




The  
**Legal Aid Society**  
of Cleveland  
*Since 1905*

**Callie E. Dendrinis**  
Phone: 216-861-5129  
Fax: 216-861-5759  
callie.dendrinis@lasclev.org

To: Lorain Metropolitan Housing Authority  
From: Callie E. Dendrinos   
Re: 2017 Proposed Revisions LMHA Annual Plan  
Date: March 10, 2017

The Legal Aid Society of Cleveland (“Cleveland Legal Aid”) is a non-profit provider of legal services in northeastern Ohio. We provide free civil legal representation to low-income individuals in five counties, including Lorain County. As part of our practice, we represent tenants in many forms of subsidized housing, including tenants of and applicants to the Lorain Metropolitan Housing Authority (“LMHA”). Cleveland Legal Aid wishes to share the following comments on LMHA’s annual planning documents and the proposed changes to these documents.

## **I. Admissions & Continued Occupancy Policy (ACOP)**

### **1. Section II(E): Tenant Selection and Assignment Plan (page 4)**

LMHA proposes to limit the number of days an applicant may accept an offer of a unit to three business days after “the offer is communicated by phone, voicemail, or email.” If an applicant does not respond within three business days, LMHA proposes to offer the unit to the next applicant on the waiting list.

Given the frequency with which people change phone numbers and run out of minutes on their mobile phones, and the limited access many people have to e-mail, LMHA should give applicants ten (10) business days to respond to an offer of a unit. Further, LMHA should also consider adopting the use of text messages to communicate with applicants, as text messaging is often accessible to low-income individuals even when they no longer have phone minutes. Last, LMHA should utilize every method of communication available to it to inform applicants of unit availability: mailing, e-mailing, calling, and text messaging (if possible).

### **2. Section II(I)(4): Removal From the Waiting List (page 7)**

LMHA proposes to provide applicants with one opportunity to reschedule the required interview upon their request if they contact the office prior to the interview. Cleveland Legal Aid commends this change and encourages LMHA to give all applicants the opportunity to reschedule the interview prior to removal from the waiting list, regardless of whether they request it prior to the

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interview.

### **3. Section III(A)(3.): Unreported Income Policy (page 13)**

LMHA proposes to set a threshold for all repayment agreements with tenants who have no income as “[\$]20.00 or 40% of the minimum rent amount in place at the time of [sic] the repayment agreement is entered into.” LMHA should clarify which amount governs. Cleveland Legal Aid proposes that the lower of the two amounts should be the threshold. LMHA should also adopt a more flexible policy that allows tenants to pay lesser amounts, particularly when the repayment period is short and when the total amount to be repaid is small.

LMHA also proposes to enter into only one repayment agreement with a tenant at a time, and to require full payment on a prior repayment agreement before entering into a second agreement. LMHA should adopt a less restrictive, more flexible policy that allows a tenant to enter into a second agreement while still paying on a first agreement, particularly if the tenant is complying with the first agreement.

### **4. Appendix XIII, Section B: Policy Regarding Termination of Lease & Eviction**

LMHA proposes that, in all instances where LMHA provides a tenant with additional time to pay at an eviction hearing, and a tenant fails to do so, LMHA “will not extend the deadline and will execute the eviction.” LMHA should evaluate these situations on an individual basis rather than adopt a blanket policy precluding any additional time. At the very least, LMHA should adopt a policy that affords all tenants who have not complied with an opportunity to offer proof either of their efforts to repay or good cause for failure to do so.

### **5. Appendix XIV, Section 3: Transfer Policy**

LMHA proposes to amend its transfer policy by adding a priority for emergency VAWA transfers that are second in priority to emergency transfers, and treated in the same class of priorities as reasonable accommodation transfers. LMHA should elevate emergency VAWA transfer policies to the same priority as other emergency transfers, pursuant to 24 C.F.R. § 5.2005(e)(6) (“these policies must ensure that requests for internal emergency transfers under VAWA receive, at a minimum, any applicable additional priority that housing providers may already provide to other types of emergency transfer requests.”)

### **6. Appendix XVIII: Smoke-Free Policy**

LMHA proposes that a tenant’s household will be in violation of the new smoke-free policy if, among other things, “staff witnesses a resident, resident’s guest, or family member, service provider, or other person smoking within the unit or within 25 feet of the building.” LMHA should clarify the meaning of the phrase “other person.” LMHA should also require a finding of a tenant’s fault prior to determining that the tenant has violated the policy.

## **II. Administrative Plan**

## 1. Chapter 3, Section H: Applicant Selection Policy (page 41)

LMHA proposes a look-back period of three years for felonies and misdemeanors which “reasonably impact community safety” and one year for all other misdemeanors. On April 4, 2016, HUD issued the Office of General Counsel Guidance on Application of the Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions (“April 2016 HUD Guidance”). HUD stated that the US prison population is the largest in the world: 2.2 million adults. (April 2016 HUD Guidance at p. 1.) Further, HUD cited the statistic that “as many as 100 million U.S. adults-or nearly one-third of the population-have a criminal record of some sort.” (*Id.*)

Then, on October 18, 2016, the United States of America filed a Statement of Interest in The Fortune Society, Inc. v. Sandcastle Towers Housing Development Fund Corp., et. al, CV-14-6410 (US District Court-Eastern District of New York). The Fortune Society challenges blanket exclusions based on criminal history as a violation of fair housing laws due to the disparate impact that eligibility criteria based on criminal history has on African Americans.<sup>1</sup>

The US argues in support of individualized assessments of applicants’ criminal convictions, including “evidence of rehabilitation, evidence that the applicant has maintained a good tenant history before and/or after the conviction.” (See Statement of Interest, at p. 18., citing April 2016 HUD Guidance at p. 7.) Referring to individualized assessments, the US states: “Such a review is likely to more ‘accurately distinguish between applicants [who pose an unacceptable level of risk and those [who] do not’ (citing El v. Se Pa. Transp. Auth., 470 F.3d 232 at 245 (3d Cir. 2007).

Cleveland Legal Aid encourages LMHA to adopt a policy that provides for an individualized assessment for any applicant with a felony conviction who would be automatically denied on the basis of the three year look-back period. An individualized assessment would mirror the process that is afforded applicants to present mitigating circumstances to show that their application should be approved. It would consider each applicant’s circumstances based on evidence that the applicant will be an acceptable tenant and does not pose any additional risk as a tenant than any other applicant. The Housing Authority of New Orleans (HANO) has instituted the use of individualized assessments as a tenant selection procedure.

Cleveland Legal Aid further encourages LMHA to adopt a policy that does not exclude applicants with misdemeanor convictions. The Cuyahoga Metropolitan Housing Authority (CMHA) does not exclude applicants with misdemeanor convictions. Also, CMHA provides space to Open Door, a transitional housing reentry program. Upon completion of Open Door, an applicant receives automatic admission to CMHA’s public housing.

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<sup>1</sup> The Statement of Interest provides a detailed analysis of how admissions policies that have a disparate impact on African Americans and Hispanics may constitute fair housing violations. See Statement of Interest, at pp. 10-14. A housing complex with a predominately African American and Hispanic population does not preclude a plaintiff from establishing a prima facie case. *Id.* at 12, citing Alexander v. Edgewood Mgmt. Corp., No.1:15-cv-1140-RCL, 2016 WL 5957673, at 3 (D.D.C. July 25, 2016).

Using the individualized assessment and eliminating misdemeanor convictions as grounds for ineligibility is more consistent with the April 2016 HUD Guidance and less likely to adversely impact otherwise qualified African American and Hispanic applicants. If LMHA adopts the changes suggested above, it will be at the forefront of providing safe, decent and affordable housing that helps to reduce recidivism, which can result in a net saving for the community.

## **2. Chapter 10, Section I: Determination of Responsibility (pages 128-129)**

LMHA proposes that it will consider lease terms in determining whether a tenant or a landlord is responsible for treatment of infestations, and that, if the lease does not allocate responsibility, the general rule will be that landlords of multi-unit complexes will be responsible for treatment, whereas tenants of single-family units will be responsible.

LMHA should follow Ohio Revised Code, § 5321.04(A)(2), which requires landlords to do “whatever is reasonably necessary to put and keep the premises in a fit and habitable condition.” Any effort by a landlord to negotiate away this provision violates § 5321.13, which prohibits the modification or waiver of any provision of Chapter 5321 and landlords’ attempts to otherwise limit liability.

Consistent with state law, LMHA should deem responsibility of pest elimination (including extermination) to be a landlord’s responsibility unless a tenant has intentionally or negligently caused said infestation, consistent with the plans of other housing authorities, including CMHA.

The effect of the proposed policy will be to discourage tenants from reporting infestations, including those not caused by tenants, because of the proposed allocation of liability and the leeway given to private leases. This is likely to spread infestations even more and encourage self-treatment, which can cause its own health and safety issues.

### **III. General Revisions**

#### **1. VAWA Transfer Policy**

Cleveland Legal Aid notes that the VAWA policies included in the ACOP and Administrative Plan are not identical, although largely the same in content. The Administrative Plan lacks a definition of “bifurcation,” whereas the ACOP defines that term. Further, the Administrative Plan does not address how it determines which household members should continue to receive assistance in the case of family break-up, nor does it include the additional protections VAWA offers to victims in these circumstances (*see* 24 C.F.R. § 982.315). The Administrative Plan’s description of emergency VAWA transfers also lacks the detail of that policy in the ACOP. LMHA should standardize these policies as much as possible and ensure that each policy includes the provisions required by federal regulations.

Last, Cleveland Legal Aid encourages LMHA to consider creating regional agreements with other housing providers to allow for external transfers that will maximize victims' safety by increasing the likelihood of finding safe, available housing.

## **2. Extermination Policies**

LMHA proposes that, as part of its Integrated Pest Management (IPM) program, it will require residents to prepare their units for treatment. While Cleveland Legal Aid commends LMHA for adopting an IPM program, some tenants will not physically be able to prepare their units, particularly for bed bug treatments. In such instances LMHA should offer to prepare a unit on behalf of the tenant as a reasonable accommodation.

## **IV. Additional Comments**

### **1. Language Access under Title VI**

Cleveland Legal Aid encourages LMHA to adopt a Language Access Plan, if one has not previously been adopted, that complies with Title VI of the Civil Rights Act of 1964, consistent with the Department of Housing and Urban Development's Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (72 Federal Register 2732, Jan. 22, 2007). If LMHA has already adopted a compliant language access plan, Cleveland Legal Aid encourages the posting of this plan in LMHA's main office as well as online with other LMHA policies, and referencing of it in the annual plan.

While the Administrative Plan does include a paragraph regarding when LMHA will translate documents, which is commendable, this paragraph does not fully comply with the requirements of Title VI. Furthermore, such a policy should be adopted across LMHA's programs. Attached is a sample policy from Lake Metropolitan Housing Authority, another housing authority which Cleveland Legal Aid has reviewed and believes complies with Title IV requirements.

### **2. LCEHC Tenant Selection Plan**

Last, while LMHA states in the Annual PHA Plan that its administration of Harr Plaza and International Plaza is governed by the LCEHC Tenant Selection Plan, no such document is available on the LMHA website or included in the annual plan documents. LMHA should make this document available or, if appropriate, clarify whether another set of regulations governs these projects.

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

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

Language for Limited English Proficiency Persons (LEP) can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by the HCV program. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI against discrimination on the basis of national origin. This part incorporates the Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Persons, published December 19, 2003 in the *Federal Register*.

The PHA will take affirmative steps to communicate with people who need services or information in a language other than English. These persons will be referred to as Persons with Limited English Proficiency (LEP).

LEP is defined as persons who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English. For the purposes of this administrative plan, LEP persons are HCV applicants and participants, and parents and family members of applicants and participants.

In order to determine the level of access needed by LEP persons, the PHA will balance the following four factors: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the Housing Choice Voucher program; (2) the frequency with which LEP persons come into contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the PHA and costs. Balancing these four factors will ensure meaningful access by LEP persons to critical services while not imposing undue burdens on the PHA.

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

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

### **LMHA Policy**

The PHA will analyze the various kinds of contacts it has with the public, to assess language needs and decide what reasonable steps should be taken. "Reasonable steps" may not be reasonable where the costs imposed substantially exceed the benefits.

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

Where LEP persons desire, they will be permitted to use, at their own expense, an interpreter of their own choosing, in place of or as a supplement to the free language services offered by the PHA. The interpreter may be a family member or friend.

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

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

### **LMHA Policy**

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

The PHA will provide written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000 persons, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

If there are fewer than 50 persons in a language group that reaches the 5 percent trigger, the PHA does not translate vital written materials, but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

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

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

If the PHA determines that it is not necessary to develop a written implementation plan, the absence of a written plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to the PHA's Housing Choice Voucher program and services.

### **LMHA Policy**

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

If the PHA determines it is appropriate to develop a written LEP plan, the following five steps will be taken: (1) Identifying LEP individuals who need language assistance; (2) identifying language assistance measures; (3) training staff; (4) providing notice to LEP persons; and (5) monitoring and updating the LEP plan.



**LORAIN METROPOLITAN HOUSING AUTHORITY**  
**2017 ANNUAL PLAN**  
**PUBLIC COMMENTS RECEIVED AND LMHA'S RESPONSES**

A public hearing was held at 1:00 p.m. on March 15, 2017 at LMHA's Main Office 1600 Kansas Avenue, Lorain, OH 44052.

Attendees: Homer A. Virden, Executive Director  
John P. McMahon, Assistant Director  
Debbie Carter, HCVP Manager  
Edwin Oliveras, Procurement and Contract Officer  
Megan Newson, Public Housing Operations Manager  
Callie E. Dendrinis, Attorney, The Legal Aid Society of Cleveland  
Pam Davila, Resident Advisory Board member

LMHA received comments during the advertising period, including an 8-page document from The Legal Aid Society of Cleveland, which is attached to the end of this document. All comments received and expressed prior to and at the public hearing are presented below.

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**COMMENT**

ACOP, page 3, paragraph II.A. states that "Online applications will be automatically time and date stamped upon completion. Bedroom size will be determined at interview and shall be based upon family composition and LMHA occupancy standards." The way the online pre-application works, it seems like bedroom size should be determined when the application is completed, not at a subsequent interview.

**LMHA RESPONSE**

LMHA agrees that the bedroom size should be determined when the online pre-application is completed. The language has been revised:

"Online *pre*-applications will be automatically time and date stamped upon completion. ***Family composition will be determined by the information provided by the applicant when the online pre-application is submitted.*** Bedroom size shall be based upon family composition, ***reasonable accommodations***, and LMHA occupancy standards."

With this language, LMHA is clarifying that applicants first submit a pre-application online, not a complete application. The pre-application establishes date and time of application. This language also enables LMHA Placement Department to download applications based upon bedroom size. The use of the term "pre-application" has been updated throughout the HCVP Administrative Policy, where applicable (Chapter 3).

In Chapter 3, Section 3, page 35, the list of information requested in the online pre-application was shortened to reflect the actual pre-application questions. LMHA removed:  
Amount(s) and source(s) of income received by household members

Information regarding Disabilities relating to program requirements (i.e., deductions)  
Arrests and/or Convictions for Drug Related or Violent Criminal Activity  
Program integrity questions regarding previous participation in HUD programs

Added:

Number of Bedrooms preferred

Listing all states in which applicant has resided

Request for Specific Accommodation needed to fully utilize the program and services

Whether applicant currently receives housing assistance

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### **COMMENT**

HCVP Administrative Policy, Chapter 3.B, page 33, Opening/Closing of Application Taking:  
This section describes where LMHA will advertise the opening and closing of the waiting list. Newspapers, radio ads, and postings at different organizations are listed but nothing about social media. LMHA should consider online advertising, as well, to reach more people.

### **LMHA RESPONSE**

LMHA has added the following language to the list: "[www.lmha.org](http://www.lmha.org), and social media"

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### **COMMENT**

ACOP Page 4, Section II.B, discusses split households:

"When an LMHA household separates and both co-heads desire to remain in LMHA housing, one may retain the present LMHA unit and the other must apply through the online pre-application process." Does the current resident who must apply get placed at the end of the waiting list? Or are they transferred? How does that work?

### **LMHA RESPONSE**

LMHA acknowledges the benefit of clarifying that this paragraph is for "Split Households" and will add the following language to reflect the historical practice: "The pre-application will be reviewed for eligibility. The resident selection plan in effect at the time of the final eligibility determination will be used. If approved, that applicant will receive preference over other residents and applicants."

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### **COMMENT**

ACOP Page 4, Section II.E:

Legal Aid suggested that applicants should be given 10 business days rather than three (3) to respond to a unit offer, consider using text messaging to communicate with applicants, and should utilize every method of communication available to inform applicants of unit availability.

### **LMHA RESPONSE**

Waiting ten days for each unit offer is inefficient and delays the housing of other applicants. The majority of applicants who do respond to a unit offer do so within 3 business days. Though

LMHA follows the 3-day timeline, additional time to reply is allotted without penalty if the applicant can document extenuating circumstances or for reasonable accommodations.

LMHA has reduced the use of U.S. mail as the primary mode of communication because it takes more time than electronic communications, and applicants change their mailing addresses quite often without notifying LMHA. It is rare that we cannot make contact with an applicant via phone, email, or their contact person. If we can't make contact, the applicant is mailed a letter to update their contact information and by doing so will remain on the waiting list and be offered another unit. Applicants have 10 business days to reply to this correspondence. We have also learned that, while mailing addresses and phone numbers do change often, email addresses remain relatively consistent and are used from one phone to the next.

LMHA's goal with these changes is to provide more efficient service by offering units and getting responses more quickly. LMHA has an obligation to maximize occupancy while maintaining a fair waiting list process.

LMHA considered utilizing text messaging but existing communication technology make it difficult to efficiently send, receive and document text correspondence. LMHA will add "and text messages, if technologically possible" so that we can implement that method in the future.

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#### **COMMENT**

ACOP Page 8, Section II.I.4 Removal from the Waiting list:

Legal Aid expressed concerns about the amount of time an applicant has to reschedule a missed interview. The proposed change reads "Other than ineligibility, the PHA will remove an applicant from the waiting list for the following reasons: (4) Failure to attend the required interview. Applicants are given one (1) opportunity to attend. Applicants may request to be rescheduled one (1) time by contacting the placement department prior to their scheduled orientation date. Additional consideration given for documented extenuating circumstances or for reasonable accommodations."

#### **LMHA RESPONSE**

LMHA acknowledges that the language could be clearer and agrees to the following language to be used in the ACOP and the HCVP Administrative Policy, Page 37: "Applicants are given one (1) opportunity to attend. Applicants may request to be rescheduled one (1) time by contacting the Placement Department within ten (10) business days following their scheduled interview date. Additional consideration will be given for reasonable accommodations. If the appointment is not rescheduled within ten (10) business days, the file will be inactivated. The file will be reactivated only within sixty (60) calendar days should the applicant make a written request. There will be no further consideration for file reactivation after sixty (60) calendar days. A file may be reactivated one time. If a file is inactivated for a second time, the applicant must reapply."

**COMMENT**

ACOP Page 8, Section II.I.4 Removal from the Waiting List:

The term “removed from waiting list” and “file inactivated” are used quite often. What is the difference?

**LMHA RESPONSE**

An applicant file can be inactivated before they are on the waiting list or while on the waiting list.

If a file is inactivated, the file will be reactivated only within sixty (60) calendar days should the applicant make a written request. There will be no further consideration for file reactivation after sixty (60) calendar days. A file may be reactivated one time. If a file is inactivated for a second time, the applicant must reapply.

If an applicant refuses a unit without good cause or an approved reasonable accommodation, the applicant shall be removed from the waiting list and will be eligible to reapply in six (6) months.

LMHA made this distinction more clear in this section of the waiting list.

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**COMMENT**

The language on page 5 of the ACOP, Section II.F.7 is rather broad and would require LMHA to subjectively assess documentation. Your proposed language is: “Families who provide documentation indicating they are currently working on a reunification plan or custody agreement, or who have such an agreement in place in which a child may live in a unit less than half the time, may be permitted to have extra bedroom(s) for those household member(s). Such household members shall not be considered for eligibility for deductions, nor shall they be considered members of the lease agreement.”

In the majority of cases, Children Service agencies are responsible for reunification plans; LMHA should rely on those. There have been times when a parent claims to have their kids on weekends and then turn their apartment into a party hall the rest of the time and have friends sleep there all the time. Perhaps focus on official agency documents rather than a written statement from a parent.

**LMHA RESPONSE**

LMHA agrees with the recommendation and rewrote the paragraph as follows:

“Families who provide documentation from a court or social service agency of a custody or shared parenting agreement in which a child may live in a unit less than half the time, may, at LMHA’s discretion, be permitted to have extra bedroom(s) for those household member(s). Such household members shall not be considered for eligibility for deductions, nor shall they be considered members of the lease agreement.”

**COMMENT**

ACOP Page 8, Section II.I.7:

One of the reasons an applicant can be removed from the waiting list is because they fail to lease the unit. How long do they have to lease?

**LMHA RESPONSE**

LMHA has clarified #7: The applicant fails to lease the unit accepted within five (5) business days of initial contact by the management leasing office.

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**COMMENT**

ACOP page 13, Section III.A.3: Unreported Income Policy and Repayment Agreements:

Legal Aid requested clarification about the repayment agreement policy for retroactive rent and suggested that the policy be less restrictive.

Another comment was: Update the EIV policy to match the changes you made in the ACOP page 13 Unreported Income Policy where you changed the repayment agreement language. Also, note that the repayment agreement 40% cap refers to the tenant's Net Tenant Payment, not the Total Tenant Payment required by EIV. And will LMHA only enter into one repayment agreement for retroactive rent at a time with one tenant? Or is that for all repayment agreements?

**LMHA RESPONSE**

LMHA explained that the repayment agreement policy was for retroactive rents due to unreported income. It is not relevant to rent or non-rent charges, such as maintenance fees. LMHA advised that the first thing management must do is to assess whether the retroactive rent was due to deliberate and willful misrepresentation by the tenant. If not, then LMHA may offer a repayment agreement rather than terminating the lease. A second retroactive rent charge is a serious concern since, when signing the first repayment agreement with the tenant, LMHA instructs the tenant in their obligation to report all changes in income. Only if LMHA deems that the second occurrence is again not deliberate and willful misrepresentation will the tenant be offered another opportunity to repay.

LMHA also advised that the 40% cap does not apply to repayment agreements for charges not due to retroactive rent.

The policy is rewritten on page 13 and in the EIV policy as follows:

**UNREPORTED INCOME POLICY AND REPAYMENT AGREEMENTS**

Tenants are required to report income changes in writing within ten (10) business days of the change. Wherein the tenant fails to report an income change that results in an increase in rent regardless of the established minimum threshold, the rent shall be effective the first day of the month following the month in which the change occurred. The tenant will be responsible for the retro-active rent amount, which is the difference

between what the rent would have been had the change in income/family composition been reported as required, and the amount the tenant was charged for monthly rent

At the discretion of the Project Manager, a repayment plan may be offered to the tenant for the retroactive rent amount. Should the Project Manager determine that deliberate and willful misrepresentation has occurred, the Project Manager may proceed with a lease termination rather than offer the repayment agreement.

Tenants can repay amounts due for retroactive rent:

1. In a lump sum payment; or
2. By entering into a repayment agreement with LMHA; or
3. A combination of 1 and 2, above.

For example, a tenant may owe \$1,000, make a lump sum payment of \$300 and enter into a repayment agreement for the remaining \$700.

Tenants who do not agree to repay amounts due in accordance with the above will be in noncompliance with their lease agreement and may be subject to termination of tenancy.

The monthly retroactive rent payment plus the tenant's Total Tenant Payment (TTP) at the time the repayment agreement is executed should be affordable and not exceed 40% of the family's monthly adjusted income, unless the tenant and LMHA agree to a higher amount. However, the LMHA has the discretion to establish thresholds and policies for repayment agreements in addition to HUD required procedures. The threshold for a tenant with no income (and no utility reimbursement payment (URP) check) will be the lesser of \$20.00, or 40% of the minimum rent amount in place at the time the repayment agreement is signed. The terms of the agreement may be renegotiated if there is a decrease or increase in the family's income.

If a tenant has agreed to the terms of a repayment agreement for retroactive rent, and if the tenant subsequently incurs an additional charge for retroactive rent which LMHA deems was not due to deliberate or willful misrepresentation by the tenant, then LMHA may offer the tenant another repayment agreement for retroactive rent which may be combined with the first agreement.

If, however, LMHA deems that the charge for retroactive rent was due to deliberate or willful misrepresentation by the tenant, then LMHA shall not offer another repayment agreement and shall instead proceed with lease termination.

LMHA will not offer repayment agreements for current or overdue rent.

The above repayment policy for unreported income is not applicable to repayment agreements for maintenance and/or other non-retroactive rent charges. If a tenant is in compliance with the terms of a retroactive rent repayment agreement and incurs charges not related to retroactive rent for which the tenant requests a repayment agreement, then LMHA may agree to offer the tenant a second repayment agreement for the new charges.

Repayment Agreements for charges other than retroactive rent are not subject to the 40% threshold.

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**COMMENT**

ACOP Appendix V Air Conditioner Surcharges:

The updated calculation for tenant-provided a/c units in family developments is “\$30.96/year.” What if there are more than one a/c unit in the home. Is it still \$30.96 per year?

**LMHA RESPONSE**

LMHA clarified that the surcharge is \$30.96 per air conditioner per year.

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**COMMENT**

ACOP Appendix XIII, Section B, Policy Regarding Termination of Lease and Eviction:

The Eviction Policy has mirrored the language in the public housing lease. It needs updated since the lease has been updated a few times.

Legal Aid suggested that LMHA should allow more time for tenants to comply following a settlement agreement made before the hearing.

**LMHA RESPONSE**

LMHA acknowledges that the Policy needs updated to reflect the lease. LMHA discussed with Legal Aid the proposed revision: “If, during an eviction court hearing, an agreement is made between LMHA and the tenant to offer the tenant an opportunity to pay by a particular date, and if payment is not made by the agreed upon deadline, then LMHA will not extend the deadline and will execute the eviction.”

LMHA is in the housing business, not the eviction business. By the time LMHA files an eviction with the courts, the Project Manager has exhausted every opportunity to get the tenant to comply with the lease. The time to “afford all tenants who have not complied with an opportunity to offer proof either of their efforts to repay or good cause for failure to do so” is prior to a court hearing. The court hearing is the last resort.

Legal Aid noted that they were thinking more about the settlement agreements made prior to the court hearing to avoid an eviction. Regardless of when the agreement is made, whether inside of our outside of the courtroom, LMHA ensures that it is memorialized with the court and that the writ of restitution is to be issued if the tenant fails to meet the agreement. This settlement agreement is an extension of the deadline to enable the tenant to fulfill their lease obligations.

LMHA intends to continue with the standard practice which has been implemented consistently for several years and has proven to be fair and equitable.

## **COMMENT**

ACOP Appendix XIV, Transfer Policy:

The PH Transfer Policy has been reorganized in a logical manner. However, there are a few particulars which do not accurately reflect the LMHA's practice. Specifically, under-housed transfers DO take priority over new admissions. If not, then some residents will be waiting for a long time to move. And in practice, LMHA has limited the transfers to one transfer PER BEDROOM SIZE, per development, per month, NOT just one transfer per development per month. Is this changing?

Legal Aid stated that emergency VAWA transfers should be "treated in the same class of priorities as reasonable accommodation transfers" and that "LMHA should elevate emergency VAWA transfer policies to the same priority as other emergency transfers, pursuant to 24 CFR §5.2005(e)(6)."

## **LMHA RESPONSE**

LMHA agrees with the first comment and made those corrections to accurately reflect the practice.

LMHA acknowledges the cited regulation and adjusted the transfer hierarchy as follows:

### **1. Emergency Transfers**

Emergency transfers are mandatory when LMHA determines that conditions pose an immediate threat to resident life, health, or safety. Emergency transfers may be made for reasons such as, but not limited to, permitting repair of hazardous unit defects, alleviating verified disability problems of a life threatening nature, protecting household members from threat of physical harm or criminal activity, or Emergency VAWA Transfers.

A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking is eligible for an emergency transfer if the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same unit. If the tenant is a victim of sexual assault, the tenant may also be eligible to transfer if the sexual assault occurred on the premises within the 90-calendar-day period preceding a request for an emergency transfer. Refer to the Emergency VAWA Transfer Plan for complete details.

Emergency transfers shall take priority over new admissions and all other transfers. If, however, the only suitable unit available is an accessible unit designated to fulfill a request for a reasonable accommodation, then the reasonable accommodation shall have precedence.

### **2. Reasonable Accommodation Transfers**

The LMHA Reasonable Accommodations Review Committee may approve a transfer as a reasonable accommodation for a person with a disability, provided that there is a nexus between the disability and the accommodation as verified in accordance with LMHA's Reasonable Accommodations Manual.

Reasonable Accommodation transfers shall take priority over new admissions.



### **3. Violence Against Women Act (VAWA) Transfers**

Transfers for the victims of domestic violence (VAWA) shall take priority over new admissions.

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#### **COMMENT**

LMHA created a new Emergency VAWA Transfer Plan as part of the public housing Transfer Policy. The existing VAWA Policy should make reference to this new Emergency VAWA Transfer Plan.

Legal Aid noted that the VAWA Policy in the HCVP Administrative Policy did not define “bifurcation.” The Administrative Policy does not address that the victim retains housing assistance if the family breaks up. The description of Emergency VAWA Transfer Plan lacked the detail in the Administrative Policy as compared to the ACOP. Legal Aid also encouraged LMHA to create regional agreements with other housing providers to allow for external transfers.

#### **LMHA RESPONSE**

LMHA agrees with the recommendation to reference the Emergency VAWA Transfer Policy in paragraph IX of the VAWA policy.

LMHA has elected to not create agreements with other housing providers to allow for external transfers, but will instead focus on engaging in outreach activities to assist victims. LMHA’s Transfer Policy does permit transfers to/from other LMHA owned and/or managed properties to assist victims, such as from Public Housing to Multifamily properties.

The VAWA Policy in the HCVP Administrative Policy has been updated to more closely mirror the VAWA Policy in the PH ACOP.

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#### **COMMENT**

LMHA recently updated the Assistance Animal Addendum for Harr and International Plazas to better describe dangerous animals. The Assistance Animal Application form was amended to include contact information for the person responsible to care for the tenant’s assistance animal in case of emergency. It is recommended that this be done for the Public Housing version, as well.

#### **RESPONSE**

LMHA agrees with the recommendations and included the definitions from the Ohio Revised Code.

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### **COMMENT**

ACOP Appendix XVIII Smoke Free Policy:  
Legal Aid noted that “other person” should be defined.

### **LMHA RESPONSE**

“Other person” is defined as “an invitee or guest of the tenant, the tenant's family or otherwise on the premises with the knowledge of the tenant or member of tenant's family.”

Note that the corrected Appendix Number for the Smoke-Free Policy is XVII.

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### **COMMENT**

Applicant Selection Process, Chapter 3, Section H Page 41 of the Administrative Policy (Note, this process is being incorporated into both the HCVP Administrative Policy, the Public Housing ACOP, and the multifamily Tenant Selection Plan.)

Legal Aid suggested that LMHA provide “for an individualized assessment for any applicant with a felony conviction who would be automatically denied on the basis of the three year look-back period.” Legal Aid “further encourages LMHA to adopt a policy that does not exclude applicants with misdemeanor convictions.”

Another comment was that LMHA’s process is allotting an applicant 10 business days to request a hearing after being proposed for denial. In HUD Handbook 4350.3 Rev 1, CHG 4, Chapter 4-9 C.2.b it says “14 days.” Is this a problem?

The process also does not define how soon the hearing officer will render a decision. HUD Handbook 4350.3 Rev 1, CHG 4, Chapter 4-9 D.2 says “5 business days.”

### **LMHA RESPONSE**

This new process incorporates guidance from Notice PIH 2015-19, FAQs for Notice PIH 2015-19 / H 2015-10, and Notice PIH 2012-28 / H 2012-11. LMHA also modeled some of its language based upon the tenant selection procedure from the Housing Authority of New Orleans (HANO), referenced by Legal Aid.

LMHA does not propose “blanket exclusions” based upon criminal history. No applicant with a criminal history is *automatically denied*. In fact, LMHA *proposes* denial of an applicant with a questionable criminal history and offers the applicant an opportunity for a hearing, i.e., an individualized assessment. No denial is made until after a hearing or after the opportunity for a hearing has passed.

LMHA will continue to include a 1-year look back for misdemeanors. Not every applicant is proposed for denial based upon a misdemeanor record. LMHA considers the nature, frequency and quantity of misdemeanors prior to proposing denial. For example, an applicant with only one misdemeanor conviction for a Dog At Large that occurred six months ago will not be proposed for denial. However, an applicant with 6 convictions for disorderly conduct in the past

year would be proposed for denial so that the hearing officer could learn more about the applicant's history during the hearing process.

Further, LMHA must not ignore the wishes and concerns of the other tenants in the community and the statutory obligation of LMHA to provide decent, safe and affordable housing.

Regarding the time to request a hearing, LMHA changed it to 14 business days. LMHA also added "Within five (5) business days of the hearing, LMHA must advise the applicant in writing of the final decision on eligibility."

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#### **COMMENT**

Administrative Policy Chapter 10, Section I, pages 128-129 Determination of Responsibility for extermination:

Legal Aid indicated that, per ORC §5321.04(A)(2), landlords have primary responsibility for extermination unless a tenant has intentionally or negligently caused the infestation.

#### **LMHA RESPONSE**

LMHA acknowledges this provision and amended the language to read:

"The owner shall exterminate vermin and other infestations as may be necessary to keep the premises in a fit and habitable condition; provided, however, that where an infestation is repeated and caused by housekeeping habits that were previously made known to the family by the owner or pest controller, it may be considered a lease violation and cause for eviction. The PHA may also terminate the family's assistance on that basis."

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#### **COMMENT**

Public Housing Extermination Program:

Legal Aid commented that some tenants will not physically be able to prepare for treatment and that "LMHA should offer to prepare a unit on behalf of the tenant as a reasonable accommodation."

#### **LMHA RESPONSE**

LMHA advised that if a person with a disability requests a reasonable accommodation for which there is a nexus, the LMHA will fulfill the request. LMHA cannot *offer* a reasonable accommodation, but can only reply to a request for a reasonable accommodation. LMHA has assisted tenants in extermination preparation.

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#### **COMMENT**

Language Access Plan:

Legal Aid "encourages the posting of this plan in LMHA's Main Office as well as online with other LMHA policies and referencing of it in the Annual Plan."

#### **LMHA RESPONSE**

LMHA will post its Language Access Plan as suggested and reference it in the Annual Plan.

LMHA has implemented procedures which are not specifically memorialized in any policy. As noted in the sample policy: "...the PHA shall determine whether it is necessary to develop a written implementation plan.... If the PHA determines that it is not necessary to develop a written implementation plan, the absence of a written plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to the PHA's housing programs and services."

LMHA has assessed the language needs of community and determined that the primary second language is Spanish. [Note also the statistics in the Annual Plan regarding races and ethnicities.]

LMHA seeks employees who can fluently speak, read and write Spanish. At least one employee in the Placement Department must be bilingual.

LMHA currently has at least 14 bilingual full-time employees among the 95 total fulltime employees. These employees work in the HCVP, Public Housing, Placement Department, Maintenance, Resident Services, and Procurement.

One employee is fluent in American Sign Language.

LMHA publicizes its TDD/TTY phone number.

LMHA translates several key/vital documents into Spanish utilizing the services of InterChez.

LMHA's website utilizes Google Translate.

LMHA provides free translation services via a third party (InterChez) to residents who attend court hearings.

LMHA's Language Access Plan follows:

Language for Limited English Proficiency Persons (LEP) can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by the Lorain Metropolitan Housing Authority (LMHA) housing programs. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI against discrimination on the basis of national origin. This part incorporates the Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Persons, published December 19, 2003 in the *Federal Register*.

LMHA will take affirmative steps to communicate with people who need services or information in a language other than English. These persons will be referred to as Persons with Limited English Proficiency (LEP).

LEP is defined as persons who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English. For the purposes of this Language

Access Plan (LAP), LEP persons are applicants, tenants, and participants, and parents and family members of applicants, tenants, and participants.

In order to determine the level of access needed by LEP persons, LMHA will balance the following four factors:

- (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the LMHA housing programs;
- (2) the frequency with which LEP persons come into contact with the programs;
- (3) the nature and importance of the program, activity, or service provided by the programs to people's lives; and
- (4) the resources available to LMHA and costs.

Balancing these four factors will ensure meaningful access by LEP persons to critical services while not imposing undue burdens on the LMHA.

### **ORAL INTERPRETATION**

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

LMHA hires interpreters from InterChez when necessary to provide a third party in court hearings.

LMHA will analyze the various kinds of contacts it has with the public, to assess language needs and decide what reasonable steps should be taken. "Reasonable steps" may not be reasonable where the costs imposed substantially exceed the benefits. Where feasible, LMHA will train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other PHAs, and will standardize documents.

Where LEP persons desire, they will be permitted to use, at their own expense, an interpreter of their own choosing, in place of or as a supplement to the free language services offered by LMHA. The interpreter may be a family member or friend.

### **WRITTEN TRANSLATION**

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

In order to comply with written-translation obligations, LMHA will take the following steps: LMHA will provide written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000 persons, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally.

If there are fewer than 50 persons in a language group that reaches the 5 percent trigger, LMHA does not translate vital written materials, but provides written notice in the primary language of

the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

LMHA utilizes the services of InterChez to ensure accurate translation of documents.

### **IMPLEMENTATION PLAN**

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

If LMHA determines that it is not necessary to develop a written implementation plan, the absence of a written plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to the LMHA's housing programs and services.

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

If LMHA determines it is appropriate to develop a written LEP plan, the following five steps will be taken:

- (1) Identifying LEP individuals who need language assistance;
- (2) identifying language assistance measures;
- (3) training staff;
- (4) providing notice to LEP persons; and
- (5) monitoring and updating the LEP plan.

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### **COMMENT**

LCEHC Tenant Selection Plan:

Legal Aid noted that the LCEHC Tenant Selection Plan which governs the administration of the multifamily properties Harr Plaza and International Plaza is not online or in the annual plan documents, though it is referenced in the ACOP.

### **LMHA RESPONSE**

LMHA provided a copy of the Tenant Selection Plan to Legal Aid at the hearing and will post it online. LMHA thanks Legal Aid for pointing out this oversight.