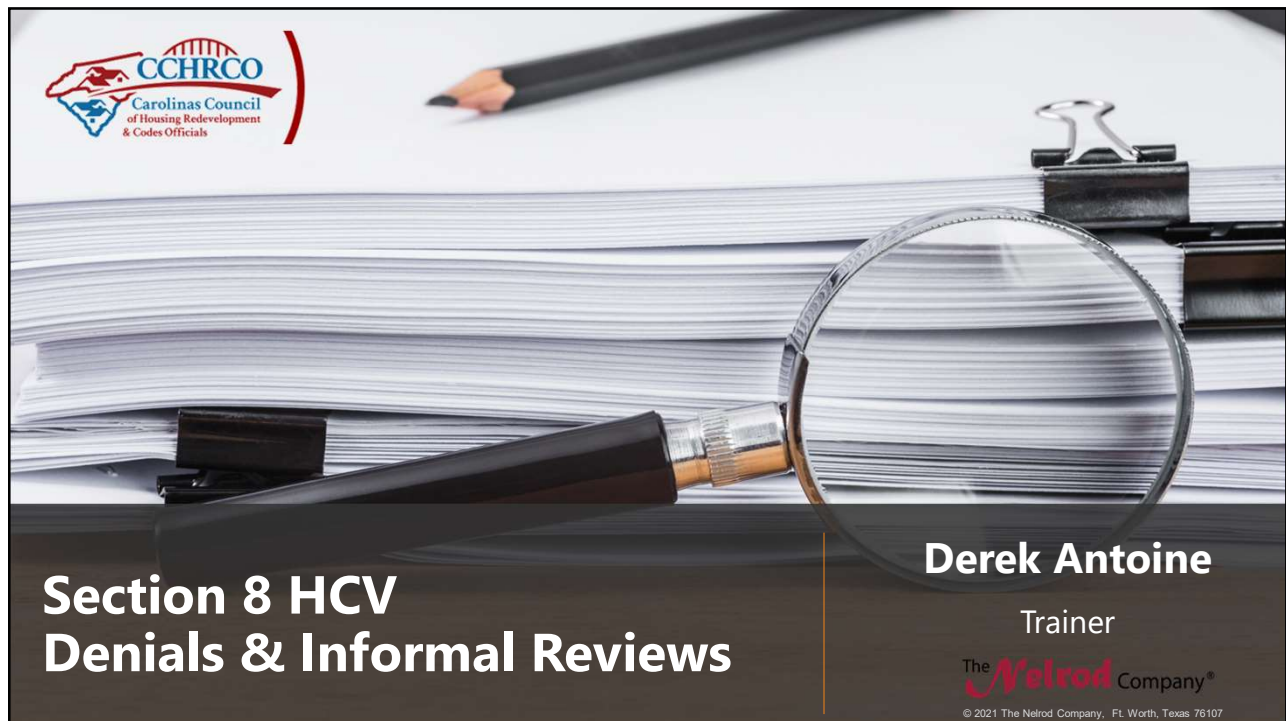



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 CCHRCO  
Carolinas Council  
of Housing Redevelopment  
& Codes Officials

**Section 8 HCV  
Denials & Informal Reviews**

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Trainer

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## Denial of Assistance

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- PHAs may deny assistance for applicants because of the family's actions or failure to act
- Consider all relevant circumstances
- Admin Plan indicates PHA procedures

## Family Obligations

*24 CFR 982.551*



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Must supply any information that the PHA or HUD determines is necessary, including submission of required evidence of citizenship or eligible immigration status

Must supply any information requested by the PHA or HUD for use in a regularly scheduled reexam of family income and composition

Must disclose and verify SSNs

Must sign and submit consent forms for obtaining information

Any information supplied by the family must be true and complete

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Responsible for HQS breach from family

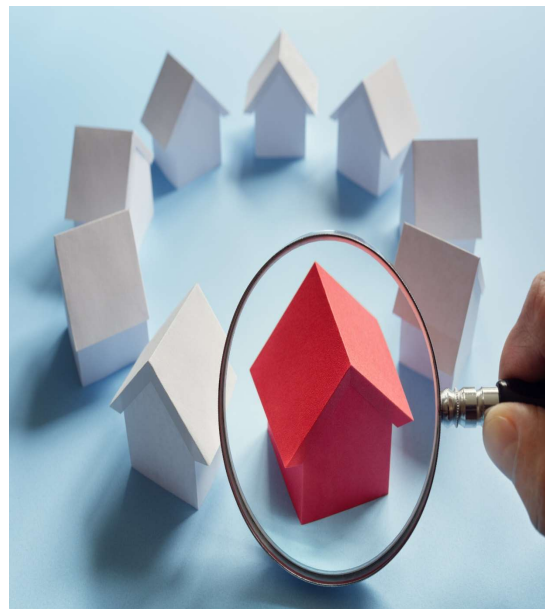
Must allow the PHA to inspect the unit at reasonable times and after reasonable notice

May not commit any serious or repeated violation of the lease

Must notify the PHA and Owner before moving out of the unit or terminating the lease without notice to the owner

*(VAWA is acceptable for both obligations)*

Must promptly give the PHA a copy of any owner eviction notice



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The composition of the family must be approved by the PHA

The family must promptly inform the PHA of the birth, adoption or court-awarded custody of a child

The family must request PHA approval to add any other family member

If the PHA has given approval, a foster child or live-in aide may reside in the unit

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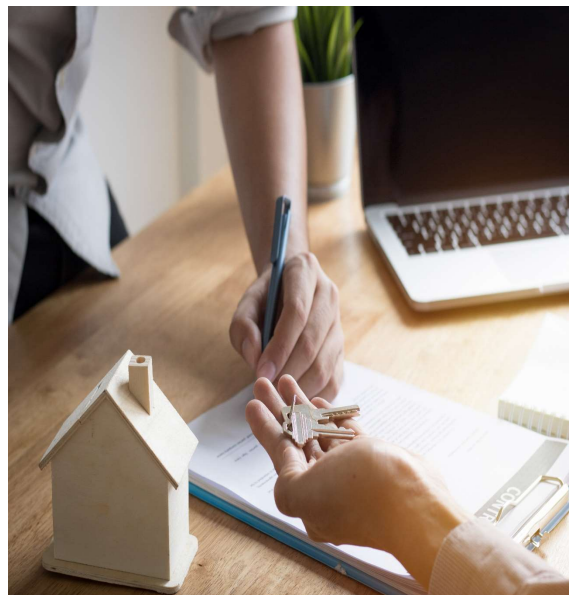
The family must use the assisted unit for residence by the family

The unit must be the family's only unit

The family must not sublease or let the unit

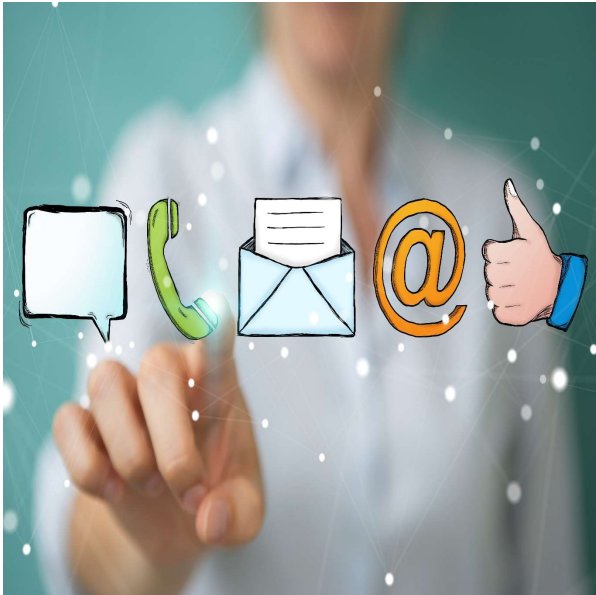
The family must not assign the lease or transfer the unit

The family must not own or have any interest in the unit



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The family must promptly notify the PHA if any family member no longer resides in the unit

The family must promptly notify the PHA of absence from the unit

The family must supply any information or certification requested by the PHA to verify that the family is living in the unit, or relating to family absence from the unit, including any PHA-requested information or certification on the purposes of family absences

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An assisted family, or members of the family, may not receive Section 8 tenant-based assistance while receiving another housing subsidy, for the same unit or for a different unit, under any duplicative federal, State or local housing assistance program

Members of the household may engage in legal profitmaking activities in the unit

The members of the family must not commit fraud, bribery or any other corrupt or criminal act in connection with the programs

The members of the household must not abuse alcohol in a way that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises



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The members of the household may not engage in:

*Drug-related criminal activity, or*

*Violent criminal activity, or*

*Other criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises*

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## Definitions

### Drug

A **controlled substance** as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)

### Drug-Related Criminal Activity

The **illegal manufacture, sale, distribution, or use** of a drug, or the **possession** of a drug with **intent** to manufacture, sell, distribute or **use** the drug

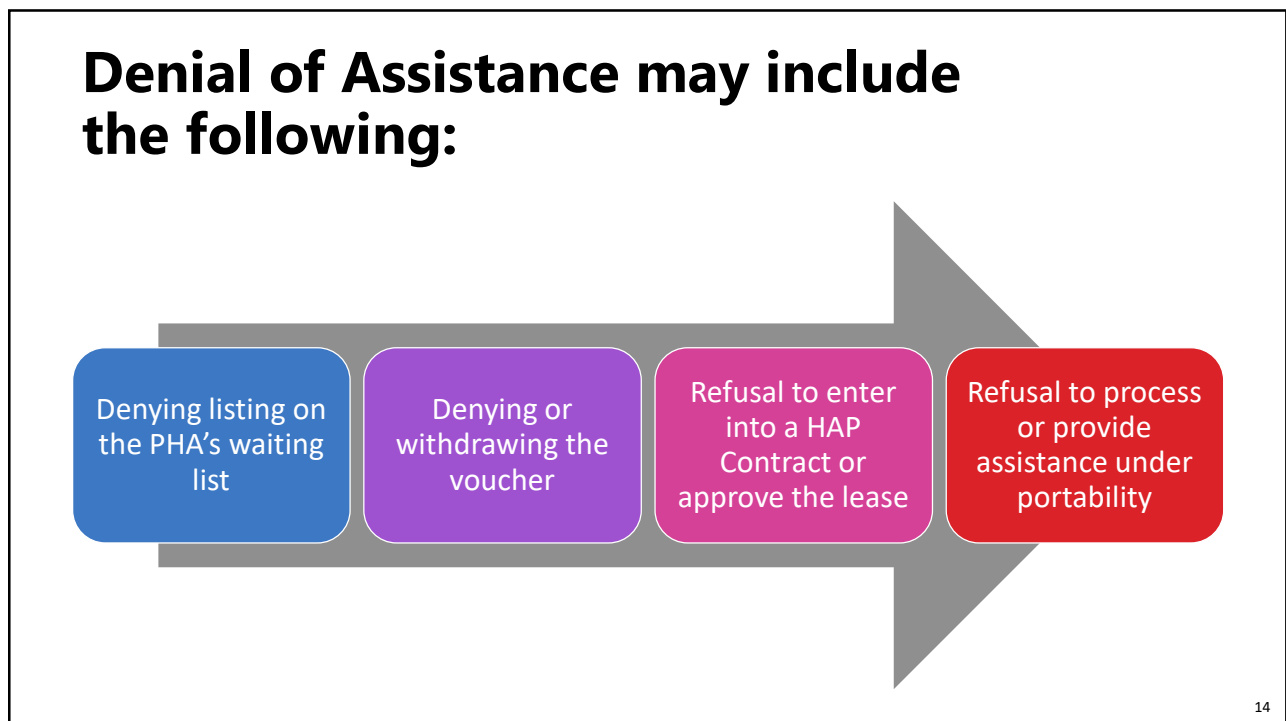
### Currently Engaging In

Means that the individual has engaged in the behavior **recently enough** to justify a reasonable belief that the individual's behavior is current

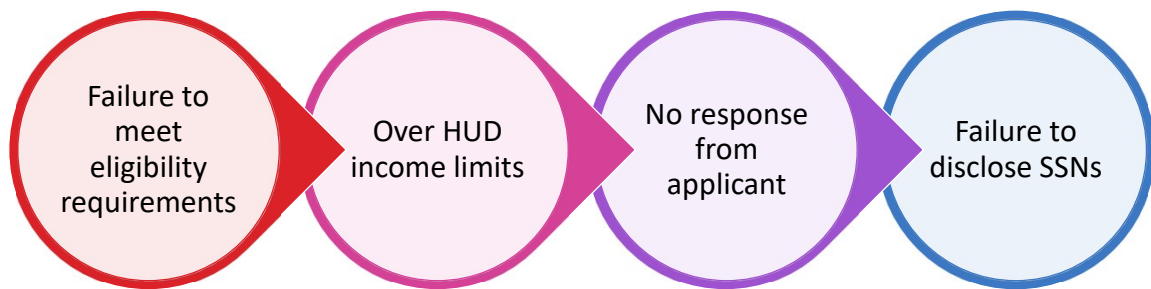
### Violent Criminal Activity

Means any criminal activity that has as one of its elements the **use, attempted use, or threatened use** of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage

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## Mandatory Denials



### **Mandatory Denials**

Persons evicted for drug-related criminal activity from federally assisted housing for **3 years** from date of eviction



## Mandatory Denials

If any family member fails to sign/submit consent forms for obtaining information

Failure to submit required evidence of citizenship or eligible immigration status

Failure to meet eligibility requirements as an individual enrolled at an institution of higher education

Any household member has ever been convicted of production of methamphetamine on federally assisted housing premises

Any household member is currently engaging in illegal use of a drug

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## Mandatory Denials

If any member of the household is subject to a lifetime registration requirement under a state sex offender registration program

If any member of the household whom the PHA determines that it has reasonable cause to believe is involved in illegal drug use, pattern of illegal drug use, or alcohol abuse that is a threat to others

PHAs **must perform** the lifetime registration requirement under a state sex offender registration program criminal background check in the state where the housing is located and in other states where the household members are known to have resided

The statute provides that rehabilitation of the member can render the household eligible

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## Permissive Denials of Admission

PHAs may prohibit admission of a household to the program if the PHA determines that **any** household member is currently engaged in, or has engaged in **during a reasonable time** before the admission:

*Drug-related criminal activity;*

*Violent criminal activity;*

*Other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or*

*Other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor or agent)*

## Permissive Denials of Admission

## Permissive Denials



PHAs may establish a period “reasonable time” before admission that an applicant may not have engaged in the specific activities



How long is a “reasonable time?”



Permissive Denials must be addressed in Admin Plan

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## Authorized Denials

Violation of any family obligation

Any member of family evicted from federally assisted housing in last 5 years

If a PHA has ever terminated assistance under the program for any member of the family

Any member of family has committed fraud, bribery, or other corrupt/criminal act in connection with any Federal housing program

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## Authorized Denials

Family currently owes rent or other amounts to the PHA or another PHA

Family has not reimbursed any PHA for amounts paid to an owner under HAP contract for rent, damages, or other amounts under the lease

Family breaches an agreement with PHA to pay amounts owed to PHA or owner

The family has engaged in or threatened abusive or violent behavior toward PHA personnel

If the family has been engaged in criminal activity or alcohol abuse

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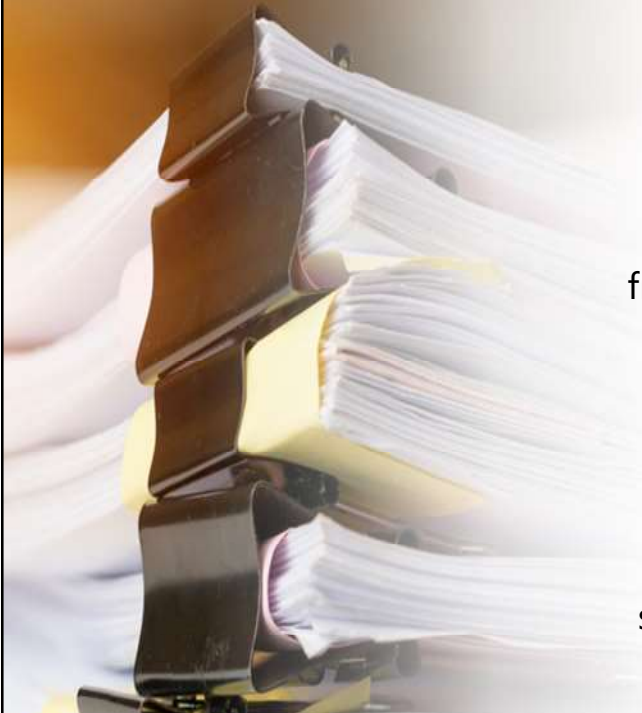
## Use of Arrest Records

Arrest records may not be the basis for denying admission

The fact that an individual was arrested is not evidence that he/she has engaged in criminal activity

Arrest records are often inaccurate or incomplete

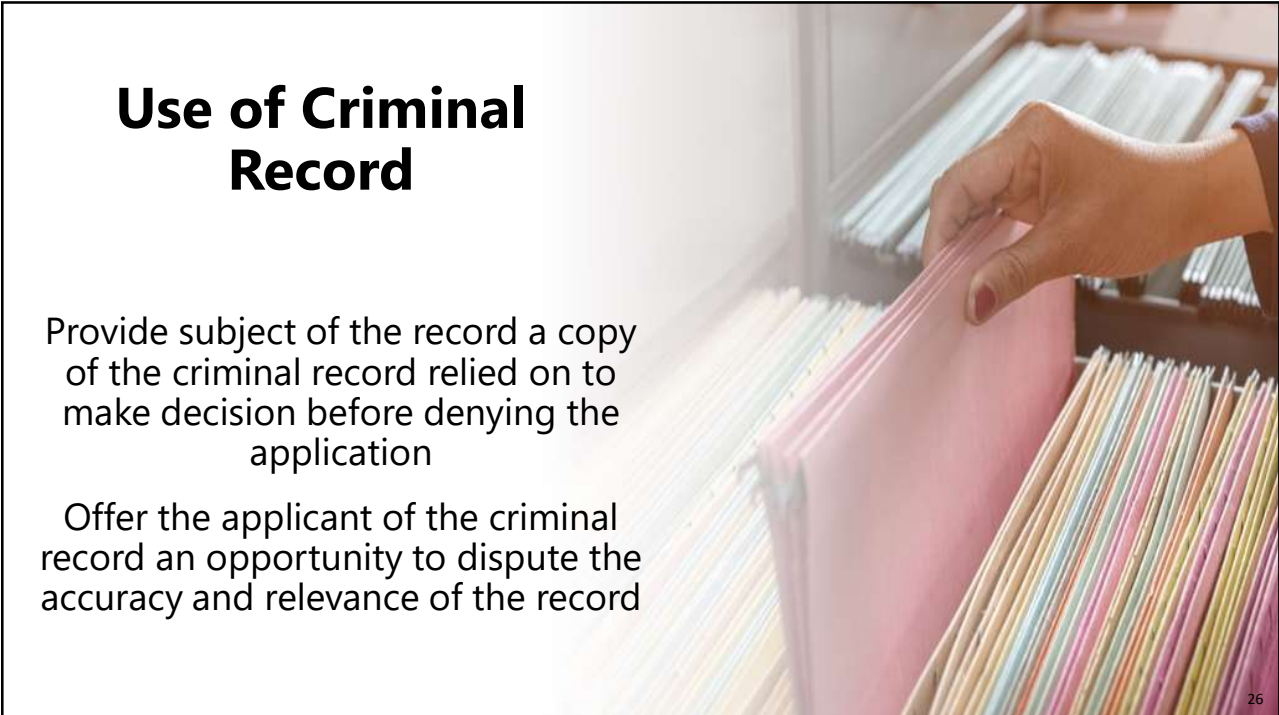




## What PHAs can do...

- Request a deposition of the case from the applicant/participant or the court itself
- Use arrest records to compile a "preponderance of evidence"
- Use arrest records, or other public sourced information, to trigger an inquiry into whether there is sufficient evidence to pursue denial of admissions

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## Use of Criminal Record

- Provide subject of the record a copy of the criminal record relied on to make decision before denying the application
- Offer the applicant of the criminal record an opportunity to dispute the accuracy and relevance of the record

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## Use of Criminal Record

Explain how to request an Informal Review to contest decision and timeframe for request

State that an applicant with a disability may request a reasonable accommodation to participate in the Informal Review

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Do not maintain criminal conviction and drug-related records in the applicant's file folder

File all criminal conviction and drug-related records in the Supervisor's area under lock

Destroy criminal history reports after the last date the applicant could obtain an Informal Review to dispute information contained in these reports

## Criminal & Drug Activity Records



## Ensure compliance with the Fair Credit Reporting Act (FCRA)

If criminal background check was obtained from a tenant screening agency, the FCRA requirements apply:

*PHA must provide name, address and phone number of agency providing info*

*Any appeals about results of search is conducted through the tenant screening agency*

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## File disclosure by reporting agency – free if:

*Adverse action has been taken due to info provided;*

*Victim of identity theft and place a fraud alert in file;*

*File contains info as a result of fraud;*

*If applicant is on public assistance; or*

*If applicant is unemployed*



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Individual circumstances of each applicant

The relationship between the offense and the safety and security of other program participants

How long ago the offense occurred

Mitigating circumstances/likelihood of reoccurrence

## **What to Consider Before Denying Admissions**

## What to Consider Before Denying Admissions

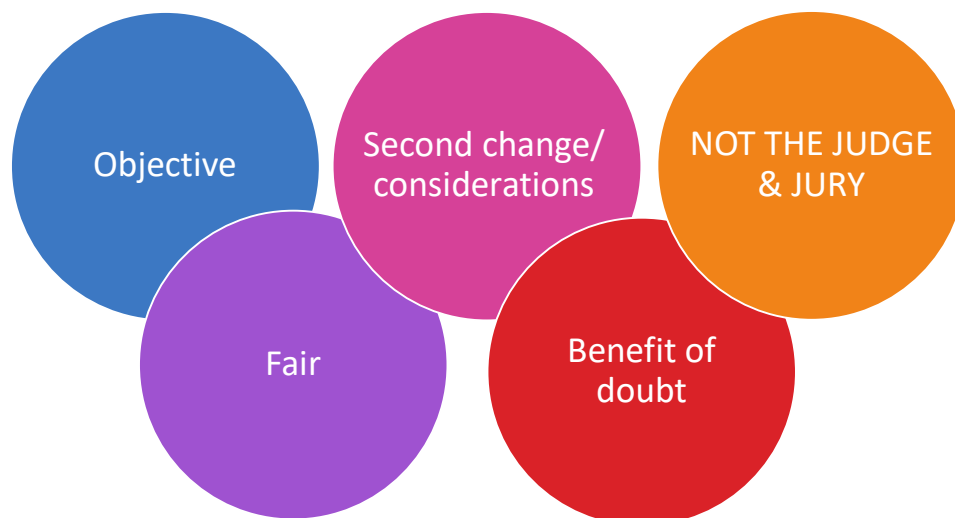
Culpability of current family members

Successful completion of a supervised drug or alcohol rehab program

Reasonable accommodation if related to a disability

Victims of VAWA crimes

## Mindset/Approach



## Contents of the Denial Notice

Brief statement of the reason for the decision

Advise the family if the family does not agree with the decision, that the family may request an Informal Review of the decision

Advise of the PHA's Informal Review procedures

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## Contents of the Denial Notice

Describe how the family can request an Informal Review

Deadline to request an Informal Review

Information regarding requesting reasonable accommodations

VAWA Notice of Occupancy Rights (HUD-5380) and Certification form (HUD-5382)

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## Contents of the Denial Notice

### Representation:

*The family may be represented by an attorney or any other person at the family's expense*

### Evidence:

*The PHA and family must be given an opportunity to present and ask questions to any witness*

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## Contents of the Denial Notice

### Discovery:

The family must be given the opportunity to review/examine any PHA documents which are directly relevant to the Informal Review prior to the Informal Review date

The discovery procedures also apply to the PHA

If the either party does not make the documents available upon request, the party cannot rely on the documents at the Informal Review

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## Informal Reviews

24 CFR 982.554

### Informal Review

The purpose of the Informal Review is to determine solely based on the preponderance of the evidence presented during the Informal Review, if the PHA acted or failed to act in compliance with HUD regulations and PHA program rules

Admin Plan must state the PHA procedures for conducting the Informal Reviews

## Informal Review

The PHA must give an **applicant** an opportunity for an Informal Review of the PHA's decision to deny assistance

The PHA **must** provide the applicant the opportunity to request an Informal Review prior to acting on the its decision

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## Informal Review

**NOT REQUIRED**

- Discretionary administrative determinations by the PHA
- General policy issues or class grievances
- A determination of the family unit size under the PHA subsidy standards
- A PHA determination not to approve an extension of a voucher term

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## Informal Review



- A PHA determination not to grant approval of tenancy
- A PHA determination that a unit selected by the applicant is not in compliance with HQS
- A PHA determination that the unit is not in accordance with HQS because of the family size or composition

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## Informal Review

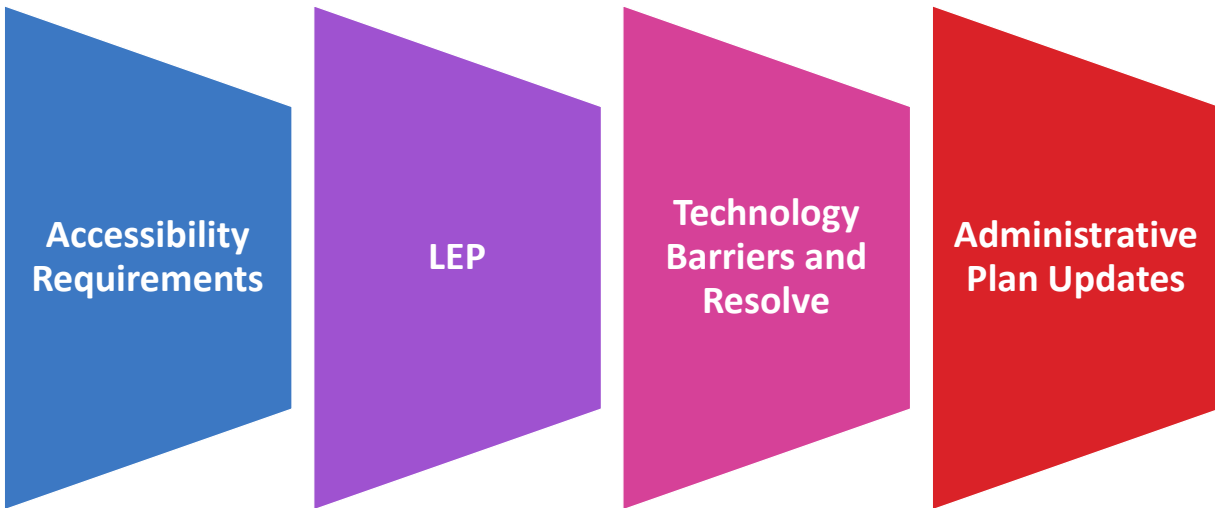
When an Informal Review is required, PHA must proceed with the Informal Review in a reasonably expeditiously manner upon request by the family

The PHA should provide enough time to conduct the Informal Review and ensure the venue is appropriately set-up, confidential, and will accommodate any request for reasonable accommodation

The PHA should have a "No Show" policy

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## Remote Informal Review



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## Hearing Officer/Panel

- The Informal Review may be conducted by any impartial person or persons designed by the PHA other than the person who made or approved the decision or a subordinate of this person
- The Informal Review will be conducted in accordance with the PHA's Hearing Procedures in Admin Plan

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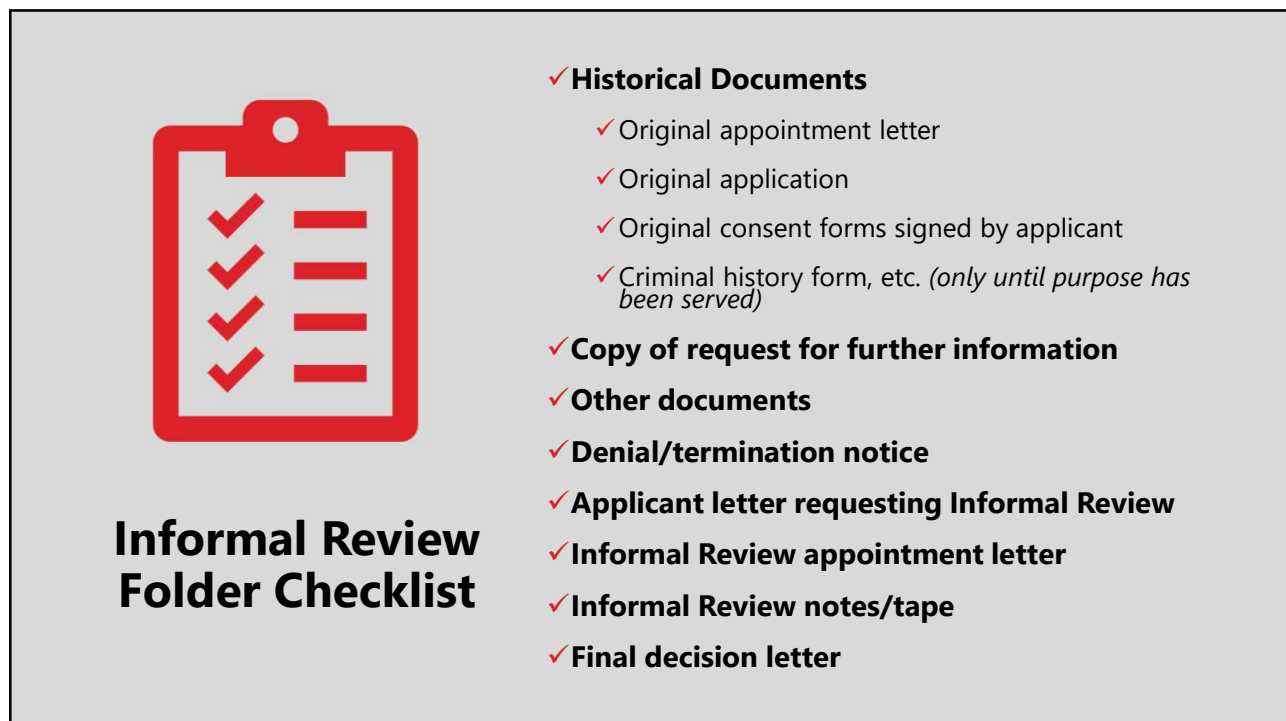
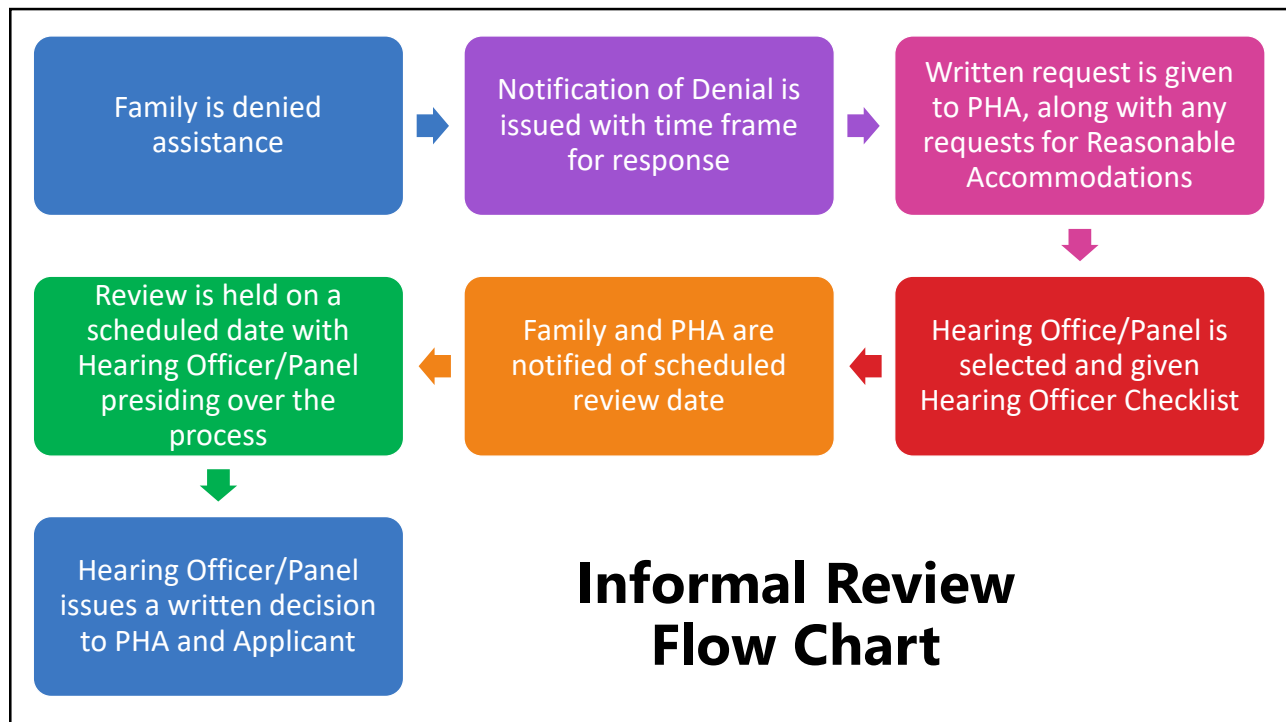


## Issuance of Decision

- Within a "reasonable timeframe", determined by the PHA, the Hearing Officer will prepare the written decision, which must include a brief statement of the reasons for the decision
- Both the family and the PHA will be notified of the decision

## The PHA is not Bound by an Informal Review Decision:

- Concerning a matter for which the PHA is not required to provide an opportunity for an Informal Review
- Or otherwise exceeds the authority of the person conducting the Informal Review under the PHA hearing procedures
- Contrary to HUD regulations or requirements or federal, state or local law
- If PHA determines that it is not bound by Informal Review decision, the **PHA must promptly notify** the family of that determination and of the reasons for the determination





## **Who Can Access Records?**

PHA employees, or representatives (*i.e., Hearing Officer*) who have job-related need to access to info

Third parties and contractors with reason to access (*i.e., IA file reviews, contracted Hearing Officer*)

*Make sure PIH Notice 2015-06 is followed*



## Who Can Access Records?

No criminal conviction or drug-related records in the applicant file

These records to be filed in supervisor's area under lock

*Only those that require access can obtain or request as needed*



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## Records Retention

PHAs must keep the following records for at least **3 years**

*Records that provide income, racial, ethnic, gender, and disability status data on program applicants*

*An application from each ineligible family and notice that the applicant is not eligible*



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## Records Retention

All records are to be maintained for a period of at least **3 years or longer** from the effective date of the action

PHAs are required to maintain at a minimum, the last **3 years** of forms HUD-50058 and supporting documentation for all regular and interim reexaminations of family income



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## Records Retention

The PHA's record retention policy will determine the length of time the PHA should maintain EIV printouts in the tenant file

EIV printouts...**should** be locked...and destroyed when not needed

PHAs are authorized to maintain the EIV Income and other reports in the tenant file for the duration of tenancy and no longer than **3 years** from the EOP date



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## Records Retention

The PHA must keep all denial of assistance documents related to immigration status for a minimum of **5 years**

*These include any applications for initial assistance*



## When Can You Destroy?

Criminal records must be:

Maintained confidentially

Not misused or improperly disseminated

Destroyed, once the purpose(s) for which the record was requested has been accomplished

*Includes timeframe to contest PHA decision (Informal Reviews)*





Thank You!



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