comment.

P.24

In paragraph D. 7) the MPHA conflates vacating when evicted or given a notice of termination “for cause” with vacating when a lease is not renewed because it has reached the end of its term and there has not necessarily been any allegation of cause attributed to a tenant’s breach or misconduct. If the MPHA is seeking to limit the admission of those who vacate after receiving an eviction complaint or a notice of lease termination for alleged misconduct or breach, then the criterion should clearly state that. As written, a tenant who vacates after her landlord chooses not to renew her lease for any number of reasons having nothing to do with the tenant’s conduct is excluded from MPHA housing for 5 years. The MPHA assumes negative information about an applicant without any factual basis to do so. The MPHA’s choice to adopt this policy risks use of MPHA’s resources to defend legal challenges to it.

Revise paragraph D. 19) to comply with HUD instructions in HUD Notice PIH 2015-19 “Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions” (November 2, 2015) and “Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions” (April 4, 2016). The MPHA’s choice to adopt this policy without necessary revisions risks use of MPHA’s resources to defend legal challenges to it.

MPHA Response: Thank you for your comment.

P.25

Revise paragraph E. 4) to exclude any alleged debt to the MPHA that is unenforceable because it is barred by the statute of limitations or has been discharged in bankruptcy. Also include in this paragraph information to the alleged debtor about her rights to challenge any alleged debt to the MPHA as provided in HUD-52675. Failure to revise the Draft places MPHA's resources at risk to defend legal challenges to this position.

MPHA Response: Thank you for your comment.

P.26

In paragraph 5.C., delete "...may waive the right to further judicial review." Applicants are not legally required to exhaust administrative remedies so choosing to bypass the MPHA's applicant admission appeal process does not constitute waiver. Failure to revise the Draft places MPHA's resources at risk to defend legal challenges to this position.

The informal hearing process elements in subparagraph D. 2) b) must be revised to include the right to provide both oral and written arguments to comply with the due process requirements of *Goldberg v Kelly*, 397 U.S. 254 (1970). The complainant in the hearing has the right to determine how best to present her position, the MPHA cannot make that choice for her. The MPHA's choice to adopt this policy without necessary revisions risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: Thank you for your comment.

P.27

Add a subparagraph to 5. referencing the MPHA's VAWA policy at Part XII of the ACOP. The applicant appealing an admission denial must know that she has the right to ask for the protections of VAWA in the informal hearing if applicable, just as the policy already references the MPHA Reasonable Accommodation Policy informing a person with a disability of the right to seek the protections of reasonable accommodation if applicable. The MPHA's choice to adopt this policy without revision risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: Thank you for your comment. A subparagraph has been added referencing MPHA's VAWA Policy.

P.31

The Income Targeting paragraph at 3. is incorrect. The definition of "Extremely-Low Income" (ELI) was changed by the Streamlining Rule published on March 8, 2016, and is included in HUD Notice PIH 2016-05 "Streamlining Administrative Regulations for Programs Administered by Public Housing Agencies" (April 7, 2016), p. 5. Targeting must result in at least 40% of MPHA residents being ELI. The definition of Extremely Low Income at #35, P.12, of the Draft 2016 ACOP is correct and must be the definition used at 3. on P.31. Failure to revise the Draft places MPHA's resources at risk to defend legal challenges to this position.

MPHA Response: Thank you for your comment. We have changed the Income Targeting definition information.

P.32

The MPHA has changed the number of offers in paragraph 5. D. 1) from 4 units to 2 units in line one of the subparagraph. There are 4 offers in line two. These sentences must be consistent to avoid confusion.

Since the consequence of turning down the 2 offered units, removal from the waiting list, is very harsh the MPHA should include the possibility of remaining on the waiting list if the units offered present a hardship to the family. If the offers were turned down for reasons based “solely on the fact that the unit previously offered would place a hardship on the family because the location is not accessible to the family’s employment, job training, day care, child’s education facility, or medical or support services”. These are the reasons the MPHA has proposed adding to the 2016 ACOP, Part VIII. F. 2), P.45. These are hardship reasons are also good reasons to keep a new resident family on the waiting list rather than imposing the ultimate penalty of removal from the waiting list.

MPHA Response: We have made revisions to paragraph 5.D.1) to address your concerns.

P.34

The MPHA policy stated in subparagraph 1. C. violates Federal regulations 24 C.F.R. §§ 966.51 (1)(a)(1), 966.51 (a) and 966.53 (a) (2016) in its effort to limit the grievance rights of a resident/tenant. The resident/tenant has the right to grieve the denial of an addition to her family. The MPHA must revise this section to comply with the law. *See also Saxton v. Hous. Auth. of City of Tacoma*, 1 F.3d 881 (1993). The MPHA’s choice to adopt this policy without revision risks use of MPHA’s resources to defend legal challenges to it.

Revise the incomplete statement in paragraph G.1. about Social Security Numbers (SSNs) to include the two 90-day periods the MPHA is obligated to allow a person who has to produce a SSN for a child under 6 years of age. *See* “Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs”, 81 F.R. 12354 (March 8, 2016) and HUD Notice PIH 2016-05 “Streamlining Administrative Regulations for Programs Administered by Public Housing Agencies” (April 7, 2016), p. 4. The MPHA’s choice to adopt this policy without necessary revisions risks use of MPHA’s resources to defend legal challenges to it.

MPHA Response: Subparagraph 1.C has been changed in an attempt to make the policy clearer.

P.35

The MPHA cannot terminate a family’s lease for the reason proposed in subparagraph 2. F. The MPHA must revise this section. The only reasons for termination by the MPHA are set out in 24 C.F.R. § 966.4 (l) (2016). The permanent absence (excluding death) of the head of household within 3 years after an adult is added to the household relied on as a basis for termination of the

tenancy of the remaining family by the MPHA is not among the exclusive bases for termination provided in the law.

With the exception of live-in aides whose incomes are not included in the calculation of rent, remaining household members do not have diminished rights based on the MPHA's creation of a subclass of residents it labels "add-ons". Remaining family members qualify as residents for continued occupancy so long as at least one of them are legally able, by age and capacity, to execute a lease and they are in compliance with resident obligations. *See* HUD Public Housing Occupancy Guidebook, Pp. 170-71, 175-76, and App.III. The MPHA's choice to adopt these policies stripping remaining family members of their legal rights without revisions risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: 24 C.F.R. § 966.4 (l) does not prohibit MPHA from terminating the lease for the reason proposed in this paragraph. This provision is necessary to promote fairness to those on the wait list and maintain wait list integrity.

P.36

The MPHA cannot terminate a family's lease for the reason proposed in subparagraph 2. G. The MPHA must revise this section. The only reasons for termination by the MPHA are set out in 24 C.F.R. § 966.4 (l) (2016). The permanent absence (excluding death) of the head of household within 3 years after an adult is added to the household relied on as a basis for termination of the tenancy of the remaining family by the MPHA is not among the exclusive bases for termination provided in the law.

With the exception of line-in aides whose incomes are not included in the calculation of rent, remaining household members do not have diminished rights based on the MPHA's creation of a subclass of residents it labels "add-ons". Remaining family members qualify as residents for continued occupancy so long as at least one of them are legally able, by age and capacity, to execute a lease and they are in compliance with resident obligations. *See* HUD Public Housing Occupancy Guidebook, Pp. 170-71, 175-76, and App.III. The MPHA's choice to adopt these policies stripping remaining family members of their legal rights without revisions risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: Please see response above.

P.37

Delete paragraph 3 because the MPHA has closed out its Absence from Unit Initiative according to the Draft FY2017 MTW Plan, P.7 and P.56.

MPHA Response: Thank you. The change has been made.

P.39

Delete subparagraph C. 7) reference to "Income Tax Records". The MPHA may not access federal taxpayer returns and return information. 26 U.S.C. § 6103 (l)(7) (2016) provides access to HUD

only, not the MPHA. The terms of the HUD 9886 release in paragraph 2 at (3) limits tax information access to HUD only. The MPHA's choice to adopt this policy risks use of MPHA's resources to defend legal challenges to it.

Delete reference to escrow of rent in C. 9). The final rule "Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs", 81 F.R. 12354 (March 8, 2016), removed 24 C.F.R. § 966.55 (2015) which included at (e) the rent escrow rule.

MPHA Response: Thank you for your comments regarding subparagraph C. 7) and C.9).

P.42

In paragraph 9., add a reference to the "Security Deposit Schedule" location in the ACOP so a reader can easily find it.

In paragraph 10., add a reference to the "Pet Policy" location in the ACOP so a reader can easily find it.

MPHA Response: Thank you the references have been added.

P.43

In section 1. E. of the transfer policies the MPHA proposes a resident transferring from one MPHA unit to another must move within three (3) days. The MPHA should make the time period the resident has to move longer than three (3) days. Such a short time to move is an extreme hardship. In addition, the MPHA should clearly identify when this lengthened time period begins.

When a more tenant-friendly deadline to making a transfer move was requested in the 2015 Plan process, the only reason the MPHA gave for refusing to do so was the lack of any complaints from tenants about the three-day (3-day) deadline. It is a mistake to interpret lack of protest from residents as resident endorsement or approval of a MPHA action. The experience of our clients who have sought a transfer is one in which they are so relieved to finally get to move after very lengthy waits that they hesitate to express any needs or concerns known because they fear receiving a negative response from MPHA management including fear of losing the long-awaited transfer.

A move within three (3) days, even for a household with modest furnishings, poses a hardship for a household with extremely limited resources. Revision of this policy could easily relieve this hardship with addition of a few days. The levying of "holdover fees" or \$10/day or \$40/day on the transferring family that cannot meet the three-day (3-day) deadline to move only adds insult. With a more reasonable period to complete the move, more households could avoid the financial penalties these charges entail.

MPHA Response: Thank you for your comment. We respectfully decline to make the change.

P.44

The transfer fee the MPHA proposes imposing upon residents is described as “an administrative and maintenance fee” to make the unit the resident is leaving “ready to rent”. The transfer fee, Sales and Service Charge Schedule, Appendix “C”, 12., P.114, is \$400 for residents who have lived in MPHA housing fewer than five (5) years and \$200 if a MPHA resident “for 5 & 10 years”. These fees are unreasonably large. Levying a flat penalty amount like this to cover maintenance costs to ready the original unit for a new resident has no relationship to the condition of the individual unit vacated and thus, is a disproportionate and unenforceable liquidated damage, not the fee for necessary maintenance or repair of the particular unit.

If the transfer fee is imagined to cover actual maintenance needed to ready the unit for a new resident, why is the higher fee required for the unit occupied for shorter time. The unit occupied for the shorter time ought to require less maintenance unless the actual conditions of the unit have nothing to do with the fee assessed. This difference in fees between less than five years and more than five year tenancies supports the conclusion that these fees are imposed to discourage transfer requests and to limit moves that cannot be denied in any other administrative way. The transfer fees must be revised.

In paragraph 2. B., the MPHA again proposes only three (3) days for a move-out if a resident must vacate due to modernization or demolition activities by the MPHA and the resident rejects the units offered by the MPHA as replacement units. This short move-out deadline is as unreasonable as the three-day (3-day) move at P.43. *See* our comments *supra* at P.43, regarding 1. E. These are not emergency transfers covered in paragraph 2.A. and the MPHA has lead-time to carry out its modernization and demolition activities that can easily accommodate a move-out deadline for residents that is less punitive.

MPHA Response: Thank you for your comment. We respectfully decline to make the change.

P.49

In 4. H., the MPHA proposes that there be no rent decrease for income reductions lasting between 30 and 120 days. The MPHA proposes instead that a manager will approve “a credit adjustment for the loss of income.” How will this process work with paragraph 2, especially 2. D. on P.75? It is very important that a resident is not subject to eviction complaints because the rent was not decreased when loss of income was reported. Even if the MPHA strikes the eviction complaint when its error is discovered, and does not use in the complaint in the eviction tally of paragraph 2. D. at P.75, the resident should not have to file an expungement motion to correct the MPHA’s error and clear her tenant record. These sections must be made consistent.

MPHA Response: Thank you for your comment.

P.51

Paragraph 1 must be revised. The MPHA no longer has the authority of its “Absence from Unit Initiative” granted in the MPHA’s MTW Amended and Restate Agreement, Attachment C., paragraph 11, for disallowance of rent reduction based on loss of income due to absence from the unit for over 30 days.

The MPHA's interest in who lives in the rental unit, who is temporarily absent and who no longer resides there, is relevant to its obligations to verify income for accurate rent calculation. However, although the family is required by law to inform the MPHA of who lives in the home and who no longer lives in the home, 24 C.F.R. §§ 966.4 and 960.259 (2016), the family is not required by law to seek pre-approval from the MPHA for any individual family member's absence. The family is not required by law to provide verification to the MPHA of the need for an individual family member's absence.

In this paragraph the MPHA states some absences of some family members for some periods must be authorized by the MPHA. The MPHA asserts authority to terminate a lease for failure to give advance written notice of an absence of more than 30 days without any legal basis. The MPHA has no legal basis for the intrusions into residents' family life described in the proposed paragraph beyond the provisions of the federal regulations we have cited *supra*. The MPHA's choice to adopt this policy risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: Your comment is unclear with regards to Paragraph 1. We respectfully decline to make the requested change with regards to temporary absence of the unit.

P.52

The paragraph 5. description of required information in a notice of termination is incomplete. This section must be revised to comply with the requirements of 24 C.F.R. § 966.4 (1)(3)(ii) (2016). The MPHA's choice to adopt this policy without revision risks use of MPHA's resources to defend legal challenges to it.

The proposed language in 1. B. 2) about the instances in which the MPHA will bypass its grievance procedure when terminating a lease is an incorrect statement of the law. The MPHA must replace paragraph "2) any activity that *may* threaten..." (emphasis added) with the correct legal standard of "2) any criminal activity that threatens...". There is a significant difference between the law and the MPHA's paraphrasing which exceeds the MPHA's legal authority. 24 C.F.R. § 966.51 (a)(i) (2015). The MPHA's choice to adopt this policy without necessary revisions risks use of MPHA's resources to defend legal challenges to it.

Paragraph 1. C. 5) attempts to cut off a resident's reasonable accommodation rights. A resident may make a reasonable accommodation request of the MPHA at any time in his/her interaction with the MPHA. The MPHA cannot refuse to accept, review and make a decision about a reasonable accommodation request whenever it is received. *Radecki v. Joura*, 177 F.3d 694 (8th Cir. 1999). The MPHA's choice to adopt this policy without revision risks use of MPHA's resources to defend legal challenges to it.

Paragraph 1. C. 5) attempts to cut off a resident's rights to VAWA protections. The only time limit in VAWA is the not less than 14 days that he/she has to respond to a written request from the MPHA for certification in order to exercise her VAWA rights. 24 C.F.R. § 5.2007 (a) (2015). The MPHA's choice to adopt this policy without revision risks use of MPHA's resources to defend legal challenges to it.

In paragraph 1. C. 6), the MPHA attempts to exclude from the instances listed in 1.B. 2), 3), 4), and 5) a resident's rights to reasonable accommodation or the protections of VAWA. A resident's disability status or an incident of VAWA-prohibited activity could be related to the instances listed in paragraph 1. B. 2), 3), 4) and 5). A resident is not legally prohibited from using her rights to reasonable accommodation or her VAWA protections in regard to a termination based on those listed instances. The MPHA's choice to adopt this policy without revision risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: MPHA will ensure that the notice of termination has all of the requirements of 24 C.F.R. §966.4 (1)(3)(ii). We have eliminated the word "may" in 1.B 2). We respectfully decline to make the changes to paragraph 1.C.5) and 1.C. 6).

P.54

Paragraph E. 5) c) references "24 C.F.R. § 966.55". This section of the federal regulations was deleted by "Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs", 81 F.R. 12354 (March 8, 2016). This paragraph should be revised to comply with the federal regulations and HUD guidance implementing the rule, HUD Guidance Streamlining Administrative Regulations for Programs Administered by Public Housing Agencies, PIH 2016-05 (April 7, 2016).

The definition of Tenant in paragraph 7 is incomplete. Revise it to include the entire definition of 24 C.F.R. § 966.53 (f) (2016).

MPHA Response: We have removed the citation to 24 C.F.R. § 966.55. We believe this definition is consistent with the definition of tenant.

P.55

The list of information in F. 2) d) in the summary of the informal conference must be revised to include in regard to the disposition "the specific reasons therefor", see 24 C.F.R. § 966.54 (2016).

MPHA Response: The section F.2) has been revised to address your concerns.

P.56

Delete paragraph G. 2. regarding escrow of rent. The final rule "Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs", 81 F.R. 12354 (March 8, 2016), removed 24 C.F.R. § 966.55 which included at (e) the rent escrow rule.

MPHA Response: Thank you for your comment. We respectfully decline to make the change.

P.57

Paragraph G. 6) a) contains the rights: to examine documents; to copy documents; to be represented by counsel or other advocate; and the right to have counsel or the other advocate make statements on the resident's behalf. The remainder of G. 6) lists other due process rights in individual

subparagraphs. It would be clearer and more consistent to have each due process element in an individual subparagraph or bullet, including the 4 grouped together in G. 6) a).

In paragraph 7) a), the MPHA asserts that a Hearing Panel may render a decision in a grievance without hearing testimony or examining evidence from the complainant if the Panel thinks the issue has been determined in another proceeding. Is this referring to another grievance proceeding involving the MPHA? Is this referring to another judicial or quasi-judicial proceeding in which the MPHA was a party? Was the complainant a party in the other proceeding? How would the objective Hearing Panel become aware of the determination of the allegedly same issue in another proceeding? Without revising this paragraph to resolve these questions and without providing legal authority for this paragraph, the MPHA's choice to adopt this policy without revision risks use of MPHA's resources to defend legal challenges to it.

Combine paragraphs 7) d) and 7) g) which do not need to be two separate statements and should be combined as a statement in this section that mirrors the regulation at 24 C.F.R. § 966.66 (e) (2016).

The hearing requirements of 7) should include a statement regarding the MPHA's legal obligation to provide free interpreter services at the hearing. This longstanding requirement to comply with Title VI for LEP residents is now specifically listed as a hearing requirement at 24 C.F.R. § 966.56 (g) (2016). Failure to revise the Draft places MPHA's resources at risk to defend legal challenges to this position.

The hearing requirements of 7) should include a statement of the MPHA's legal obligation to provide notice regarding the Formal Hearing for people with vision impairments in an accessible format as required by 24 C.F.R. § 966.56 (h) (2015).

MPHA Response: We respectfully decline to make the changes with regards to paragraph G.6), G.7) a), d) and g). Thank you for your comments with regards to interpretation services and for notice for people with vision impairments.

P.66

The terms of VAWA 2013 specifically place the decision to disclose the name of her abuser in the hands of the survivor. 42 U.S.C. § 14043e-11 (c)(3) (2015). The MPHA cannot force the survivor to provide a copy of an Order for Protection or a No Contact Order as this section proposes as paragraph 1.C. appears to do. The paragraph should be revised to state that if a survivor chooses to have the MPHA assist in enforcement of an Order for Protection" ("OFP") or a "Domestic Abuse No Contact Order" ("DANCO") by adding the perpetrator of domestic or sexual violence to the MPHA's Trespass List, then the resident must provide a copy of the OFP or DANCO to the MPHA. It must be clear that the person protected by VAWA retains the right to choose whether to disclose the name of the perpetrator to the MPHA and its staff. The MPHA's choice to adopt this policy without the necessary revisions to comply with the law risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: We respectfully decline to make the change.

P.75

How does the MPHA prevent filing court actions under paragraph 2 against those persons whose incomes have decreased for 30 to 120 days but for whom the MPHA proposes not reducing their income-based rent offering instead a management-approved credit adjustment to offset the loss of income, *see supra* P.49 at 4 .H.?

In 2. E., the MPHA proposes termination of a lease when a resident has “. . . two *valid* Eviction Actions for nonpayment of rent . . .” and “. . . three *valid* Eviction Actions . . .” (emphasis added). The Draft ACOP lacks any explanation of what “valid” means. By “valid” does the MPHA mean:

- eviction actions resulting in judgment for the MPHA?; or,
- eviction actions resulting in settlement agreements with a vacate date? or,
- eviction actions resulting in settlement agreements for repayment of alleged unpaid rent?
or,
- evictions actions where allegations are made? or,
- something else?

Since the MPHA is proposing the ultimate penalty of termination of tenancy when the conditions are met, this section must be revised so what will lead to the MPHA seeking that ultimate penalty is clear.

MPHA Response: We have appropriate safeguards to address the concern addressed in paragraph 2. Thank you for your comment with regards to paragraph 2.E.

P.76

In 3. C. 3) iii, the MPHA attempts to shift responsibility to the resident for loss of rent revenues resulting from MPHA error. The MPHA proposes that the resident be responsible for identifying MPHA error. At most, the resident can be held responsible for reporting to the MPHA that the MPHA has used an incorrect source of income. Beyond that piece of information, the resident is not obligated to do the MPHA’s work nor trained to audit its eligibility staff regarding how the income amount is adjusted to comply with applicable laws, regulations, policies, practices and procedures to determine the amount that is finally used in the lease and lease addenda. If the rent calculation is incorrect due to action or inaction by the MPHA, then there is no rationale for collecting payment from the resident to cover the MPHA’s error. In fact, 24 C.F.R. § 966.6 (2015) specifically prohibits exculpatory clauses in public housing leases. The MPHA cannot insert such a clause through its ACOP definition. The MPHA’s choice to adopt this policy without necessary revisions risks use of MPHA’s resources to defend legal challenges to it.

Paragraph C. 6 must be revised to include all of the significant terms mandated by HUD in PIH 2010-19 “Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System”, p.15 (May 17, 2010), extended in HUD Notice PIH 2015-2 (January 9, 2015). This section also must be revised to include the limitation on the amount of the monthly payment that MPHA may require. This provision limiting the amount of the monthly payment is too significant to omit. This section must state that the Repayment Agreement will state that the monthly

retroactive rent payment plus the amount of rent the tenant pays at the time the repayment agreement is executed should be affordable and not exceed 40% of the family's monthly adjusted income. PIH 2010-19 (May 17, 2010), p. 15. Subparagraph 6) f) regarding monthly payment amounts for residents paying Minimum Rent must also be revised to comply with HUD instructions. If the MPHA chooses not to make the necessary revisions to comply with the law it risks use of MPHA resources to defend legal challenges to its choice.

MPHA Response: Thank you for your comments.

P.77

Revise paragraph 4. B. 2. to include MPHA use of HUD 92006 Supplement to Application for Federally Assisted Housing, completed by the resident at admission or recertification, to authorize contact of the person designated when the MPHA is unable to contact the resident.

The Revenue Recapture Act, Minn. Stat. § 270A.09 (2015) requires that the MPHA hearing be conducted according to the contested case procedures of the MN Administrative Procedures Act (APA), Minn. Stat. §§ 14.57-14.62 (2015). The hearing procedures outlined from P. 77 through P.78 must be revised to include the APA requirements. For example, the procedures proposed in this section of the Draft ACOP do not include the provisions of the APA regarding transcripts of the hearing. Minn. Stat. § 14.58 (2015). For example, the procedures proposed in this section of the Draft ACOP do not include the provisions the APA requires concerning evidence. Minn. Stat. § 14.60 (2015). Failure to revise the Draft places MPHA's resources at risk to defend legal challenges to this position.

MPHA Response: Thank you for your comment with regards to paragraph 4.B.2. We respectfully decline to make any changes to paragraph 4.F. at this time. Our hearing procedure related to the Revenue Recapture Act are in compliance with Minnesota Law.

P.78

Revise paragraph 4. G. b. to include notice to the MN Dept. of Revenue of MPHA's cancellation of the revenue recapture claim if the Hearing decision finds in the resident's favor at the conclusion of the hearing.

MPHA Response: The proposed change has been made.

P.79

In paragraph 4. I. d., the MPHA attempts to cut off a resident's reasonable accommodation rights. A resident may make a reasonable accommodation request of the MPHA at any time in her interaction with the MPHA. The MPHA cannot refuse to accept, review and make a decision about a reasonable accommodation request whenever it is received. *Radecki v. Joura*, 177 F.3d

694 (8th Cir. 1999). The MPHA's choice to adopt this policy without revision risks use of MPHA's resources to defend legal challenges to it.

In paragraph 4. I. d. the MPHA also attempts to cut off a resident's rights to VAWA protections. The only time limit in VAWA is the "not less than 14 days she has to respond to a written request from the MPHA for certification in order to exercise her VAWA rights." 24 C.F.R. § 5.2007 (a) (2015). The MPHA's choice to adopt this policy without revision risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: Thank you for your comments. We respectfully decline to make these changes.

P.79

Does paragraph 1 reference to "the emergency contact form" mean the HUD 92006 Supplement to Application for Federally Assisted Housing, the resident completed at admission or recertification? If not, the paragraph must be revised to so HUD 92006 is used as well as whatever other form(s) the MPHA has created for its own procedures.

This section also must be revised so the MPHA gives the notice required by Minn. Stat. § 504B.265, subd. 1 (2016) if there is no agreement executed with the former resident's contact person or next-of-kin regarding the date the unit will be vacated. Waiver of this notice requirement is prohibited by Minn. Stat. § 504B.265, subd. 3 (2016).

The MPHA also must revise this section to comply with Minn. Stat. § 504B.171, subd. 1. (2014) which requires the MPHA to store abandoned property for 28 days.

MPHA Response: We have added HUD 92006 Supplement to Application for Federal Assistance Housing as an applicable form. We respectfully decline to make your remaining changes.

P.79-84

The MPHA's LEP Plan is a section of the Draft ACOP in which the MPHA continues to misstate the law and create policies that violate the law. We have pointed out these deficiencies through at least five (5) past MPHA Annual Plan comment cycles. In many instances, the MPHA's responses have repeatedly consisted of no more than "Thank you for the comment." or "MPHA declines to make this change." The points of concern we have raised in the past remain unchanged in the MPHA's policy documents for FY2016-2017.

In light of the MPHA's past consistent refusals to make any revisions on the points we have raised, we have not repeated our comments. Our resources are not well-spent addressing the deficiencies of the MPHA LEP Plan in the context of the Annual Plan process here, when the MPHA has repeatedly failed to engage in any improvement of its policies. If the MPHA is interested in creating a LEP Plan that meets the requirements of the law and better serves the needs of LEP members of the community it serves, it may refer to our comments of the past beginning in September 2010. If the MPHA decides to make changes to its LEP Plan in the future and is

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required by 24 C.F.R. §§ 903 or 966 (2016) or other law to use a notice-and-comment process for the changes, we will review any proposals published at that time and comment on behalf of our clients as appropriate at that time.

MPHA Response: Thank you for your comments.

P.84-91

The MPHA's Reasonable Accommodation Policy is a section of the Draft ACOP in which the MPHA continues to misstate the law and create a policy that violates the law. We have pointed out these deficiencies through a number of MPHA Annual Plan comment processes. In many instances, the MPHA's responses have repeatedly consisted of no more than "Thank you for the comment." or "MPHA declines to make this change." The points of concern we have raised in the past remain unchanged in the MPHA's policy documents for FY2016-2017. We renew our comments as well as the specific points *infra*.

MPHA Response: Thank you for your comment.

P.85

The definition on paragraph 3.3 must be revised. Under the ADA Amendments Act of 2008 (ADAAA) the "current" in the first sentence is not a complete statement of the law. Episodic conditions and conditions in remission may also meet the definition of disability. The second sentence of this paragraph regarding medical conditions corrected by medications also misstates the provisions of the ADAAA. Failure to revise the Draft places MPHA's resources at risk to defend legal challenges to this position.

Paragraph 3.4 is incorrect about a disability based on drug or alcohol dependence. The definition of disability for the purpose of determining eligibility for public housing programs where eligibility depends on disability status, such as mixed population housing, vouchers targeted to persons with disabilities and eligibility for preferences or medical deductions related to having a disability, does not include a person whose sole disability is alcoholism. However, the definition of disability for the purposes of reasonable accommodation must include a person whose alcoholism meets the definition of disability in 24 C.F. R. § 8.3 (2015). This section is the MPHA Reasonable Accommodation Policy so this paragraph must be revised to correctly state the law concerning the disability of chemical dependency. The MPHA's choice to adopt this policy without necessary revisions risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: Thank you for your comments on paragraph 3.3. We respectfully decline the changes to paragraph 3.4.

P.86

Paragraph 3.7 is an incomplete statement of the law without the following revision: "...with or without reasonable accommodation or modification."

MPHA Response: The proposed change has been made.

P.87

Paragraph 4.3 incorrectly describes the reasonable accommodation process. Subparagraph (a) must be revised to delete the "or" and replace it with "and" between financial and administrative burden to correctly state one of the legal bases for the MPHA to deny a reasonable accommodation request. It is a conjunctive not disjunctive phrase in the law. Subparagraph (b), fundamental

alteration of its programs is the other reason that the MPHA may legally deny a reasonable accommodation request. Finally, subparagraph (c) provides the final reason for a legal denial of a reasonable accommodation request, direct threat. But the subparagraph needs additional information to describe what “direct threat” means to be really informative to the reader. Subparagraph (c) should include the need for an individualized assessment that involves consideration of: the nature, duration and severity of the risk of injury, and the probability that injury will actually occur, and whether there are any reasonable accommodations that will eliminate the direct threat. The whole picture needs to be included rather than abbreviated bullet points so it is clear that the process is more fact-intensive and complex than simply deciding something seems alarming so it must be a direct threat. The remaining subparagraphs in 4.3 should be deleted or rewritten so it is clear that other than the legal bases for denial noted above, if the MPHA receives a reasonable accommodation request and runs into the other situations enumerated, then it should ask for additional information and engage in the interactive process that is the core of reasonable accommodations before reaching denial. The “Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodation Under the Fair Housing Act”, May 17, 2004 is especially useful in formulating a reasonable accommodation policy. The MPHA’s choice to adopt this policy without necessary revisions risks use of MPHA’s resources to defend legal challenges to it.

MPHA Response: Paragraph 4.3, subdivision (a) has been revised. We respectfully decline to make the remaining changes.

P.88

In Paragraph 7.0, both subparagraphs (a) and (b) must be revised. The Draft attempts to cut off an applicant’s or resident’s reasonable accommodation rights by barring the request during a hearing. An applicant or resident may make a reasonable accommodation request of the MPHA at any time in his/her interaction with the MPHA. The MPHA cannot refuse to accept, review and make a decision about a reasonable accommodation request whenever it is received. *Radecki v. Joura*, 177 F.3d 694 (8th Cir. 1999). The MPHA’s choice to adopt this policy without revision risks use of MPHA’s resources to defend legal challenges to it.

MPHA Response: The language does not bar the request during a hearing.

P.89

The MPHA proposes cutting off the reasonable accommodation interactive process if a transfer unit is offered as an accommodation and the unit is rejected by the person with a disability. It may be that some processes will end at that point. But it is also true that the reasons for the rejection of the unit may be related to the person’s disability and the MPHA is obligated to explore that further with the person and attempt to accommodate her disability with an offer that does meet her reasonable accommodation needs. Failure to revise the Draft places MPHA’s resources at risk to defend legal challenges to this position.

As part of the reasonable accommodation process the MPHA may receive chemical health records. The MPHA has specific obligations regarding the retention and disclosure of chemical health records of applicants and participating families. Appendix C should include a statement of the

MPHA's obligations pursuant to the Confidentiality of Alcohol and Drug Abuse Patient Records statute and regulation, 42 U.S.C. § 290ee-3 (2015); 42 C.F.R. Part 2 (2015).

In light of the MPHA's past consistent refusals to make any revisions on the points we have raised, our resources are not well-spent addressing the deficiencies of the MPHA Reasonable Accommodation Policy in the context of the Annual Plan process. If the MPHA is interested in creating a Reasonable Accommodation Policy that meets the requirements of the law and better serves the needs of applicants and residents with disabilities, it may refer to our prior comments. If the MPHA decides to make changes to its Reasonable Accommodation Policy in the future and is required by 24 C.F.R. §§ 903 or 966 (2016) or other law to use a notice-and-comment process for the changes, we will review any proposals published at that time and comment on behalf of our clients as appropriate at that time.

MPHA Response: We respectfully decline to make the proposed changes.

P.93

In paragraph 4.2 B. i., the MPHA states it will use HUD 50066 as one of its approved forms of certification by an applicant or tenant asserting her VAWA protections. This form has been translated by HUD from English into 10 languages for the past 3 years. The MPHA should state in its policy that it will: (1) state in its Admin Plan and in all notices about VAWA that HUD 50066 is available in languages other than English and list the languages; (2) have HUD 50066 translated into any language that is not available on the HUD website that is needed in the MPHA service area according to the HUD LEP Guidance analysis; (3) educate staff about the availability of the translated certification forms and about how to identify LEP participants who will need a translated certification form; and (4) use translated HUD 50066 forms with its LEP participants. See, <http://www.hud.gov/offices/fheo/lep.xml#Indian4>. The MPHA's choice to adopt this policy risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: Thank you for your comment.

P.95

Paragraph 6.0 imposes obligations on the people protected by VAWA that exceed the MPHA's authority under the law. VAWA does not require that the survivor take any action against her abuser including obtaining court orders. A survivor cannot be required to do more than comply with legally enforceable terms of her lease. The second and third sentences of this paragraph propose additional tenant obligations for survivors of domestic and sexual violence, only because they are victims of those crimes, thereby imposing more demanding standards than those applied to other residents if they are victims of crimes. This paragraph imposes unnecessary and punitive burdens upon survivors due to their survivor status unless the second and third sentences are deleted. This paragraph must be revised by: Delete the second and third sentences in this paragraph from "The victim shall . . ." through ". . . reasonable measures." The MPHA has been informed of the illegality of this section since 2013 and refused to make any changes. The MPHA's choice to persist with this policy risks use of MPHA's resources to defend legal challenges to it.

In paragraph 8.0, the MPHA should state clearly that a person asserting her VAWA rights and protections has the right to request an Informal Hearing if her VAWA certification request or her protection pursuant to VAWA is denied if she has responded in a timely manner to the MPHA’s request for certification. As written using the word “may”, this paragraph makes it sound as if any opportunity to dispute such a denial in an Informal Hearing is conjectural at best.

The certification of prohibited activities under VAWA required by the MPHA for a preference in section 9.0 as an involuntarily displaced person is incomplete compared to the VAWA certification required by the MPHA for VAWA status in Section 4.2.B.i., ii., and iii. Section 9.0 must be revised.

MPHA Response: We have made a revision to paragraph 6.0 and paragraph 9.0 to address your concerns. We respectfully decline the changes to paragraph 8.0.

P. 114

See *supra* regarding “transfer charge” fees on P.44.

See *supra* regarding “transfer holdover” fees on P.43.

MPHA Response: See our responses to your concerns regarding P. 43 and 44.

P.117

The MPHA proposes prohibiting king-size beds and bed frames in its high-rise units at section A.8). Beds are very expensive. Will the MPHA grandparent in those king-size beds already in high-rise units on the date the Board approved the 2017 ACOP in order to avoid inflicting an additional economic hardship on its residents?

MPHA Response: MPHA will not restrict king size beds in Public Housing units, but will require enough space in the bedroom to facilitate ingress and egress, the ability for MPHA staff to maintain the bedroom windows, outlets, heating system, switches and other fixtures and similar access as necessary, and provide pest control services.

P.119

The proposed ACOP describes the tenant responsibility to notify the Work Order Dept. Has the MPHA changed how work orders are handled? The MPHA’s Performance Reports for June 2016 and July 2016 show startling drops in completion rates on non-emergency work orders in some AMPs. We looked at the same months in 2015 in case the data was somehow seasonal, but the completion rates were not nearly as low in 2016.

AMPs	June 2016	July 2016	June 2015	July 2015
AMP 1	88%	85%	85%	95%
AMP 2	84%	77%	85%	87%
AMP 3	74%	57%	76%	72%
AMP 4	73%	42%	89%	78%
AMP 5	74%	48%	85%	85%

AMP 6	94%	55%	88%	91%
AMP 7	77%	60%	Not available	Not available

We are concerned about the cause of the drop in completion rates because repairs and work orders are key quality of life indicators for our clients.

MPHA Response: Thank you for your comment. We have not changed how work orders are addressed.

P.126-134

The MPHA’s Applicant Screening Guidelines section of the ACOP continues to contain both misstatements of law and poorly conceived policies, despite recent HUD guidance. *See*, HUD Notice PIH 2015-19 “Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions” (November 2, 2015) and “Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions” (April 4, 2016). We have pointed out the deficiencies of this section through at least three (3) MPHA Annual Plan comment cycles. In most instances, the MPHA’s responses have repeatedly consisted of no more than “Thank you for the comment.” or “MPHA declines to make this change.” The points of concern we have raised in the past remain unchanged in the MPHA’s policy documents for FY2016-2017.

In light of the MPHA’s consistent past refusals to make any revisions on the points we have raised, our resources are not well-spent addressing each of the deficiencies of the MPHA Applicant Screening Guidelines in the context of this Annual Plan process. If the MPHA is interested in creating an applicant screening policy that meets the requirements of the law and better serves the needs of applicants and residents for safety and access to housing for ex-offenders reintegrating into our families and communities, it may refer to our prior comments as well as those *infra*.

The MPHA is required to use tenant selection criteria that are related to individual attributes and behavior, not those imputed to a group or category of persons to which the applicant may belong. 24 C.F.R. § 960.203 (a) (2015). Using the “grid” of the MPHA’s Guidelines, Appendix H, circumvents the individualized evaluation that the law requires. When the MPHA receives negative information about an applicant, the MPHA is required to consider the time, nature and extent of the conduct, including the seriousness of the offense. 24 C.F.R. § 960.203 (d) (2015). The MPHA Draft ACOP recognizes this legal obligation in paragraph 1, P.126, of Appendix H, but the MPHA’s use of the Applicant Screening Guidelines “grid” in Appendix H does not meet these legal requirements. The consideration required by the law is individualized, so the MPHA cannot fulfill its legal obligations to the individual applicant by simply creating the Screening Guidelines “grid” in advance and mechanically applying the “grid” to tell applicants they are not eligible based on their place on the “grid”. The MPHA cannot waive its obligation to exercise its judgment about each applicant’s individual attributes and behavior by creation of the Screening Guidelines “grid.” The individualized review of an applicant required by 24 C.F.R. § 966.203 (d) (2011) is outlined in Part II of the Draft ACOP and the Screening Guidelines “grid” must be revised to carry out the individual evaluation of Part II as the law requires. The MPHA’s choice to adopt

this policy without necessary revisions risks use of MPHA's resources to defend legal challenges to it.

The MPHA states it intends to use the Screening Guidelines "grid" as its listing of what it deems to be reasonable "look-back" periods, paragraph 2, P.126 of Appendix H, and criminal history outside the time periods in the "grid" will not be considered. If this is the intent of the MPHA then this section needs revision, as well as practices and procedures the staff uses to implement this policy. We have seen far too many application files containing the criminal history information outside the "look-back" parameters of the Appendix H "grid". If these old incidents will not be considered, pursuant to Appendix H, paragraph 2, P.126, then they should not appear in the applicant's file.

The MPHA's states its intention in paragraph 3, page 126 of Appendix H, to make *ad hoc* decisions when a crime does not occur on its Screening Guidelines list. MPHA states its intention to make decisions that can only appear, and likely be, arbitrary because the mechanical application of grid to an individual's application may not precisely match. This is another instance of the use of the "grid" exposing the MPHA to use of its resources to defend legal challenges to its *ad hoc* determinations.

The MPHA's definition of "Sentence" in paragraph 4, P.126 of Appendix H, is overly broad. Further, by including probation and parole in the meaning of "sentence" and then adding on the years it has chosen for ineligibility, the MPHA imposes additional collateral consequences to criminal sentencing that are not penalties the criminal justice system has created or sanctioned. Retention of this language puts the MPHA at risk to use MPHA's resources to defend legal challenges to it.

The proposed language defining "Conviction" in paragraph 6, P.126 of Appendix H, should not include the term "continuance for dismissal", "no admission" "continuance without prosecution" or any other term in which there is no plea of guilty entered. These all are not legally equivalent to conviction. These terms do not prove past criminal activity any more conclusively than an arrest does and HUD has instructed the MPHA not to include arrests in its application or termination evaluations. *See*, HUD Notice PIH 2015-19 "Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions" (November 2, 2015), "Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions" (April 4, 2016), and *Landers v. Chicago Housing Authority*, 2010 Ill. App. Lexis 100 (1st Dist. 2010). Retention of this language puts the MPHA at risk to use MPHA's resources to defend legal challenges to it.

The Draft ACOP definition of drug-related criminal activity, #11 on P.129 of Appendix H, exceeds the federal definition of drug-related criminal activity applicable to public housing, *see* 24 C.F.R. § 5.100 (2015). A "petty misdemeanor" is not only not included in the federal definition, but is also directly contradicted by the MPHA's proposed new language on P. 126: "a Petty Misdemeanor shall not be construed to be a criminal activity." The MPHA's choice to adopt the definition without revision risks use of MPHA's resources to defend legal challenges to it.

As part of the criminal screening process the MPHA may receive chemical health records. The MPHA has specific obligations regarding the retention and disclosure of chemical health records of applicants and participating families. Appendix C should include a statement of the MPHA's obligations pursuant to the Confidentiality of Alcohol and Drug Abuse Patient Records statute and regulation, 42 U.S.C. § 290ee-3 (2015); 42 C.F.R. Part 2 (2015).

Finally, there are many members of the community with information and experience who could assist the MPHA in improving its policies, practices and procedures to meet the goals of community safety and access to housing for our neighbors with criminal histories if the MPHA solicited assistance. If the MPHA decides to make changes to its Applicant Screening Guidelines of Appendix H in the future and is required by 24 C.F.R. §§ 903 or 966 (2016) or other law to use a notice-and-comment process for the changes, we will review any proposals published at that time and comment on behalf of our clients as appropriate at that time.

MPHA Response: The definition 11 has been revised to address your concerns. We decline to make any additional changes to our policy at this time. Finally, we have had members of the community assist us in drafting the current guidelines and we will in the future.

P.131

In paragraph 18, the MPHA attempts to restrict the applicant's choice of how she will exercise her opportunity to present her rebuttal to the MPHA's denial of eligibility. The MPHA Draft language violates the applicant's rights under 42 U.S.C. § 1437d (c) (2015) and the line of due process cases based upon the fundamentals of *Goldberg v Kelly*, 397 U.S. 271, 90 S. Ct. 1011 (1970). If the MPHA keeps the language of paragraph 18 and demands disclosure of any written argument from the applicant five business days prior to the hearing, the MPHA must also be held to the same disclosure to the applicant or her representative five business days prior to the hearing. Even with the addition of mutual disclosure the MPHA, cannot restrict the applicant's right of choice as to methods for presenting her arguments throughout her hearing. The MPHA's choice to adopt this policy risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: Thank you for your comment. We respectfully decline to make the proposed changes.

P.133

In paragraph 18, the MPHA attempts to restrict the tenant's choice of how she will exercise her opportunity to present her evidence. The MPHA Draft violates the applicant's rights under 42 U.S.C. § 1437d (k) (2015) and the line of due process cases based upon the fundamentals of *Goldberg v Kelly*, 397 U.S. 271, 90 S. Ct. 1011 (1970). If the MPHA keeps the language of paragraph 18 and demands disclosure of any written argument from the tenant five business days prior to the hearing, the MPHA must also be held to the same disclosure to the tenant or her representative five business days prior to the hearing. Even with the addition of mutual disclosure the MPHA, cannot restrict the tenant's right of choice as to methods for presenting her arguments throughout her hearing. The MPHA's retention of this language and these policies risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: Thank you for the comment. We respectfully decline to make the proposed changes.

P.133-134

Revenue Recapture Hearings must be conducted pursuant to the contested case procedures of the Minnesota Administrative Procedures Act, Minn. Stat. Chapter 14. *See*, 270A.09 (2015). There is nothing in the Revenue Recapture Act or the Administrative Procedures Act that permits paragraph 9. This entire Appendix K must be revised so it complies with the Revenue Recapture law. *See* comments *supra* regarding P.77. We have pointed these deficiencies in at least three (3) past MPHA Annual Plan comment cycles and the MPHA's responses have been no more than "Thank you for the comment." rather than compliance with the law. The MPHA's choice to persist with this policy risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: Thank you for your comment. We respectfully decline to make the proposed changes. See our response regarding Revenue Recapture on Pg. 77.

**MPHA DRAFT FY2016-2017 SECTION 8 HOUSING CHOICE VOUCHER
ADMINISTRATIVE PLAN (“ADMIN PLAN”)**

P.3-3

The first paragraph regarding the break-up of a family must be revised to specifically include the mandate of 24 C.F.R. § 982.315 (a)(2) (2015) that the MPHA ensure that in the instance of family break-up due to the prohibited conduct of VAWA the victim of domestic or sexual violence or stalking retains the housing assistance. The MPHA’s choice to adopt this policy without necessary revisions risks use of MPHA’s resources to defend legal challenges to it.

MPHA Response: MPHA added the following: MPHA will adhere, to the extent applicable, to our VAWA Policy (Appendix D).

P.3-7

Paragraph 2 of “Return of Permanently Absent Family Members” is incorrect. There is only one subset of family members recognized by law and assigned particular obligations -- the head of household. 24 C.F.R. §§ 5.403 and 982.201 (c) (2014). The law does not otherwise distinguish between original family members, subsequent family members or recognize any subset of family members as “original family members” or “add-on members”.

An adult joining the family must pass Section 8 financial and background screening for eligibility. 24 C.F.R. §§ 982.201 and 5.903 (2014). This is the only legal authority granted to the MPHA to screen a new adult family member for eligibility. The new family member who has passed the eligibility requirements has the same legal rights and obligations as any other family member. There are no subsets of family membership with lesser rights or obligation under the law. The MPHA does not have the legal authority to create such subsets with diminished rights. The MPHA’s retention of this language and these policies risks use of MPHA’s resources to defend legal challenges to it.

MPHA Response: MPHA’s HCV Program adheres to HUD’s definition of family as outlined in our Administrative Plan. The definition of “Family” and the definition of “Household Composition” are not interchangeable. The “Family” as designated by the applicant at the time of admission, does not change, although the household composition may change. Our reference to “original family members” or “add on members” is our way of referencing a change in the household composition. MPHA’s policies in this regard promotes fairness to applicants on the Wait List and provides integrity to the Wait List Process. CFR 982.315 (a) (1) gives the PHA the authority to determine which member(s) continue to receive assistance in the program if the family breaks up. The PHA administrative plan must state PHA policies on how to decide who remains in the program if the family breaks up.

P.3-12

The language of the template is incorrect in section 3-II. C. regarding the extension of time for a family to obtain a SSN for a child under the age of 6. There is a 90-day window for the family to obtain a SSN for the child and an additional 90-day period if the failure was unforeseeable and outside the control of the applicant. *See*, HUD Notice PIH 2016-05 “Streamlining Administrative Regulations for Programs Administered by Public Housing Agencies” (April 7, 2016), p. 4. Since a reader may not go on to the more detailed discussion in Chap. 7, the information must be correct where ever it appears. The language needs to be corrected, even if it is the error of the MPHA’s consultant and not the MPHA’s drafting, because a reader may not distinguish between the consultant’s writing and the MPHA’s policies.

MPHA Response: MPHA added the following: The PHA will grant one additional 90-day extension if needed for reasons beyond the participant’s control such as delayed processing of the SSN application by the SSA, natural disaster, fire death in the family, or another emergency.

P.3-13

Previously the MPHA used First Advantage to produce its criminal background checks. Is this still the independent contractor the MPHA uses to carry out the tasks outlined in 3-II. D.? What steps has the MPHA taken to ensure that its evaluations of eligibility by its contracted vendor and by its staff comply with HUD Notice PIH 2015-19 “Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions” (November 2, 2015), “Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions” (April 4, 2016), and *Landers v. Chicago Housing Authority*, 2010 Ill. App. Lexis 100 (1st Dist. 2010).

MPHA Response: Thank you for your comment – MPHA will be going out with an RFP in 2017. At that time, MPHA will determine the scope of services to be contracted for this purpose.

P.3-19

In section 3-III. C. the MPHA includes “Record of arrests for drug-related or violent criminal activity within the past 5 years” on the list of “evidence of criminal activity”. The MPHA states “a record of an arrest(s) will not be used as the basis for denial or proof that the applicant engaged in disqualifying criminal activity”. What is the MPHA’s purpose in collecting and reviewing this arrest information? As proposed this item violates HUD Notice PIH 2015-19 “Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions” (November 2, 2015), “Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions” (April 4, 2016). *See also Landers v. Chicago Housing Authority*, 2010 Ill. App. Lexis 100 (1st Dist. 2010). The MPHA’s choice to persist with this policy risks use of MPHA’s resources to defend legal challenges to it.

MPHA Response: Thank you for your comment. MPHA’s current use of criminal records is in compliance with Federal Law and Guidance including PIH 2015-19.

In the same list in section 3-III. C. the MPHA states that “A conviction for drug-related or violent criminal activity will be given more weight than an arrest for such activity.” Please see section 4 of the HUD PIH 2015-19, pp. 3-4, entitled “4. An Arrest is Not Evidence of Criminal Activity that can Support an Adverse Admission, Termination or Eviction Decision.” and delete this item from the list. Failure to make this deletion will violate HUD Notice PIH 2015-19 “Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions” (November 2, 2015), “Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions” (April 4, 2016). See also *Landers v. Chicago Housing Authority*, 2010 Ill. App. Lexis 100 (1st Dist. 2010). The MPHA’s choice to persist with this policy risks use of MPHA’s resources to defend legal challenges to it.

MPHA Response: Thank you for your comment. MPHA’s current use of criminal records is in compliance with Federal Law and Guidance including PIH 2015-19.

P.3-20

In section 3-III. C. paragraph 1, the MPHA must revise its language regarding denial of assistance for a debt owed in connection with assisted housing programs. The MPHA’s policy must exclude any alleged debt to the enumerated housing programs that are unenforceable because it is barred by the statute of limitations or has been discharged in bankruptcy. Also include in this paragraph information to the alleged debtor of her rights to challenge any alleged debt as provided in HUD-52675. Failure to make these changes risks use of MPHA’s resources to defend legal challenges to it.

MPHA Response: Changed to “enforceable debt”.

Upon what factors, indicia or criteria does the MPHA form its “reasonable belief that a participant has engaged in fraudulent or criminal activity” requiring a criminal background check through “an independent contracted service” referenced in section 3-III. D.?

MPHA Response: Depending upon the circumstances, MPHA uses a variety of factors in forming its reasonable belief that a participant has engaged in fraudulent or criminal activity.

P.3-21

What “independent contracted service” does the MPHA use for its criminal background checks of applicants for admission regarding status as registered sex offenders on registered sex offenders referenced in section 3-III. D.?

MPHA Response: Thank you for your comment – MPHA will be going out with an RFP in 2017.

P.4-9

According to the summary of the proposed Policy Changes in the MPHA’s FY 2017 Plan documents presented to the MPHA Board of Commissioners by the Executive Director on August 24, 2016, the rationale for the deletion of the local preference for veterans, 4-III.C. subparagraph

E., is “Delete - E -Veterans - now have VASH Program”. There is no way the 235 VASH Vouchers administered by the MPHA meet the need of all eligible veterans and their families in the Metro area from which the MPHA draws its applicants. This is an insufficient rationale for deletion of the local preference provided to veteran applicants. The preference should continue.

MPHA Response: We will retain the preference for Veterans.

P.5-4

Why is the MPHA no longer providing participant’s with the HUD Pamphlet on lead-based paint entitled “Protect Your Family from Lead In Your Home” in the Briefing Packet?

MPHA Response: MPHA replaced that pamphlet with a brochure from the Minnesota Department of Health.

P.5-6

Correct the citation in Bullet 4, paragraph 2 to: Minn. Stat. § 524.5-211 (2015).

MPHA Response: Thank you. MPHA made the correction.

P.5-7

In Bullet 3, the MPHA proposes a policy in which an individual family member must give written notice prior to beginning an absence of more than 30 calendar days and MPHA authorization for the absence is limited to 90 days. The MPHA creates a system of seeking permission for absence of an individual family member from the MPHA and MPHA approval or disapproval of an absence lasting between 31 and 90 days. The MPHA has no legal authority to create and administer such a system of control over the movements of individual family members.

The participant family is required to report when “a family member no longer resides in the unit.” 24C.F.R. § 982.551 (h)(3) (2015). The family is not required by law to report when a family member is temporarily away from home, but continues to live in the home. Although the family is required by law to inform the MPHA of who lives in the home and who no longer lives in the home, 24 C.F.R. §§ 982.551 (b) and (h)(3) (2015), the family is not required by law to seek pre-approval from the MPHA for any individual family member’s absence. The family is not required by law to provide verification to the MPHA of the need for an individual family member’s absence.

The temporary absence from home of an individual family member is not the absence of the entire family from the unit in 24 C.F.R. § 982.312 (2015). The family absence covered by 24 C.F.R. § 982.312 (2015) is defined as absence when no member of the family is residing in the unit, not the absence (temporary or permanent) of an individual family member. 24 C.F.R. § 982.312 (c) (2015) (emphasis added). The law sets 180 days as the limit for the absence of the entire family and the MPHA is required to state in its Administrative Plan its time limit on absence of the entire family from the home, which cannot exceed 180 days. 24 C.F.R. § 982.312 (e) (2015). The proposed language in the MPHA Draft Plan fails to satisfy this requirement because it does not address the absence of the entire family but erroneously focuses on the absence of individuals.

In the FY2016 Plan cycle, the MPHA agreed: MPHA's policy is a 90-day limit of absence from the unit for the entire family. Extenuating individual circumstances may result in the absence from the unit for the entire family to extend but not exceed the statutory requirement of 180 days.

This Bullet must be revised. Failure to do so risks use of MPHA's resources to defend legal challenges to piecemeal application of its policies or attempted enforcement of invalid policies.

MPHA Response: Thank you for your comment.

P.5-10

Paragraph 6 in the MPHA's policy section of 5-II. C. refers to reasonable accommodation of an increased voucher size but only in the context of an additional bedroom for medical equipment related to a household member's disability. There are other bases for a reasonable accommodation of an additional bedroom, i.e. a live-in aide or other family circumstances. See PIH Notice 2014-25 "Over Subsidization in the Housing Choice Voucher Program" (Oct. 16, 2014). Revise this paragraph to clarify that an increased Voucher size may be requested as a reasonable accommodation for needs other than a room for medical equipment. The MPHA's choice to adopt this policy without necessary revisions risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: See bullet 4 – Live in attendants will generally be provided a separate bedroom. No additional bedrooms are provided for the attendant's family.

P.6-3

The "Temporarily Absent Family Members" section is incorrect. An adult joining the family must pass Section 8 financial and background screening for eligibility. 24 C.F.R. §§ 982.201 and 5.903 (2016). This is the only legal authority granted to the MPHA to screen a new adult family member for eligibility. The new family member who has passed the eligibility requirements has the same legal rights and obligations as any other family member. There are no subsets of family membership with lesser rights or obligation under the law as this policy section creates. The MPHA does not have the legal authority to create a subset of remaining family members with diminished occupancy rights. The MPHA's choice to adopt this policy without revision risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: See answer P 3-7.

P.6-40

MTW does not authorize waiver of the MPHA's civil rights obligations. Reasonable accommodation is a non-waivable civil rights obligation. In paragraph 6-III. A., the MPHA proposes a limit of 10% of the flat subsidy amount for MTW Voucher Program reasonable accommodation requests for increased subsidy payments required by participants' disabilities. This paragraph should be revised to provide for increased payments up to 120% of the FMR. See 24 C.F.R. §§ 982.505 (b) and 982.505 (d) (2015); and HUD Notice PIH 2016-05 "Streamlining Administrative Regulations for Programs Administered by Public Housing Agencies" (April 7,

2016), p. 31. The MPHA's choice to adopt this policy risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: Thank you, we made the change (added sentence – or a maximum of 120% of the Fair Market Rent).

P.6-41

The MTW Policy—Minimum Rent section refers to “MTW Policy—Minimum Rent and Interim Recertification Hardship Policy” but provides no section or page number for location of that policy. Revise this section to provide the section (6-III.B) or page (6-43) where the Hardship Policy is located.

MPHA Response: Thank you. MPHA made the correction.

P.6-47

The MTW policy about the effective date of Rent Reform Subsidy Tables is ambiguous and must be clarified. MPHA has previously stated that the Rent Subsidy Tables are revised and made effective January 1 of every year. But it is not clear how this affects participant families who do not all have their annual income reexaminations and do not all renew their leases on January 1 of every year. Our clients have experienced confusion and the unfairness of rent increases mid-lease that are not rooted in income changes on their part or rent increases by the landlord. The MPHA Draft Admin Plan says the revised Subsidy Tables may be effective at a date determined by the MPHA or may be effective at the family's reexamination. This only serves to describe what two possible policies might be but the MPHA has not chosen either one and made it clear to the participating families it serves or their landlords. Revise this section so the MPHA's policy is clearly stated, not just its options.

MPHA Response: The revised subsidy tables will be effective with the families' annual re-examination or at the time of Unit Transfer.

P.6-49

In regard to MTW Rent Reform Revised Utility Allowances see our comments *supra* at 6-47.

MPHA Response: See above.

P.7-16

Revise the preferences in 7-II. H so the only verifications needed are those for the preferences in 4-III. C, P.4-9. As proposed the language requires verification of preferences that the MPHA proposes to delete.

MPHA Response: Thank you. MPHA will make the required change.

P.8-3

In the “Additional Local Requirements” section, MPHA has included other items required to clarify the HUD standards for subsidized units. The listed requirements should also include the following requirements:

- The unit is free from all mold and mildew.
- In a single-meter building, the Owner, not the Family, is identified as the bill payer and the customer of record contracting with the utility provider for utility services, and that the Owner inform the utility services provider that it is a single-meter building. *See* Minn. Stat. § 504B.215, subd. 2 (2016). An Owner must show compliance with the statutory requirements for apportionment of utility service payments under Minn. Stat. § 504B.215, subd. 2a (2016) before utility services can be billed in the Family’s name.

MPHA Response: Thank you for your comment.

P.8-6

Revise the list of life-threatening conditions requiring immediate corrective action and a shortened remediation time in section 8-I.C. to include the following:

- Where documentation verifies household member(s) physical well-being is endangered due to the presence of mold/mildew
- Where documentation verifies household member(s) have blood lead levels at or above 5 micrograms/deciliter or the current blood lead reference level recommended by the Centers for Disease Control and Prevention.

MPHA Response: Thank you for your comment.

P.10-8

The MPHA proposed changes to the restrictive porting in its MTW experiment outlined in the MTW Plan at P.36 paragraph 9 are missing. The MPHA has to get whatever porting criteria is finally adopted consistent across its Admin Plan, its website material, its forms provided to participants and all policies, practices and procedures. Failure to do so risks use of MPHA’s resources to defend legal challenges to piecemeal application of its policies or attempted enforcement of invalid policies.

MPHA Response: Thank you; MPHA will assure the Rent Reform Portability Policy is placed in all appropriate areas and circulated.

P.11-8

The citation for the delegation of parental authority in subparagraph should be Minn. Stat. § 524.5-211 (2016).

MPHA Response: Thank you. We made the correction.

P.12-6

Revise paragraph 7 in section 12-I. E. regarding denial of assistance for a debt owed in connection with assisted housing programs. The MPHA’s policy must exclude any alleged debt to the

enumerated housing programs that is unenforceable because it is barred by the statute of limitations or has been discharged in bankruptcy. Also include in this paragraph information to the alleged debtor about her rights to challenge any alleged debt as provided in HUD-52675. Failure to make these changes risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: Added 'enforceable' amounts.

P.12-9

The policy proposed in section 12-II. C. allows an alternative to termination of assistance if the family member who participated in or is responsible for the offense that is the basis of the termination no longer resides in the unit. The MPHA's proposed policy exceeds its legal authority by requiring the "culpable family member" not only no longer reside with the family but also that the head of household certify that the "culpable family member" will not visit the family. This proposed language not only exceeds the authority granted to the MPHA by the federal regulation but also violates the constitutional rights of association of the family members. The MPHA's choice to adopt this policy without revision to eliminate constitutional violations risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: Deleted visit.

P.12-10

The application of discretionary factors in termination considerations must be revised so it is clear that MPHA's mandatory legal obligations always apply. The MPHA must act as required by law when reasonable accommodation requests or VAWA protections are involved, it is not a matter of MPHA choice or discretion. The MPHA's choice to adopt this policy without necessary revisions risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: MPHA revised as follows: If so, upon the family's request, the PHA may approve alternative measures that are appropriate as a reasonable accommodation. The PHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed termination of assistance. MPHA will comply with our Reasonable Accommodation Policy – Appendix C.

P.12-11

The proposed policy in 12-II. E. to require a participant to advise the MPHA within 10 days of receipt of the termination notice that she wants to assert her VAWA protections from termination must be deleted. The MPHA does not have legal authority to require the participant meet this 10-day deadline. The only time limit in VAWA is the "not less than 14 days she has to respond to a written request from the MPHA for certification in order to exercise her VAWA rights." 24 C.F.R. § 5.2007 (a) (2015). If the MPHA is attempting to put this requirement into its policy here the statutory period is 14 not 10 days. Failure to make this changes risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: Updated to 14 days.

P.12-17

Bullet 1 is too broad and must be revised to impart meaning. The participant's obligation to provide information to the PHA or HUD is not boundless. The revision must state "necessary" for what purpose.

MPHA Response: MPHA revised as follows: The family must supply any information that the PHA or HUD determines is necessary in the administration of the program, including submission of required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 5). "Information" includes any requested certification, release or other documentation.

P.12-18

In Bullet 6, the MPHA creates a policy in which an individual family member must give written notice prior to beginning an absence of more than 30 calendar days and that MPHA pre-authorization or pre-approval of the absence is required. The MPHA has no legal authority to create and administer such a system of control over the movements of individual family members.

MPHA Response: Thank you for your comment.

The participant family is required to report when "a family member no longer resides in the unit." 24 C.F.R. § 982.551 (h)(3) (2015). The family is not required by law to report when a family member is temporarily away from home, but continues to live in the home. Although the family is required by law to inform the MPHA of who lives in the home and who no longer lives in the home, 24 C.F.R. §§ 982.551 (b) and (h)(3) (2015); the family is not required by law to seek pre-approval from the MPHA for any individual family member's absence. The family is not required by law to provide verification to the MPHA of the need for an individual family member's absence. The MPHA's choice to adopt this policy without revision risks use of MPHA's resources to defend legal challenges to it.

P.14-5

The MPHA proposed policy to make the participant family pay for MPHA errors is not what HUD describes in HUD's Housing Choice Voucher Program Guidebook. HUD holds the family accountable for repayment only when the "error or omission is clearly the faulty of the family". Guidebook at P.22-12. (Emphasis added). The MPHA should adopt the same standard to avoid use of resources to defend legal challenges to the policy as proposed.

MPHA Response: Thank you for your comment.

P.16-8

The law requires that the MPHA provide a copy of the criminal record upon which it relied, not just give the opportunity to review the criminal record. See 24 C.F.R. § 5.904 (e)(2) (2016). Paragraph 1 of Section 16-III. B. on this page must be revised to comply with the law. The MPHA agreed to make this change in its September 14, 2015, response to our 2015 comments. The change was not made.

MPHA Response: The change was made in 2015 – upon request MPHA will provide a copy of the criminal record to the applicant.

Paragraph 1 of the Draft policy for Informal Review Procedures must be revised. It treats the hearing officer's decision as nothing more than a recommendation that the MPHA will apparently review and accept or reject. The MPHA must accept the hearing officer's decision unless it is within one of the three delineated circumstances of 24 C.F.R. § 982.555 (f) (2015). The MPHA's choice to adopt this policy without revision risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: MPHA updated as follows: The hearing officer decision is submitted to the PHA. The PHA is not bound by a hearing decision:

- *(1) Concerning a matter for which the PHA is not required to provide an opportunity for an informal hearing under this section, or that otherwise exceeds the authority of the person conducting the hearing under the PHA hearing procedures.*
- *(2) Contrary to HUD regulations or requirements or otherwise contrary to federal State, or local law.*
- *(3) If the PHA determines that it is not bound by a hearing decision, the PHA must promptly notify the family of the determination, and of the reasons for the determination. (24 CFR 982.555 (f) 2015)*

P.16-10

In 16.III. C., the list of situations in which an informal hearing is provided to a participant must be revised to include denials of requests by families with MTW Vouchers to port outside Minneapolis. In Section 10-II.B., at Pg.10-7, the MPHA has stated that informal hearings are available for denial of a request to port out of Minneapolis. The MPHA's choice to adopt this policy without necessary revisions risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: See Bullet #9.

P.16-13

In section 16-III. C., the second paragraph that discusses the content of discovery exchanged between the MPHA and the participant must be revised. The information to be disclosed on the part of both the MPHA and the participant must be mutual. The MPHA proposes that no fewer than three (3) before the hearing the participant must allow the MPHA to examine any documents that she wants to use at the hearing or those documents will not be allowed. The MPHA must revise the policy so that the same requirement is imposed on the MPHA. Specifically, the MPHA must revise its policy so that no fewer than three (3) days before the hearing, the MPHA must allow the participant to examine any documents it will use at the hearing or the MPHA cannot use the documents at the hearing. Giving the participant access to her file in the preceding paragraph is not the same as giving the participant the documents that the PHA intends to use at the hearing. If the MPHA chooses not to revise this policy it risks use of MPHA's resources to defend legal challenges to it.

The policy also proposes that no fewer than three (3) days before the hearing the participant provide to the MPHA the names, addresses and relationship of any person who will be attending the hearing on the participant's behalf or those persons will not be allowed to attend the hearing. The policy must be revised so the same requirement is imposed on the MPHA so that no fewer than three (3) days before the hearing, the MPHA must provide to the participant the names, addresses and relationship of any person who will be attending the hearing on behalf of the MPHA or those persons will not be allowed to attend the hearing. If the MPHA chooses not to revise this policy it risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: Thank you for your comment.

P.16-20

In section 16-IV. A., the Admin Plan refers to "State income tax set-off program". We assume this refers to the Minnesota Revenue Recapture Act, Minn. Stat. § 270A.01-.12 (2015). The program's correct name and citation should be used.

MPHA Response: Thank you. MPHA made the correction.

P.16-22

Paragraph 16-IV. B. e. violates HUD Notice PIH 2010-19 "Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System", p.15 (May 17, 2010), p. 15 extended in HUD Notice PIH 2015-2 (January 9, 2015). There can be no \$25 minimum payment requirement imposed because HUD Notice PIH 2010-19 limits the total payment of rent plus the repayment amount per month to 40% of the participant's income. The MPHA's choice to adopt this policy without necessary revisions risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: Thank you for your comment.

Pg. 16-23

The MPHA's proposed language at 16-IV. B. cites the provisions of any repayment agreement mandated by HUD in PIH 2010-19 (May 17, 2010), extended in PIH 201502 (January 9, 2015). This section must be revised to include the limitation on the amount of the monthly payments. This is a material term too significant to omit. Add to the listed bullets: "The monthly retroactive rent payment plus the amount of rent the tenant pays at the time the repayment agreement is executed should be affordable and not exceed 40 percent of the family's monthly adjusted income." The MPHA's choice to adopt this policy with this significant omission risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: Thank you for your comment.

P.16-26

MPHA's policy regarding "Records Management" in section 16-V. C. should state that disclosure of family information will be made in compliance with HUD-92006.

MPHA has specific obligations regarding the retention and disclosure of chemical health records of applicants and participating families. Section 16-V. C. should include MPHA's obligations pursuant to the Confidentiality of Alcohol and Drug Abuse Patient Records statute and regulation, 42 U.S.C. § 290ee-3 (2015); 42 C.F.R. Part 2 (2015).

MPHA Response: Thank you for your comment.

P.16-25

MPHA's stated policy in Part VI indicates that the health department(s) has told the MPHA that it does not want to receive the quarterly reports from the MPHA about lead poisoned children in its assisted housing as mandated by federal law at 24 C.F.R. § 35.1225 (f) (2015). This is an extraordinary statement about one or more public health departments choosing not to know when children living in rental housing subsidized by MPHA in their jurisdictions are lead poisoned.

Apart from the troubling statement in its Admin Plan regarding public health departments' deliberate inattention to lead poisoned children, the MPHA policy fails to address the MPHA's reciprocal legal obligation. The MPHA is required to obtain quarterly from the public health department(s) in its jurisdiction information containing the names and addresses of children under 6 years of age with an identified environmental intervention blood lead level. 24 C.F.R. § 35.1225 (f) (2015). Even if every public health department in its jurisdiction does not want to hear from the MPHA despite the law, MPHA is still obligated to gather the information from them about the children of its program participants and to act upon that information as required by 24 C.F.R. § 35 Subpart M (2015). MPHA's policy in its Admin Plan in this section must correctly state the MPHA's legal obligations and its actions to comply with the law.

MPHA Response: Thank you for your comment.

P. GL-9

The MPHA's Draft Administrative Plan illegally intrudes into family relationships when it directs how the family designates its head of household. 24 C.F.R. §§ 5.403 and 982.201 (c) (2014). Beyond the purposes of determining income eligibility and rent, the MPHA does not have the legal authority to dictate which adult family member the family chooses to designate head of household. In addition, the Draft Admin Plan proposes to use the family's application to choose the Head of Household for the family That initial application may be years old and out of date for a tenant family. If the MPHA is going to refer to an application when it chooses the Head of Household for a family, the MPHA should at least use the family's latest application for Continued Occupancy because that information will be more up-to-date. The MPHA must revise this Section accordingly. The MPHA's choice to adopt this policy without necessary revisions risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: Thank you for your comment.

P.GL-15

A definition of sexual assault must be added.

MPHA Response: Defined in the VAWA Policy.

P.B-1—B-8

The MPHA LEP Plan remains seriously, legally flawed. We renew our comments, concerns and suggestions tendered through at least the past five (5) MPHA Annual Plan comment cycles. The MPHA repeatedly responds by thanking us for commenting but never makes a change to its LEP Plan to comply with the law and better serve our community. Our efforts to improve the MPHA's LEP Plan have garnered few revisions, with the MPHA declining nearly all changes. In light of the MPHA's responses our time is not well-spent addressing these issues in the context of the Annual Plan process again. If the MPHA is genuinely interested in correcting and improving its LEP Plan, we suggest referring to our prior comments. The MPHA's failure to act on this issue risks use of MPHA's resources to defend legal challenges to it despite more efficient alternatives. If the MPHA decides to make changes to its LEP Plan in the future and is required by 24 C.F.R. §§ 903 or 966 (2016) or other law to use a notice-and-comment process for the changes, we will review any proposals published at that time and comment on behalf of our clients as appropriate at that time.

MPHA Response: Thank you for your comments with regard to MPHA's LEP Plan – MPHA will continue its effort to remain in compliance with current laws.

P.C-1—C-8

The MPHA's Reasonable Accommodation Policy is a section of the Draft ACOP in which the MPHA continues to misstate the law and create a policy that violates the law. We have pointed out these deficiencies through a number of MPHA Annual Plan comment processes. In many instances, the MPHA's responses have repeatedly consisted of no more than "Thank you for the comment." or "MPHA declines to make this change." The points of concern we have raised in the past remain unchanged in the MPHA's policy documents for FY2016-2017. We renew our comments as well as the specific points *infra*.

MPHA Response: Thank you for your comments with regard to MPHA's Reasonable Accommodation Policy – MPHA will continue its effort to remain in compliance with current laws affecting persons with disabilities.

P.C-2

The definition on paragraph 3.3 must be revised. Under the ADA "current" in the first sentence is not a complete statement of the law. Episodic conditions and conditions in remission may also meet the definition of disability. The second sentence of this paragraph regarding medical conditions corrected by medications also misstates the provisions of the ADA. The MPHA's choice to adopt this policy without necessary revisions risks use of MPHA's resources to defend legal challenges to it.

Paragraph 3.4 is incorrect about a disability based on drug or alcohol dependence. The definition of disability for the purpose of determining eligibility for public housing programs where eligibility depends on disability status, such as mixed population housing, vouchers targeted to persons with disabilities and eligibility for preferences or medical deductions related to having a disability, does not include a person whose sole disability is alcoholism. However, the definition of disability for the purposes of reasonable accommodation must include a person whose alcoholism meets the definition of disability in 24 C.F.R. § 8.3 (2015). This section is the MPHA's Reasonable Accommodation Policy so this paragraph must be revised to correctly state the law concerning the disability of chemical dependence. The MPHA's choice to adopt this policy risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: Thank you for your comments on paragraph 3.3. We respectfully decline to make the proposed changes to paragraph 3.4.

P.C-3

Paragraph 3.7 is an incomplete statement of the law without the following revision: "...with or without reasonable accommodation or modification." Failure to revise the Draft places MPHA's resources at risk to defend legal challenges to this position.

MPHA Response: The proposed change has been made.

P.C-5

Paragraph 4.3 incorrectly describes the reasonable accommodation process. Subparagraph (a) must be revised to replace the "or" with "and" between financial and administrative burden to correctly state one of the legal bases for the MPHA to deny a reasonable accommodation request. It is a conjunctive not disjunctive phrase in the law. Subparagraph (b), fundamental alteration of its programs is the other reason that the MPHA may legally deny a reasonable accommodation request. Finally, subparagraph (c) provides the final reason for a legal denial of a reasonable accommodation request, direct threat. But the subparagraph needs additional information to describe what "direct threat" means to be really informative to the reader. Subparagraph (c) should include the need for an individualized assessment that involves consideration of: the nature, duration and severity of the risk of injury, and the probability that injury will actually occur, and whether there are any reasonable accommodations that will eliminate the direct threat. The whole picture needs to be included rather than abbreviated bullet points so it is clear that the process is more fact-intensive and complex than simply deciding something seems alarming so it must be a direct threat. The remaining subparagraphs in 4.3 should be deleted or rewritten so it is clear that other than the legal bases for denial noted above, if the MPHA receives a reasonable accommodation request and runs into the other situations enumerated then it should ask for additional information and engage in the interactive process that is the core of reasonable accommodations before reaching denial. The "Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodation Under the Fair Housing Act", May 17, 2004 is especially useful in formulating a reasonable accommodation policy. The MPHA's choice to adopt this policy without necessary revisions risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: Paragraph 4.3, subdivision (a) has been revised. We respectfully decline to make the remaining changes.

P.C-6

Paragraphs 7.1 and 7.2 must be revised. The Draft attempts to cut off an applicant's or resident's reasonable accommodation rights by barring the request during a hearing. An applicant or resident may make a reasonable accommodation request of the MPHA at any time in her/his interaction with the MPHA. The MPHA cannot refuse to accept, review and make a decision about a reasonable accommodation request whenever it is received. *Radecki v. Joura*, 177 F.3d 694 (8th Cir. 1999). The MPHA's choice to adopt this policy without revision risks use of MPHA's resources to defend legal challenges to it.

As part of the reasonable accommodation process the MPHA may receive chemical health records. The MPHA has specific obligations regarding the retention and disclosure of chemical health records of applicants and participating families. Appendix C should include a statement of the MPHA's obligations pursuant to the Confidentiality of Alcohol and Drug Abuse Patient Records statute and regulation, 42 U.S.C. § 290ee-3 (2015); 42 C.F.R. Part 2 (2015).

In light of the MPHA's past consistent refusals to make any revisions on the points we have raised, our resources are not well-spent addressing the deficiencies of the MPHA Reasonable Accommodation Policy in the context of the Annual Plan process. If the MPHA is interested in creating a Reasonable Accommodation Policy that meets the requirements of the law and better serves the needs of applicants and residents with disabilities, it may refer to our prior comments. If the MPHA decides to make changes to its Reasonable Accommodation Policy in the future and is required by 24 C.F.R. §§ 903 or 966 (2016) or other law to use a notice-and-comment process for the changes, we will review any proposals published at that time and comment on behalf of our clients as appropriate at that time.

MPHA Response: The language in Paragraphs 7.1 and 7.2 does not bar the request during a hearing. We respectfully decline to make the proposed changes.

P.D-1—D-8

The MPHA's VAWA Plan is a section of the Draft Admin Plan in which the MPHA continues to misstate the law and create policies that violate the law. We have pointed out these deficiencies through at least five (5) past MPHA Annual Plan comment cycles. In many instances, the MPHA's responses have repeatedly consisted of no more than "Thank you for the comment." or "MPHA declines to make this change." The points of concern we have raised in the past remain unchanged in the MPHA's policy documents for FY2016-2017. We renew those comments as well as the points raised *infra*.

In light of the MPHA's past consistent refusals to make any revisions on the points we have raised, we have not repeated our comments. Our resources are not well-spent addressing the deficiencies of the MPHA VAWA Plan in the context of the Annual Plan process here, when the MPHA has repeatedly failed to engage in any improvement of its policies. If the MPHA is interested in creating a VAWA Plan that meets the requirements of the law and better serves the needs of

VAWA members of the community it serves, it may refer to our comments of the past beginning in September 2010. If the MPHA decides to make changes to its VAWA Plan in the future and is required by 24 C.F.R. §§ 903 or 966 (2016) or other law to use a notice-and-comment process for the changes, we will review any proposals published at that time and comment on behalf of our clients as appropriate at that time.

MPHA Response: Thank you for your comments with regard to MPHA's VAWA Policy – MPHA will continue its effort to remain in compliance with current laws.

P.D-4

In paragraph 4.2 B. i., the MPHA states it will use HUD 50066 as one of its approved forms of certification by an applicant or tenant asserting her VAWA protections. This form has been translated by HUD from English into 10 languages for the past 3 years. The MPHA should state in its policy that it will: (1) state in its Admin Plan and in all notices about VAWA that HUD 50066 is available in languages other than English and list the languages; (2) have HUD 50066 translated into any language that is not available on the HUD website that is needed in the MPHA service area according to the HUD LEP Guidance analysis; (3) educate staff about the availability of the translated certification forms and about how to identify LEP participants who will need a translated certification form; and (4) use translated HUD 50066 forms with its LEP participants. See, <http://www.hud.gov/offices/fheo/lep.xml#Indian4>. The MPHA's choice to adopt this policy risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: Thank you for your comment.

P.D-5

Revise paragraph 4.3(d) the MPHA so it not only prohibits disclosure of confidential information obtained during the VAWA process to the Owner, but also prohibits disclosure of that confidential information to anyone without a signed Release of Information Authorization from the survivor. Many perpetrators of sexual violence are adept at finding their victims through the contacts and agencies with whom the victims are known to be connected.

MPHA Response: Thank you for your comment.

P.D-6

In paragraph 6.0, the MPHA proposes imposing obligations on the people protected by VAWA that exceed the MPHA's authority under the law. VAWA does not require that the victim take any action against her abuser including naming him or obtaining court orders. A Section 8 participant's obligations are defined in federal regulations and her lease. The fourth and final sentence of this paragraph proposes additional tenant obligations for victims of domestic and sexual violence, only because they are victims of that abuse. Imposition of these additional obligations are more demanding standards than those applied to other tenants who are victims of crimes. This paragraph must be revised by deleting from "...the victim may have to ..." through "... reasonable measures." The illegality of this provision was pointed out to the MPHA in the past Annual Plan process and the MPHA declined to make any changes. The MPHA's choice to

persist with this policy knowing it lacks any legal basis risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: We have made a revision to Paragraph 6.0 to address your concerns.

P.D-7

In paragraph 8.0 the MPHA should state clearly that a person asserting her VAWA rights and protections has the right to request an Informal Hearing if her VAWA certification request or her protection pursuant to VAWA is denied if she has responded in a timely manner to the MPHA's request for certification. As written using the word "may", this paragraph makes it sound as if any opportunity to dispute such a denial in an Informal Hearing is conjectural at best.

Delete paragraph 11. It misstates the law. A tenant covered by the protections of VAWA is not subject to the requirements of Minn. Stat. § 504B.178 to break her lease. Compliance with Minn. Stat. § 504B.178 by Section 8 participant families is specifically prohibited by Minn. Stat. § 504B.206, subd. 7 (2014). The Violence Against Women Act, 24 C.F.R. § 5, Subpart L, and § 982.314 (c)(iii) (2014), allows a survivor of domestic violence, dating violence, sexual assault or stalking to end her/his lease without payment of any additional penalty and Minn. Stat. § 504B.206, subd. 7 (2014) requires compliance with the federal statute. If the MPHA's chooses to retain this policy it risks use of MPHA's resources to defend legal challenges to it.

MPHA Response: We respectfully decline to make the changes to Paragraph 8.0. We have removed Paragraph 11.

P.E-3

MPHA's policy regarding "Records Management" in section 3.0 should state that disclosure of family information will be made in compliance with HUD-92006.

MPHA has specific obligations regarding the retention and disclosure of chemical health records of applicants and participating families. This type of information may be received by the MPHA as part of its criminal history screening process. Section 3.0 should include MPHA's obligations pursuant to the Confidentiality of Alcohol and Drug Abuse Patient Records statute and regulation, 42 U.S.C. § 290ee-3 (2015); 42 C.F.R. Part 2 (2015).

MPHA Response: Thank you for your comment.

P.E-4

The definition of drug-related criminal activity at paragraph 6.0 exceeds the limits of federal law. 24 C.F.R. §§ 982.4 and 5.100 (2016). The MPHA's choice to adopt this policy risks use of MPHA's resources to defend legal challenges to it.

The MPHA has incorrectly included petty misdemeanor in its definition of "drug-related criminal activity" in paragraph 6.0. The MPHA correctly states in the Draft ACOP, P.126, that a petty misdemeanor is not a crime. The legal definition of drug-related criminal activity is the same for

Public Housing and the Section 8 Housing Choice Voucher Program. 24 C.F.R. § 5.100 (2016). A petty misdemeanor is not a crime in Minnesota. Minn. Stat. § 609.02, subd. 4a (2016).

MPHA Response: Thank you. MPHA has made the correction.

P.E-5

The MPHA states at Page 12-9 of its Draft Admin Plan that it will consider the mitigating circumstances of 24 C.F.R. § 982.552 (c)(2) (2016) when terminating assistance. The reiteration of mitigating circumstances in paragraph 1, Page E-5 incorrectly cites the federal regulations applicable to public housing not Section 8 Housing Choice Voucher programs. Delete the incorrect citation and references to it. Revise the paragraph to include the mitigating circumstances of the applicable regulation so the policy correctly states the law.

MPHA Response: Thank you. MPHA has made the correction.

The MPHA states in paragraph 1 that the Applicant Screening Guidelines “grid” establishes the “elapsed timeframe” for consideration of the crimes listed, the MPHA’s “reasonable time” of 24 C.F.R. § 982.553 (2)(ii)(B) (2016). The MPHA states it intends to use the Screening Guidelines “grid” as its listing of what it deems to be reasonable “look-back” periods, paragraph 3, and criminal history outside the time periods in the “grid” will not be considered. If this is the intent of the MPHA then this section needs revision, as well as practices and procedures the staff uses to implement this policy. We have seen far too many files containing the criminal history information outside the “look-back” parameters of the Appendix E “grid”. If these old incidents will not be considered, then they should not appear in the applicant’s file. The MPHA’s choice to adopt this policy without necessary revisions risks use of MPHA’s resources to defend legal challenges to it.

The MPHA’s stated intention in paragraph 4 is to make *ad hoc* decisions when a crime does not occur on its Applicant Screening Guidelines “grid.” MPHA’s decisions in these circumstances will appear arbitrary and expose the MPHA to the risk of use of its resources to defend legal challenges to its *ad hoc* determinations

The MPHA’s definition of “Sentence” in paragraph 5 should be revised. By including probation and parole in the meaning of “sentence” and then adding on the years it has chosen for ineligibility, the MPHA imposes additional collateral consequences to criminal sentencing that are not penalties the criminal justice system has created or sanctioned. Retention of this language puts the MPHA at risk to use MPHA’s resources to defend legal challenges to it.

MPHA Response: Thank you for your comments with regard to MPHA’s Applicant Screening Policy and Practice – MPHA will continue its effort to remain in compliance with current laws.

Finally, there are many members of the community with information and experience who could assist the MPHA in improving its policies, practices and procedures to meet the goals of community safety and access to housing for our neighbors with criminal histories if the MPHA solicited assistance. If the MPHA decides to make changes to its Applicant Screening Guidelines of Appendix H in the future and is required by 24 C.F.R. §§ 903 or 966 (2016) or other law to use

a notice-and-comment process for the changes, we will review any proposals published at that time and comment on behalf of our clients as appropriate at that time.

MPHA Response: Thank you for your comments.

Pg. H-1

This Appendix states that it is the steps the MPHA will take, in addition to compliance with a the previously listed laws, to "...affirmatively further Fair Housing relevant to vouchers that *might* be awarded to our Housing Authority under the Notice of Funding Availability "Rental Assistance for NON-Elderly Persons with Disabilities" (CFDA #14.871)." (emphasis added). Is this Appendix at all relevant at this time? Does the MPHA have any of the voucher referenced? Is there any possibility that the MPHA will be allocated any of the vouchers of the type referenced? If this Appendix has no present relevance or effect, then delete it.

If this Appendix is relevant to any of the MPHA's current Vouchers, then Bullet 4 requires attention. Bullet 4 states that as part of its duty to affirmatively further fair housing the MPHA will invite Legal Aid, among other organizations, "to come and meet with HCV staff to talk about impediments to Fair Housing and understand the importance of affirmatively further fair housing." Our Housing Discrimination Law Project, through its Supervising Attorney Lael Robertson, 612.746.3834, has not been invited to engage in this conversation with HCV staff about affirmatively furthering fair housing for MPHA participants and looks forward to receiving this invitation. We pointed this out in September 2015. The MPHA took no action. This meeting would be even more timely than it was a year ago in light of the activities undertaken in the Metro area around issues of affirmatively furthering Fair Housing. Ms. Robertson continues to look forward the MPHA convening the meeting with the organizations listed in Bullet 4.

MPHA Response: MPHA has 400 vouchers for the Non-Elderly Disabled. An Invitation to Legal Aid to speak at an HCV staff meeting will be forth coming. Bullet 4 has been deleted.

We hope that these comments will be used to revise the MPHA Draft FY2017 Annual Moving to Work Plan (MTW Plan), MPHA Draft FY2016-2017 Low-Income Public Housing Statement of Policies (ACOP) and MPHA Draft FY2016-2017 Section 8 Housing Choice Voucher Administrative Plan (Admin Plan) before they are approved by the MPHA Board and submitted to HUD. If you have any questions regarding the points we have raised, please contact us.

Sincerely,

/S/

Dorinda L. Wider
Attorney at Law
Mid-Minnesota Legal Aid

DLW:nh

Chairman Tyler, Director McCorvey and Ms. Abrahamson

September 2, 2016

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cc: Lisa Griebel, MPHA by Email lgriebel@mplspha.org
Erika Grant, HUD FHEO

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