

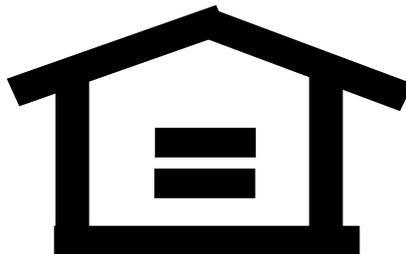
**CONTACT INFORMATION:**

135 NE Dunn Place  
McMinnville, OR 97128  
Phone: (503) 883-4300 Fax: (503) 472-4376  
1-888-434-6571 (Newberg, Dundee, Yamhill, Gaston)  
TDD 1(800) 735-2900

***POLICY ON  
REASONABLE ACCOMMODATION  
(Section 504)***

*for the*

*Housing Authority  
of Yamhill County, Oregon*



**EQUAL HOUSING  
OPPORTUNITY**

Adopted September 2000  
Revised September 2009  
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**POLICY ON REASONABLE ACCOMMODATION**  
**FOR THE HOUSING AUTHORITY**  
**OF YAMHILL COUNTY**  
**(HAYC)**

**Introduction**

HAYC complies with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988), Executive Order 11063, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Titles II and III of the Americans with Disabilities Act. HAYC will comply with any legislation and implementing rules and regulations, protecting the individual rights of residents, applicants, or staff that may subsequently be enacted.

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

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

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

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

exhaustive list; other life activities can also be major.

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

HAYC is committed to providing reasonable accommodations to qualified persons with disabilities so that the choice of living arrangements is, as a whole, comparable to other persons eligible for housing assistance under the same program. The policies and procedures outlined here apply to all properties owned and managed by HAYC and the Section 8 Voucher Program. The terms applicant and resident apply to applicants and participants in all these programs.

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

Resource materials used by HAYC as guidance in developing a policy and responding to reasonable accommodation requests and issues include:

- *The Public and Assisted Housing Occupancy Task Force to the Development of Housing and Urban Development*
- *Handbook on the Legal Obligations and Rights of Public and Assisted Housing Providers under Federal and State Fair Housing Law for Applicants and Tenants with Disabilities*
- *Handbook on the Rights and Responsibilities of Tenants with Certain Disabilities: Psychiatric, Alcohol or Drug Addiction and HIV/AIDS*
- *Americans with Disabilities Act, Title II Technical Assistance Manual*

Information regarding the availability of reasonable accommodations will be made available to applicants and residents during the admission and occupancy cycle specifically, at the time of application; with any notice of rejection; with any notice of lease violation or lease termination and with any notice of an initial determination of ineligibility. This type of information will also be provided at other times HAYC deems appropriate and will include educational opportunities for staff and residents. Forms and other documents used for

applicants and residents will, as much as is feasible, be written in plain, intelligible language. HAYC will present documents in alternative formats, provide auxiliary aids, or communicate with a third party designated by the applicant or resident.

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

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

### **Auxiliary Aids and Services**

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

Types of auxiliary aids and accommodations that HAYC readily supplies to applicants and residents include:

1. Providing additional explanation of program rules and requirements.
2. Offering information in accessible formats (e.g., large type) and in plain language.
3. Permitting rent payments and required communications to be mailed rather than delivered in person.
4. Providing auxiliary aids, such a pencil and paper for those with speech difficulties, Telecommunication Device for the Deaf (TDD), a sign language interpreter, or a reader.
5. Sending mail or making phone calls to a person designated, by the individual with disabilities, as a contact person.
6. Allowing the use of service animals.
7. Considering the impact of "mitigating circumstances" regarding the rejection of an applicant for housing or when terminating the lease or terminating housing assistance to a resident, when the applicant/resident has asked for such

consideration. (In applying this concept, HAYC will ask the applicant/resident to verify (a) that the applicant/resident does have a disability; (b) that the specific problem(s) is (are) caused by or occurred because of the disability or that the disability substantially contributes to the specific problem(s); and (c) that the present treatment, plan, or circumstances can reasonably be expected to prevent the recurrence of the problem(s).)

8. Reinstating applications of persons with disabilities, if the reason they did not respond in the required time was reasonably related to their disability.

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

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

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

### Essential Obligations of Tenancy

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

1. To pay rent and other charges under the lease in a timely manner.
2. To care for and avoid damaging the unit and common areas; to use facilities and equipment in a reasonable way; to create no health or safety hazards and to report maintenance needs;
3. Not to interfere with the rights and enjoyment of others and not to damage the property of others;
4. Not to engage in criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents or staff; not to engage in drug-related criminal activity on or off the premises; and,
5. To comply with necessary HUD and HAYC reasonable rules and program requirements and to comply with health and safety codes.

## Types of Actions Considered to Be a Fundamental Alteration

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

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

## **Reasonable Accommodation Process**

### **Notification to Applicants/Residents Regarding Reasonable Accommodation Requests**

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

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

Although the process for requesting a reasonable accommodation is standardized, each request will be treated uniquely. The results will be unique to the individual and the property and/or circumstances involved. Whenever possible, reasonable accommodation decisions will be made in a timely manner (within 10 working days) and both denials and agreements to make accommodations will be documented in writing. If applicable, forms and notifications will be provided in a format accessible to the resident or applicant. Any meetings required by this policy will be held in an accessible location.

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

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

1. All applicants, at the time of application, are provided with the opportunity to request help in filling out the application and are asked if they any type of reasonable accommodation. The Reasonable Accommodation form is available upon request and information is provided to applicants/residents at application, intake, notice of rejection, notice of lease violation, and notice of lease termination.
2. All residents will be notified of their right to request a Reasonable Accommodation at the time of re-certification, upon notice of lease violation, and upon notice of lease termination. The Request for Reasonable Accommodation form is provided with all re-certification packets and also upon request.
3. All responses to the Request Forms will be in writing and, if appropriate, in an alternative format intelligible to the person making the request.
4. Whenever possible, all decisions to grant or to deny reasonable accommodations will be communicated in writing (in the appropriate format as noted in #3 above) within 10 working days of the receipt of the request.

## **Determining Whether to Make the Accommodation**

1. Does the applicant/resident meet the definition of an Individual with Disabilities? (This can be determined through: the applicant(s)/resident(s) eligibility for SSI or SSDI benefits or using the standard Certification of Disability for Eligibility Purposes form.)
  1. If NO, HAYC is not obligated to make a reasonable accommodation, and may deny the request.
  2. If YES, go to step 2.
  3. If more information is needed, it will be requested and the applicant/resident will be notified of this request, using the standard Request for More Information or Verification Regarding Reasonable Accommodation Request form, or a meeting or discussion will be held to obtain additional information.
2. Is the requested accommodation related to the disability?
  1. If NO, HAYC is not obligated to make the accommodation, and may deny the request.
  2. If YES, go to step 3.

3. If more information is needed, either write for more information and notify the applicant/resident, using the standard Request for More Information or Verification regarding Reasonable Accommodation Request form, or request a meeting or discussion.
3. Is the requested accommodation reasonable? The **Guidelines For Determining Reasonableness** listed below will be followed in determining the reasonableness of the request.
  1. If YES, HAYC will approve the request for reasonable accommodation. A written description of the accommodation will be included in the approval letter.
  2. If NO, HAYC may deny the request or suggest/offer an alternative accommodation. The denial or suggestion/offer will be made in writing (in an accessible format, if requested).
  3. If more information is needed, either write for more information and notify the applicant/resident, using the standard Request for More Information or Verification regarding Reasonable Accommodation Request form, or request a meeting or discussion.

### **Guidelines for Determining Reasonableness**

1. If HAYC does not have enough information to approve or deny the requested accommodation, HAYC will request that the person with disabilities verify the need for an accommodation to enable access to, and use of, HAYC housing. A qualified individual can verify that the requested accommodation: (1) is related to the applicant(s)/resident(s) disability; and (b) would provide the applicant/resident with an equal opportunity to enjoy HAYC housing or that the applicant(s)/resident(s) disability restricts them from performing this task.
2. In most instances the judgment of the person with disabilities, that the requested accommodation is the most appropriate for him/her, will be accepted. However, HAYC retains the right to investigate alternatives to the requested accommodation, and/or alternative methods of providing the requested accommodation.
3. If a number of potential accommodations will satisfy the needs of the person with disabilities (and are equally effective), HAYC retains the right to select the accommodation, which is most convenient and cost-effective. This includes the option to select a change in procedure or policy, rather than to make a structural change, when the procedure change would be equally effective.
4. Does the requested accommodation constitute a fundamental alteration of the program? If so, the request will be denied.

5. Does the requested accommodation create undue financial and/or administrative burdens? If so, the request will be accommodated up to the extent that it can be met without creating undue burdens.

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

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

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

Applicants for, and residents of, housing owned and managed by HAYC, who have been denied reasonable accommodations are entitled to the applicable grievance procedures currently in place under program regulations for applicants denied housing.

For Section 8 Voucher applicants and participants, the procedures to be used regarding denial of a reasonable accommodation will be those outlined in the Complaints and Appeals: Informal Hearing Procedures section, contained in the *Section 8 Administrative Plan*.

### **Discontinuation of Reasonable Accommodation**

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

## **Pre-Application and Waiting List**

The pre-application form for all programs includes the following:

1. Statement that any individual with a disability who needs accommodation or assistance in making application at any time during the application process should inform the receptionist. We can assist applicants by providing: note taker, interpreter, TDD machine, someone to read, larger print, or when feasible, other assistance as requested by the applicant.
2. Question: "Is any Family member in need of a unit with special features to accommodate the special needs of his/her disability?" and "If yes, please explain".

The pre-application may be mailed to the applicant or picked up at the HAYC's office. If an applicant picks up a pre-application from a HAYC office, he/she will be asked if he/she needs assistance with filling out the form. HAYC accepts completed applications at the office or through the mail. Printed information about the various programs, and a statement of non-discrimination on the basis of race, color, national origin, religion, sex, physical or mental disability or familial status are a part of the pre-application packet. The Request for Reasonable Accommodation form is included with the pre-application packet and is also available to any applicant/resident at any time, at their request.

Each applicant is asked on the pre-application if they need a unit with special features. In the project-based programs, applicants are asked if they need a mobility accessible unit. Priority for a vacant unit with special features will be given first to residents who need those features and then to applicants who need those features. If there is no other resident or applicant on the waiting list needing these features, HAYC may house the next eligible, non-disabled applicant in the unit. HAYC will inform this family or individual, as a part of the HAYC Lease Agreement, that if another resident or eligible applicant needs the special features of that unit, then the non-disabled family/individual residing in the unit with special features will need to transfer to another unit, at their own expense.

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

## **Intake**

Applicants may be on the waiting list for many months. At the time their application comes to the top of the waiting list, and before providing assistance, HAYC will verify eligibility, income, family composition, need for special features, and other required information. In project-based and S8 Voucher programs, HAYC will verify the criminal history of all applicants and in project-based programs, this will also include verification of rental history.

As a part of the intake process, HAYC will verify the applicant's disability status as a

qualification for eligibility, deductions and allowances. Prior to housing an applicant in a unit with special features, HAYC will document the applicant's need for those features.

If an applicant for HAYC's project-based programs has a history of behavior or displays behavior, which as a resident, would result in a serious violation (or repeated minor violations) of the HAYC Lease Agreement, HAYC may determine the applicant ineligible. The notice of denial will include information regarding the right to request a reasonable accommodation. If the applicant requests it, HAYC will consider mitigating circumstances and a reasonable accommodation, which may enable the applicant to become lease compliant. The applicant, not HAYC, has the burden of documenting mitigating circumstances and any requests for reasonable accommodation. If such a request is made by a qualified individual with disabilities, HAYC will:

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

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

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

If HAYC determines that it is unlikely that the problem will recur with the requested reasonable accommodation in place, the applicant will be determined eligible. If HAYC determines that the requested reasonable accommodation is not likely to result in lease compliance, HAYC will determine the applicant to be ineligible.

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

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

### **Non-Traditional Rental History**

For project-based programs, HAYC will require all applicants to provide verification of ability to comply with the essential provisions of the HAYC Lease Agreement; specifically, an ability to pay rent, an ability to care for rental property, and an ability to get along with neighbors. In cases where the qualified applicant with disabilities is unable to provide acceptable landlord references because he/she was homeless, in a transitional facility, in a medical facility, living with family, or living in some other non-traditional living situation, and these periods were of significant duration, HAYC will ask for alternate references regarding the applicant's ability to comply with lease requirements. All applicants, who are unable to provide acceptable landlord references, whether they have disabilities or not, may provide alternate reference letters. HAYC will consider the information presented and if acceptable, determine the applicant eligible. If there is not enough information to make a reasonable judgment, HAYC will ask the applicant for additional information. If the documentation does not substantiate the applicant's ability to uphold the lease provisions, HAYC will determine the applicant to be ineligible. HAYC retains the right to be the final judge of what constitutes adequate and credible documentation.

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

Service or Assistance animals are considered auxiliary aids, and are not subject to additional requirements beyond those contained in the HAYC Lease Agreement. A seeing-eye dog or a dog trained to assist a hearing impaired person would be examples of service or assistance animals. Persons with disabilities may not be required to pay for costs associated with reasonable accommodations; therefore, HAYC will not charge a pet deposit or any other associated fees for a service/assistance animal kept in a development or building owned and managed by HAYC. HAYC will use the following steps when considering a request for reasonable accommodation, from applicants/residents with disabilities, to keep animals in developments or buildings, owned and managed by HAYC, with no-pet policies:

1. When an applicant/resident with a disability asserts and can verify that an animal is therapeutic for his/her disability, the applicant/resident should make a request for a reasonable accommodation; specifically, to be allowed to keep the animal.
2. HAYC may request verification that the applicant/resident is an Individual with a Disability. HAYC will also request verification that the animal has been trained to assist persons with that specific disability.
3. If both verifications are provided, and the animal actually assists the person with a disability, then the animal is a "service animal". Service animals are equivalent to other "auxiliary aids" such as wheelchairs and eyeglasses, and as such will be

permitted.

4. If, on the other hand, the animal does not have specific disability-related training but is necessary in coping with the disability (for instance, if the animal provides emotional support to a person with a panic disorder), the animal is considered a "companion animal"--not a "service animal"--and a request to keep such an animal will be considered under HAYC's standard reasonable accommodation procedure.
5. The resident will be responsible for the animal's care and the animal must be kept in a manner, which does not violate the HAYC Lease Agreement.
6. If, subsequently, the animal or its care poses a public health problem or results in a lease violation, the problem will be addressed, under the terms of the HAYC Lease Agreement. HAYC may send the resident a Notice of Lease Violation.
7. Reasonable accommodations to allow animals, other than service or assistance animals, in support of a disability, will be subject to reasonable rules (see HAYC's "Pet Policy"); however, a pet deposit will not be required for authorized companion animals.

### **Criminal Activity as Grounds for Evictions/Termination of Rental Assistance**

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

- Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees; or
- Any drug-related criminal activity on or off premises owned and managed by HAYC or covered under HAYC's rental assistance program. Crimes, which pose threats to residents or management staff, are grounds for eviction regardless of where they occur.

Any criminal activity in violation of the preceding statements shall be cause for termination of tenancy/assistance, and for eviction from the HAYC owned and managed unit. Thus, drug-related activity, which does not threaten other residents, is still grounds for eviction if it takes place on or off premises owned and managed by HAYC or covered under HAYC's rental assistance program.

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

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

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

If the resident is an Individual with a Disability and requests a reasonable accommodation, which would allow him/her to comply with his/her HAYC Lease Agreement or Section 8 Voucher, HAYC will require the resident to document the request in accordance with the standard reasonable accommodation procedures. In order to prevent the eviction/termination, the resident would need to prove, to HAYC's satisfaction, that the behavior causing the eviction/termination was substantially related to the resident's disability, and that, because of some change in treatment, services, or other verified facts, the behavior will not recur. HAYC must determine if the mitigating circumstances and requested reasonable accommodation outweigh the unfavorable information or action.

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

When giving a resident a Notice of Eviction/Termination of Assistance, HAYC shall assure that the Notice will:

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

The policy regarding Evictions, Informal Settlement Discussions, and Formal Hearings is outlined in the HAYC *Statement of Policy*, "Grievance Procedure." Residents being evicted from housing owned and managed by HAYC are entitled to use HAYC's grievance procedures. However, these grievance procedures do not apply to:

1. Any attempt to initiate or negotiate HAYC policy changes.
2. Any dispute between residents, which does not involve their rental agreement or

any HAYC regulation.

3. Eviction/Termination of Assistance for any action or inaction of a resident, or someone in the resident's control, that endangers the health or safety or right to peaceful enjoyment of the premises, of HAYC employees, neighbors or other residents. Any resident or someone in the resident's control who commits any act outrageous in the extreme.
4. Eviction/Termination of Assistance for any action or inaction of the resident involving drug-related criminal activity on or off any premises owned and managed by HAYC or covered under HAYC's rental assistance program.
5. Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises or other residents or HAYC employees. [24 CFR 966.51 (2)(i)(A)] Residents grieving the types of activities listed in this section of the CFR may be excluded from all grievance proceedings or from the right to request a Formal Hearing.

If the resident believes that his/her lease violation/termination of assistance is related to his/her disability, he/she may request a reasonable accommodation, which would enable him/her to comply with his/her HAYC Agreement. In reviewing the reasonable accommodation request HAYC will consider the following, at a minimum: Does the resident meet the definition of an Individual with a Disability? Did the resident's disability substantially contribute to the violation? What is the likelihood that the requested reasonable accommodation would result in compliance (e.g., not using illegal drugs, paying rent on time, respecting the rights of others, etc.)? What is the seriousness of the violation? Does the requested reasonable accommodation, in fact, overcome the violation?

### **Former Users of Illegal Drugs**

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

Drug-related criminal activity does **not** include use or possession of illegal drugs, if the applicant/resident can demonstrate that he/she:

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

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

1. Has successfully completed a supervised drug rehabilitation program and is no

longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

2. is participating in a supervised rehabilitation program and is no longer engaging in such use; or
3. is erroneously regarded as engaging in such use, but is not engaging in such use.

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

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

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

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

When an applicant/resident has a history of drug rehabilitation/treatment followed by recidivism, or is currently in treatment (as opposed to having completed treatment), more documentation may be necessary to convince a reasonable person that the applicant/resident is not a current user of illegal drugs. The applicant/resident may be required to show in what ways (1) his/her current situation, and (2) his/her claim to be a former illegal user of a controlled substance, and (3) his/her claim to be able to comply with the essential terms of the HAYC Lease Agreement or other housing program requirements, is different from previously unsuccessful efforts to stop illegally using a controlled substance. In all situations, in which an applicant/resident claims to be an Individual with a Disability, due to former illegal drug use, HAYC will determine the reliability and validity of information/verifications provided with the request for reasonable accommodation. HAYC will make a determination of approving or denying the reasonable accommodation request and a determination of eligibility for housing assistance accordingly.

## **Alcoholism**

HAYC will not discriminate against someone solely because he/she is a person with alcoholism.

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

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

## **Policies Specific to Housing Vouchers**

HAYC will:

1. When providing notice of the availability and nature of housing assistance for low-income families under program requirements, assure that the notice reaches eligible individuals with disabilities.
2. Encourage participation by owners, including encouragement of participation by owners having accessible units.
3. When issuing a Housing Voucher to a family, which includes an Individual with a Disability, include a current listing of available accessible units known to HAYC and, if necessary, otherwise assist the family in locating an available accessible dwelling

unit, to the extent feasible.

4. Take into account the special problem of ability to locate an accessible unit when considering requests by eligible individuals with disabilities for extensions of Housing Vouchers; and,
5. If appropriate, HAYC will make a determination of whether to request HUD to approve an exception to the Fair Market Rents to allow Housing Voucher holders to rent accessible units and/or whether to request an extension of a Voucher beyond 120 days. Housing Voucher holders may request a reasonable accommodation, in the form of an extension beyond 120 days, by following the standard reasonable accommodation request procedure. The request for extension must be made prior to the expiration of the Voucher.
6. In programs for which the Housing Authority is the program administrator, it will make reasonable attempts to negotiate with the owner to make modifications to a dwelling unit, which are necessary to provide access to a tenant. The Housing Authority will request that the owner make the necessary modifications and will seek HUD approval to increase the reasonable Gross Rent as much as 20 percent above the applicable Fair Market Rent to compensate the owner for such modifications.

## **Appendix**

Forms included in the Appendix are:

- ❖ Notice of Right to Reasonable Accommodation
- ❖ Request for Reasonable Accommodation
- ❖ Reasonable Accommodation Verification
- ❖ Request for More Information Or Verification Regarding Reasonable Accommodation Request
- ❖ Letter For A Meeting About Reasonable Accommodation
- ❖ Reasonable Accommodation Approval Notice
- ❖ Notification of Denial of Reasonable Accommodation Request
- ❖ Reasonable Accommodation Request for Extension of Section 8 Voucher (Fact Sheet)