



**BOSTON HOUSING AUTHORITY
LEASED HOUSING DIVISION
REASONABLE ACCOMMODATIONS
IN RENTAL ASSISTANCE
POLICIES & PROCEDURES**

February, 2001



It is the Boston Housing Authority's Leased Housing Division policy to provide "reasonable accommodation" for Section 8 program Clients who are individuals with a disability¹ where reasonable accommodation is necessary to provide such Clients with an equal opportunity to use and enjoy the Division's programs and facilities. (The term "Client" as used in this policy shall refer to a Section 8 program Applicant and/or Participant. See definitions of the terms used in this Appendix A in Part IV. Definitions of this Appendix A.) This policy is in furtherance of the Division's goal of providing rental assistance to low income persons regardless of disability and said policy is in compliance with applicable federal, state, and local law. A "reasonable accommodation" is a modification or change the Division can make to its procedures and rules which would assist an otherwise eligible person with a disability to benefit from Division programs, provided that the change does not pose an undue financial and administrative burden to the Division or result in a fundamental alteration of its program.

This Reasonable Accommodation in Rental Assistance Policies and Procedures (RARAPP) for the Leased Housing Division applies to Clients who are qualified "individuals with a disability" as set forth in this policy. The Division will require reliable documentation or verification of the disability, that the individual needs the accommodation, and that the accommodation meets the criteria for reasonable accommodation outlined in this RARAPP and will not constitute a fundamental alteration in itself. The Division will thoroughly and promptly consider any request for a reasonable accommodation, and will explain the basis for any denial as well as the right to appeal such denial, to the individual who has made such a request. In the course of evaluating and responding to a reasonable accommodation request, the Division will thoroughly discuss such requests with the Client. This dialogue will also entail discussions relating to problem solving for the Client.

These procedures are designed to inform and assist Division employees in identifying, determining and implementing reasonable accommodations for Clients with a disability where appropriate. Such policies, procedures and information are available for and review by program Clients upon request.

POLICY GUIDELINES

The following policy guidelines shall be in effect for assessing requests for reasonable accommodation by Clients with a disability. These guidelines are not intended to be an exhaustive compilation of rules or policies governing assessment by the Division of requests for reasonable accommodation. If any conflicts exist or arise between these guidelines and guidance issued by the U.S. Department of Housing and Urban Development, or existing or future statutes,

¹ For the purpose of Reasonable Accommodation in Rental Assistance Program(s) Procedures (RARAPP) and the policy guidelines, the preferred term "disability" includes within its scope the term "handicap".

regulations, or other legal requirements, the Division shall adhere to such changes and requirements.

I. General Principles

- A. The Division will assume that the person requesting a reasonable accommodation is an expert with respect to his/her own disability and the accommodation that is necessary to accommodate such a situation. The Division will also assume as an initial matter that the information the person provides regarding his/her own needs is accurate and the method proposed for accommodating those needs is the most appropriate for one to pursue. The Division will seek from the person documentation and/or other verification of the effect of the disability on the person and the method(s) proposed to accommodate such a situation. The Division may also seek expert advice from medical professional or qualified service provider as to the needs of the person in question and alternative methods of accommodating those needs.
- B. Procedures for evaluating requests for reasonable accommodation and responding to those requests should take place in the context of a cooperative relationship between the Division and the Client. The process is not an adversarial one.
- C. Reasonable accommodation shall be focused on the individual Client and designed to address each person's situation.
- D. The Division will base its decisions on whether the requested accommodation meets the criteria for reasonable accommodation outlined in this RARAPP by removing barriers that interfere with a client's disability, and will not constitute a fundamental alteration in itself, so as to ensure better utilization of the program's resources.

II. Overview of the Procedures

- A. This policy implements procedures through which Clients may request a reasonable accommodation. The process for making such requests will be accessible to all persons. All communications that are a part of the process should be in plain language that the individual Client can understand, in a format that is appropriate with respect to meeting the needs of the person with disability. If necessary, a format other than written documentation may be necessary for use in certain cases.
- B. Notice of the option to request a reasonable accommodation is available to all persons served by the Division ("Clients"), whether such persons are applying for rental assistance, ("Applicants") or are

currently assisted (“Participants”). A form for requesting a reasonable accommodation is provided for this purpose. See Part IV. Definitions for further clarification regarding the terms used within this RARAPP.

- C. Any meetings that must be held concerning a Client’s request for reasonable accommodation shall be held in a location accessible to the Client.
- D. Decisions on requests for reasonable accommodation shall be made within thirty (30) days after the date on which the application is complete. If the Division requests that a Client supply additional information that is reasonably necessary for the Division to make a decision on the Client’s request for an accommodation, the Client should provide the requested information, or otherwise respond to the Division’s request within a reasonable time period. If the Division denies a request for a reasonable accommodation, it must explain to the Client in writing the basis for its decision and the reason(s) why the request is being denied.
- E. If any staff member of the Division decides to deny a request for reasonable accommodation, this decision shall be reviewed by at least one (1) supervisory official, who shall document, in writing, his or her approval or disapproval of the decision to deny the request.
- F. The Division shall keep written records in Client files of its decisions to grant or deny any request for reasonable accommodation for a period of no less than seven (7) years from the date of the request.
- G. This policy implements procedures, consistent with applicable law, in which the Division maintains information related to the nature or effects of the Client’s disability, which is supplied by the Client, confidential and available only to persons within the Division who are directly involved in decisions regarding the request for reasonable accommodation.

III. Assessment of Requests

- A. Unless the Division can identify specific reasons for doing otherwise, the Division should accept the judgment of a Client that an accommodation is needed, and that the requested accommodation is reasonable. In determining whether reasons for denial exist, the Division may obtain or require verification of the reasons that substantiate justification for an accommodation.
- B. In assessing requests for reasonable accommodation, the Division shall consider the factors set forth below, in making its determination of

whether or not to grant the request. If at any stage in the assessment process the Division determines that it requires additional information from the Client to make its determination, the Division shall so inform the Client in writing. In appropriate situations, the Division may request that a Client provide documentation from a medical or rehabilitational professional or qualified non-medical service agency whose function is to provide services to the disabled concerning the Client's disability and the relationship of the requested accommodation to that disability. The Division may include in its written communication to the Client notice of a reasonable deadline for submission of the information to the Division. Under no circumstances shall the Division deny a request for reasonable accommodation based on a lack of sufficient information without first informing the Client of its need for additional information and affording the Client a reasonable opportunity to provide it.

Determinative Factors:

1. Whether the Client is a qualified "individual with a disability".
2. Whether the requested accommodation is related to the disability.
3. Whether the requested accommodation is "reasonable". A request for an accommodation shall be considered to be "reasonable" as long as it does not create an undue financial hardship and administrative burden or constitute a fundamental alteration in a rental assistance program.
 - a. The determination of whether an accommodation constitutes an undue financial and administrative burden shall be made on a case by case basis, taking into account the circumstances and resources available at the time of the decision.
 - b. If granting the requested accommodation would create an undue financial and administrative burden, the Division shall comply with the request to the extent it can do so without undergoing undue burden(s) as described above.
 - c. If granting the requested accommodation would constitute a fundamental alteration in the rental assistance program, the Division may deny the request.
 - d. Each request for an accommodation should be considered as an individual request and should be granted if the particular accommodation requested meets the criteria outlined above and will not constitute a fundamental alteration in itself. The fact that granting an accommodation for one person could set a precedent, and that granting requests by a substantial number of other

persons for the same accommodation could have a significant impact on the program shall not constitute a sufficient basis for a finding that a particular accommodation constitutes an undue financial and administrative hardship or results in a fundamental alteration of Division programs.

- C. If there are a number of different accommodations that would satisfy the needs of the person with the disability, the Division may select the option which is most convenient and cost effective, assuming there is no significant detrimental impact on the person requesting the accommodation that directly relates to her/his disability should the Division select the alternative accommodation.

IV. Definitions

A. DEFINITION OF AN INDIVIDUAL WITH A DISABILITY

- (1) For the purpose of determining whether civil rights protections apply, a person is an “individual with a disability” if s/he has or has a record of having, or is regarded as having, a physical or mental impairment which substantially limits one or more of his or her major life activities². There are three (3) necessary elements to this definition:

- A physical or mental impairment
- Which substantially limits
- One or more of the person’s major life activities

All three (3) elements must be present. However, for purposes of qualifying for low-income housing programs, a person may not be considered an “individual with a disability” solely on the basis of dependence on any controlled substance (illegal drugs which have not been prescribed by a medical provider), or alcohol³.

- (2) A “physical impairment” is any physiological disorder or condition, loss, disease or disfigurement which affects one or more body systems. A physical impairment can be caused by illness, disease, a birth defect,

² A person who meets this definition only because s/he is regarded or perceived as disabled but does not actually have a disability or a history of an actual disability is protected by law against discrimination but does not have a right to reasonable accommodation. This is because the accommodation would not be necessary to provide him or her with an equal opportunity to use and enjoy the housing.

³ “Controlled substances” are those drugs which are identified at 21 U.S.C. §802, but they do not include alcohol. Pursuant to 24 Code of Federal regulations Part 5.403, for purposes of qualifying for low-income housing programs, a person may not be considered an “individual with a disability” solely on the basis of any drug or alcohol dependence.

injury, age or any other cause that disrupts a person's physical ability to function. A physical impairment includes, but is not limited to:

- Cerebral Palsy
- AIDS and HIV infection
- Visual impairment
- Hearing impairment
- Cancer
- Heart Disease
- Epilepsy
- Arthritis

(3) A "mental impairment" is any mental, psychiatric or psychological disorder. A mental impairment includes, but is not limited to:

- Mental illness
- Mental retardation
- Alcoholism⁴
- Past drug use (only in certain circumstances)
- Emotional disorders or illness
- Specific learning disability

(4) A physical or mental impairment "substantially limits" a person in one or more "major life activities" if it causes substantial difficulty in a person's ability to:

- See, hear, speak, or breathe
- Learn, think, or read
- Work, walk, or perform manual tasks
- Care for himself or herself
- Engage in some other "major life activity"

B. EXCLUSIONS AND EXEMPTIONS FROM PROTECTION

Under certain circumstances, civil rights laws specifically exclude or exempt an individual with a disability from their protection, and thus allow the denial of admission to or termination of program participation of an individual with a disability. One of the following conditions must apply:

⁴ Under the applicable federal civil rights statutes, alcoholism is considered an impairment in the context of housing programs. However, where a person's abuse of alcohol would interfere with the health, safety or right to peaceful enjoyment by other Clients, s/he would not be "otherwise qualified" for certain housing programs. Pursuant to 24 Code of Federal regulations Part 5.403, for purposes of qualifying for low-income housing programs, a person may not be considered an "individual with a disability" solely on the basis of any drug or alcohol dependence.

- The individual's program participation would pose a direct threat to the health or safety of others, and reasonable accommodation would not eliminate that threat; or
- The individual's program participation would result in substantial damage to the property of others, provided that a reasonable accommodation would not eliminate the threat; or
- The individual is not "otherwise qualified" because the Client does not meet the essential eligibility requirements for the program such as being low income; or
- The individual has been convicted by any court of the illegal manufacture or distribution of drugs; or
- The individual is a current illegal drug user or abuser of alcohol.

In order to exclude a person on the basis of threat to health or safety, it is necessary to show how the particular person would pose a direct threat or substantial risk of harm to others. Such a claim must be based on objective evidence. It should be founded on one or more action(s) by a Client, provided that there have not been changes in the meantime which make it likely that such action or actions would not reoccur. Also, if a reasonable accommodation could eliminate or sufficiently reduce the risk to health or safety, that accommodation may be provided. However, if it can be shown that no reasonable accommodation is possible to lessen the risk of harm, then no accommodation is necessary.

A significant past threat(s) to property or property damage by a Client who is an individual with disability, including a threat(s) or damage which result from a person's disability may be reason to deny admission or to terminate tenancy, provided there have been no changes which would make it likely that such action or actions would not reoccur, and there is no reasonable accommodation requested which could reduce damage to a reasonable level. This exclusion does not apply to normal wear and tear to a unit which might be expected from a Client's disability, such as the nicking of walls and door frames from a wheelchair. An individual with a disability who may need a reasonable accommodation is protected by law as long as s/he is "otherwise qualified" for the rental assistance program(s).

To be qualified means that the person requesting the accommodation meets all the essential minimum eligibility requirements that are necessary to obtain the rental assistance. The minimum requirements assume that the person's disability will not constitute a direct threat and/or significant risk of harm to the health and safety of Division Clients or employees. Reasonable accommodation is not required for an individual with a disability who is not otherwise qualified and, therefore, is not eligible for rental assistance. However, the determination of whether a person is "otherwise qualified" shall be made in the context of whether a reasonable accommodation would permit the person to meet the eligibility requirements of the program.

For example, where a Client was previously terminated from a federal housing program for non-compliance with program regulation(s) and such non-compliance related to a disability, and reasonable accommodation is now requested and available which would enable the Client to comply with his or her program, then s/he would be “otherwise qualified.” But, if a Client has a criminal record of violent crimes which resulted from a disability and cannot demonstrate mitigating circumstances like successful rehabilitation, and there is no reasonable accommodation available which would eliminate or sufficiently reduce the risk to others, then s/he would not be “otherwise qualified”.

C. RENTAL ASSISTANCE PROGRAM-RELATED DEFINITIONS USED IN APPENDIX A

- A. The “Reasonable Accommodation in Rental Assistance Policy and Procedures” (RARAPP) for the Leased Housing Division discussed in this policy apply to a qualified Division rental assistance program Client.
- B. A “reasonable accommodation” is a modification or change the Division can make to its procedures and rules which would assist an otherwise eligible person with a disability to benefit from Division programs, provided that the change does not pose an undue financial and administrative burden to the Division or result in a fundamental alteration of its program(s).
- C. A “Client” is a Division rental assistance Applicant or Participant who is a qualified “individual with a disability”.
- D. The “Division” is the Boston Housing Authority’s Leased Housing Division. The Leased Housing Division operates rental assistance programs including the Section 8 program and the Massachusetts Rental Voucher Program (MRVP).
- E. The “Assistant Administrator” is the Division head and the supervisor of all of the employees and programs in the Leased Housing Division.
- F. An “Applicant” is an individual or family that is currently applying to the Division for rental assistance, whether having submitted an application, currently is on the waiting list, and up to and until the Division executes a Housing Assistance Payments Contract, (or for MRVP, a Voucher Contract), on the Applicant’s behalf. The term “Applicant” does not include a Participant in any Division rental assistance program.
- G. A “Participant” is an individual or family that is currently receiving rental assistance from the Division under a rental assistance program. The term

“Participant” does not include an “Applicant” to any Division rental assistance program.

- H. A “Manager” is an employee in the Leased Housing Division who supervises various Leasing Officers assigned to him or her.
- I. A “Leasing Officer” is an employee of the Leased Housing Division who serves as the case manager for Clients of the Division’s rental assistance programs.
- J. “Controlled substances” are those drugs which are identified at 21 U.S.C. §802, but they do not include alcohol.

V. Procedures

1. COMMUNICATIONS WITH DISABLED CLIENTS

[1.1] The process for making requests shall be accessible to all persons. All communications that are part of the process should be in plain language that the Client can understand, in a form that is appropriate to meet the needs of the person with disability. If necessary, a format other than written documents should be used. The BHA shall make available to all Clients notice of the option to request a reasonable accommodation and a form for making such a request will be provided. Notice for the opportunity to request reasonable accommodations will be provided to preliminarily eligible Applicants at the intake interview. Notice for the opportunity to request reasonable accommodations for all current Participants will be attached to the recertification letter that is mailed to all Participants annually.

[1.2] The Division shall take appropriate steps to assure effective communication with Clients who are disabled, and shall furnish appropriate auxiliary aids (e.g., qualified sign language and oral interpreters, readers, use of taped materials) where necessary to facilitate communication with an individual who has a disability. Auxiliary aids shall be furnished in a timely manner. If a Client requests an extension of any deadline because of a delay in providing effective communication, such a request shall be considered. The Division is not required to provide personal items such as hearing aids, magnifying eyeglasses, or readers for personal study.

[1.3] In determining what auxiliary aids are necessary, the Division shall give primary consideration to the request of the individual with the disability. However, the Division is not required to take any action which would result in a fundamental alteration in the nature of the rental assistance program or undertake an action which would constitute an undue financial and administrative burden to the Division. See Part V, paragraphs [5.7] and [5.8] of the RARAPP and Form #9 which discuss these factors.

[1.4] Documents intended for use by Clients shall be made available promptly by the Division in accessible formats for individuals who are visually impaired. The Division shall also prepare such documents in clear and simple language, to the extent possible, to assist persons with learning and cognitive disability. If requested by persons with such disability, Division staff will explain written material verbally, and if necessary, assist the individuals or obtain assistance for such individuals in filling out any necessary forms.

[1.5] The Division will take appropriate steps to assure that all persons with a disability who are eligible for a rental assistance program are provided with the information necessary to participate in the program. The Division will also take appropriate steps to assure that all persons with a disability can obtain information concerning the existence and location of accessible programs, services, activities and facilities.

[1.6] If a Client with a disability so requests, the Division will permit an advocate, friend or service provider to assist the person at any meetings, conferences or interviews. Upon request of a Client with a disability, the Division will arrange to send a copy of any notice to an authorized third party representative as well as to the Client. Any meetings that must be held concerning a Client's request for a reasonable accommodation shall be held in a location accessible to the Client.

[1.7] Where the Division communicates by telephone with Clients who are hearing challenged, it shall use telecommunication devices for deaf persons (TDDs) or other effective communications systems.

2. LOGGING OF A REASONABLE ACCOMMODATION REQUEST

[2.1] The Division shall maintain in the individual file of any Client requesting reasonable accommodation copies of the following documents for a period of seven (7) years from the date of the reasonable accommodation request: the Request(s) for Reasonable Accommodation; the Denial or Approval Notice(s); any final decision following an informal hearing or an informal review (See Part V., Chapter 8. Appeal Processes); any settlement agreements; any decision(s) of the Assistant Administrator or his/her designee; any decision(s) of an administrative agency or a court; documentation that an approved accommodation has been implemented; and all correspondence between the Client and the Division, and between the Division and verification sources concerning the reasonable accommodation request. All information in a Client's file will be kept confidential except for documents deemed public record under applicable Massachusetts law.

[2.2] The Division shall maintain a distinct log (or section of a log) containing a record of all the reasonable accommodation requests to the Division made by Clients, all the responses and decisions made by the Division on those requests,

and all follow up actions taken by the Division for a period of seven (7) years from the date of each request.

[2.3] The Request for Reasonable Accommodation, Form #2 or alternative format request shall be submitted to the Leasing Officer's Manager for prompt entry in the Reasonable Accommodation log and review by the Manager who shall determine whether any further information is needed from the Client and/or other verification of the disability and the necessity of the requested accommodation is required from an appropriate source.

3. CLIENT NOTIFICATION OF THE RIGHT TO REQUEST REASONABLE ACCOMMODATION

[3.1] All prospective Applicants for rental assistance shall be informed at the Applicant Information Briefing Session of their right to request a reasonable accommodation for a disability from the Division. A written Notice to Applicants and Participants with A Disability Regarding Reasonable Accommodation, attached as Form 1 shall also be provided by the Division staff to each prospective Applicant at that time. In addition, once each year, the appointment recertification that is mailed to all current program Clients shall contain a copy of the Notice to Applicants and Participants with a Disability Regarding Reasonable Accommodations attached as form #1.

[3.2] The Division staff shall take appropriate steps to assure effective communication with Clients who are disabled, and shall furnish appropriate auxiliary aids (e.g., qualified sign language and oral interpreters, readers, use of taped materials) where necessary to facilitate communication with an individual who has a disability. Some Clients will not be able to read (or to read English), so staff must be prepared to read and explain documents that they would normally hand to a Client to be read or filled out. Clients who read or understand little English may need to be provided with an interpreter who can explain what is occurring. The BHA is not required to pay the costs associated with having a foreign language interpreter (as they are for sign language interpreters for the hearing impaired) because the Fair Housing Amendments Act imposes no such requirement. However, if a Client does not provide a foreign language interpreter, the staff will ask another Division staff member who speaks the Client's language, if available, to interpret for the Client. The Division will also provide Clients with a list of agencies and service providers which provide no- or low-cost interpretive services. The BHA will make an effort to have its written materials translated into those languages frequently spoken by Clients. A copy of the Notice to Applicants and Participants with a Disability Regarding Reasonable Accommodation shall be posted conspicuously at all times at the Boston Housing Authority's Housing Service Center located at 56 Chauncy Street, Boston, MA and at the Leased Housing Division office on the 4th and 5th floors at 52 Chauncy Street.

[3.3] For Clients who are visually, hearing or cognitively impaired, information relating to the right to request reasonable accommodation shall be provided in an alternative format which is accessible (for example, using Division staff to make an oral statement, having a third party representative explain the information).

[3.4] Where an Applicant is unable because of a disability to visit the Division Office to attend a Section 8 Program Applicant Briefing Session and to obtain the necessary forms, he/she shall contact by telephone or write to the Leased Housing Division explaining that because of the effect of the disability s/he is unable to attend in person. A Preliminary Application form and other pertinent application information will be provided to the individual as well as a Notice to Applicants and Participants with a Disability Regarding Reasonable Accommodation, Form #1.

[3.5] An individual with a disability who attends a Section 8 Program Applicant Briefing Information Session and believes that he or she requires assistance in completing a Preliminary Application form may request such assistance from the BHA's Housing Service Center at 56 Chauncy Street or Leased Housing Division staff at 52 Chauncy Street at any point before, during or after the Client Briefing Session. If necessary, the Boston Housing Authority shall provide a sign language interpreter at its expense, but the requesting individual shall provide the Leased Housing Division with reasonable advance notice to arrange such services.

4. CLIENT REQUEST FOR REASONABLE ACCOMMODATION

[4.1] Upon request made to the Division, the BHA's Office of Civil Rights, or to the BHA's Housing Service Center, a Client shall be provided with a Request for Reasonable Accommodation, Form #2. A copy of the Division's RARAPP shall also be made available upon request. However, it is the responsibility of the Client to request a reasonable accommodation.

[4.2] For Clients who are visually or cognitively impaired, information about the right to request reasonable accommodation shall be provided in an alternative format which is accessible.

[4.3] If a Client requests a reasonable accommodation based on disability, the staff person designated to review that request may ask the Client to verify that the Client has a disability and the need for reasonable accommodation in a Division program because of the disability in accordance with the RARAPP. Except as provided in this policy, Division staff may not ask a Client whether s/he or a household member or person associated with the Client has a disability nor may they inquire as to the nature or severity of a disability or regarding its treatment. In addition, Division employees may not ask any question which

would require the Client to disclose a specific medical condition or medical history. (See paragraph [4.10] of this policy for information about which the Division staff may inquire).

[4.4] Where the Division intends to take an adverse action against a Client (e.g., denial of an additional household member or termination of program participation), and a notice of adverse action is sent, the Division shall inform the Client that if s/he has a disability, reasonable accommodation may be requested if such accommodation is necessary because of the disability to prevent the circumstances which resulted in the adverse action. At any private conference held concerning such adverse action, Division staff shall discuss the right to request reasonable accommodation.

[4.5] A Client may request reasonable accommodation for disability at any point during his/her participation in the Leased Housing Division programs. In addition, there is no limit on the number of reasonable accommodation requests a Client may make or that the Division may be required to provide. As a general rule, all requests for reasonable accommodation by a Client shall be considered; however, the Division may require reliable documentation that the person needs the accommodation and that the requested action and that the accommodation meets the criteria for reasonable accommodation outlined in this RARAPP and will not constitute a fundamental alteration in itself.

[4.6] If a Client requests a different accommodation because s/he believes that the Division previously made an insufficient or inappropriate accommodation, that request shall be reviewed and decided as though it were an initial accommodation request.

[4.7] If a Client with a disability requires assistance in filling out the Request or if s/he needs to present the reasonable accommodation request in an alternative format, s/he shall contact their Leasing Officer or the Manager of the New Lease Team, and arrangements will be made to assist the Client or to provide an alternative format. Alternative ways in which a reasonable accommodation request may be presented, where justified by a documented disability, shall include, but are not limited to, a personal interview or telephone discussion with a Leased Housing Division staff person, for which a permanent record is prepared by the Leased Housing Division staff person and confirmed by the Client or his/her representative.

[4.8] The Request for Reasonable Accommodation, Form #2 or alternative format request for reasonable accommodation shall be submitted to the Leasing Officer or the Manager of the New Lease Team for review and action as discussed in this policy.

[4.9] Where a Client is unable because of his/her disability to attend the standard personal interview at the Division's office for purposes of determining final

eligibility or for annual recertification, and s/he submits a Request for Reasonable Accommodation to the Leased Housing Division with supporting documentation from an appropriate source, the Assistant Administrator of the Leased Housing Division or his or her designee shall authorize the personal interview to take place at another location if suitable, by telephone, mail or other alternative means. Where a Client with a disability with supporting documentation requests accommodation as to the time or exact location of a personal interview at the Division's office, that request will be accommodated.

[4.10] Provided that the following inquiries are made of all Clients, whether or not they have a disability, Leased Housing Division staff may inquire into a Client's ability to meet the requirements of the Section 8 Program and whether a Client is a current illegal abuser of a controlled substance, abuses alcohol or has a criminal record. If a Client applies for rental assistance available only to persons with a disability, or for a preference, income deduction or rent deduction available only to persons with a disability, Leased Housing Division staff may ask whether s/he has a qualifying disability. In addition, if the Client requests a reasonable accommodation, s/he may be asked to verify the disability and the need for the requested accommodation as set forth in the RARAPP. The Division staff may, where necessary, request in writing that a Client provide documentation from a medical or rehabilitation professional, or non-medical qualified service provider whose function is to provide services to the disabled, which verifies that the Client has a qualifying disability and that the accommodation requested is necessary for an equal housing opportunity because of that disability. Such a request for additional documentation shall include a reasonable deadline for submission of that verification but not less than 20 days from the date of the letter. This information may be provided either directly by the verification source to the Division or through the Client to the Division. The verification source shall be a person with appropriate credentials and current knowledge of the Client's disability who is able to make an informed judgment based on that knowledge.

[4.11] If the Client is unable to provide such a verification source, the Division staff shall discuss alternative sources available to evaluate the Client's needs. Where verification is sought from a medical or rehabilitation professional or non-medical service agency whose function is to provide services to the disabled, Form #6 Certification of Need for Reasonable Accommodation shall be used. That form contains a line for signature by the Client which indicates that s/he is authorizing verification to the Division. If the Client has not previously authorized the Division to contact a specific verification source, the Leasing Officer shall include with his or her Request for More Information or Verification, Form #4 to the Client copies of the following: Certification of Need for Reasonable Accommodation Form #7; the Letter to Verification Source for a Reasonable Accommodation Request; and a copy of the Client's Form #2, Request for Reasonable Accommodation.

[4.13] With the exceptions stated above, Leased Housing Division staff may not, at any interview or at any other time, inquire as to whether the Client or any

proposed household member or person associated with a household member has a disability, nor may they inquire as to the nature or severity of a disability or regarding its treatment.

[4.14] If, during the eligibility process an individual, as a result of his or her disability, is unable to provide requested information by the deadline given or provides information which is incomplete because of his or her disability, s/he should prepare a Request for Reasonable Accommodation for the Division's consideration. The Notice to Applicants with Disability Regarding Reasonable Accommodation, Form #1 will inform such individuals of the steps they must take to prepare the Request for Reasonable Accommodation Form #2, if the above situation arises.

[4.15] If, during the eligibility review process, the Division receives unfavorable or negative information about an Applicant who is an individual with a disability before the Assistant Administrator of Leased Housing or his or her designee issues a final decision on eligibility, s/he shall advise the Client or his/her authorized representative of the Client's right to submit any additional information or documentation the Client would like the Division to consider as evidence of a mitigating circumstance or as the basis for making a reasonable accommodation with respect to the negative or unfavorable information. A Letter Advising Applicants of Mitigating Circumstance and Reasonable Accommodation Option is attached as Form #3. The Client or authorized representative shall respond as soon as possible but, in any case, no later than 30 days from the date of the letter. If the Client or authorized representative wishes the Division to consider a reasonable accommodation, s/he shall submit a Request for Reasonable Accommodation Form #2 within the 30 day time period.

[4.16] If, during the eligibility review process, the Division receives unfavorable or negative information about an Applicant before the Assistant Administrator of Leased Housing or his or her designee issues a final decision on eligibility, s/he shall advise the Client or his/her authorized representative of the Client's right to request a reasonable accommodation regarding the decision and the manner by which to request such consideration. Upon such request, the Division will send the client a Request for Reasonable Accommodation Form #2 and a Letter Advising Applicants of Mitigating Circumstance and Reasonable Accommodation Option Form #3. If the Client or authorized representative wishes the Division to consider a reasonable accommodation, s/he shall submit a response and/or a Request for Reasonable Accommodation Form #2 as soon as possible but no later than 30 days from the date of the letter.

5. ASSESSMENT OF A REASONABLE ACCOMMODATION REQUEST

PART I: PROCESS

[5.1] When the Request for Reasonable Form #2 is received by the Leased Housing Division, it shall be promptly incorporated into the Reasonable Accommodation log and reviewed by an appropriate staff member who will determine whether any further information is needed from the individual and/or whether verification of the disability and the necessity of the requested accommodation is required from an appropriate source. Once the requested information and/or verification is obtained and reviewed, the Manager addressing such matter shall make his or her recommendation on denial or approval of the request to the Assistant Administrator or his or her designee.

[5.2] Where the Manager determines that additional information is needed from a Client who has requested reasonable accommodation, s/he shall inform the individual in writing as soon as practicable and provide a reasonable time period for the Client's response but no less than 20 days from the date of the letter. The Division's letter shall clearly identify the issue(s) concerning which further information is necessary; explain why more information is needed; and suggest examples of appropriate information sources. A sample Request for More Information or Verification Regarding Reasonable Accommodation Request is attached as Form #4.

[5.3] Where the Manager believes that a meeting with the individual requesting reasonable accommodation would be useful in evaluating the request, s/he shall inform the Client in writing as soon as practicable and identify the issue(s) involved. An individual with a disability who requests a reasonable accommodation may also ask for a meeting with the appropriate Manager if s/he feels it would be useful in evaluating the request. Any meetings held concerning a reasonable accommodation request shall be held in a location and at a time accessible to the Client, and shall comply with paragraphs [1.1] and [1.5] above. A sample Letter for a Meeting About Reasonable Accommodation is attached as Form #5.

[5.4] All information submitted to the Division by a Client requesting a reasonable accommodation or by his or her verification sources which relates to the nature or effects of the individual's disability shall be kept confidential and used solely to make a determination on the reasonable accommodation request or eligibility for reasonable accommodation.

PART II: CRITERIA

[5.5] A reasonable accommodation request may seek changes or adjustments to rules, policies, practices or procedures which are followed or prescribed by the Division, including assistive technology. A reasonable accommodation request may also seek the allowance of retroactive relief (e.g., reinstatement of an individual with a disability to the waiting list for the Section 8 Program where s/he

did not respond to an update notice or a regulatory request for reasons related to the disability).

[5.6] A request for reasonable accommodation shall be granted when the following three requirements are met:

- (a) the subject of the request is a qualified “individual with a disability”, as set forth in further detail at Part IV. Section (A) above, and
- (b) the requested accommodation is necessary, because of the disability, to provide an equal opportunity to use and enjoy the Division’s programs and the requested accommodation is reasonable.
- (c) A reasonable request shall be approved if it does not create an undue financial and administrative burden or constitute a fundamental alteration in the nature of the rental assistance program(s). Part V. Chapter 19 sets forth examples of requests that would likely be considered either reasonable or not reasonable on this basis.

[5.7] The factors which shall be considered in determining whether a requested accommodation would create an undue financial and administrative burden on the Division are:

- 1) the nature of the accommodation;
- 2) the cost of the accommodation;
- 3) the Division’s financial and administrative resources;
- 4) the size of the program;
- 5) the type of facilities involved; and
- 6) the possibility of recouping costs from another source.

[5.8] In determining whether a requested accommodation would cause a fundamental alteration in the nature of the program, the Division shall consider whether the accommodation sought would require it to conduct activities which extend beyond the scope of its primary purpose, i.e., to operate a rental assistance program and to assure that Clients comply with their program obligations, and the practical components necessary to achieve that purpose. For example, a request for the Division to provide resources for child care, nursing services or other services not directly related to rental assistance would constitute a fundamental change in the nature of the program the Division provides.

[5.9] Unless the Division can identify specific reasons for doing otherwise, it shall accept the judgment of an individual with a disability that a requested accommodation is appropriate for and related to his or her disability, provides an equal housing opportunity and is reasonable. In determining whether reason for denial exists the Division may obtain verification of the reasons advanced for the

requested accommodation, and may also seek advice from qualified professionals on alternative methods of accommodating the individual's needs.

[5.10] The determination of whether a requested accommodation constitutes an undue financial and administrative burden or a fundamental alteration in the rental assistance program shall be made on an individual case basis, taking into consideration the circumstances and resources available at the time of the decision. The fact that granting an accommodation for one person could set a precedent that other Clients might follow shall not constitute a sufficient basis for determining that a particular accommodation constitutes an undue financial and administrative burden or fundamental alteration in the program.

[5.11] If granting a requested accommodation would create an undue financial and administrative burden, the Division shall comply with the request to the extent that it can do so without undergoing undue burden(s).

[5.12] If the Client's proposed accommodation cannot be approved under paragraphs [5.5] through [5.14], the Division may establish that an alternative accommodation meets the criteria for reasonable accommodation outlined in this RARAPP with respect to the removal of barriers to a disabled person's equal housing opportunity and will not constitute a fundamental alteration in itself. If there are several different accommodations that would be effective in meeting the need of the disabled person, the Division may select the accommodation which is most convenient and cost effective, provided that there is no significant detrimental impact on the disabled person which directly relates to his/her disability.

[5.13] If a requested accommodation is unlikely to provide the disabled individual with an equal opportunity to use and enjoy the rental assistance program, the Division need not grant that accommodation. See paragraph See Part IV. Definitions, Section (B).

[5.14] If a disabled individual's requested accommodation would, based on objective evidence, pose a direct threat to the health or safety of others or result in substantial physical damage to the property of others, the Division need not grant the accommodation. See Part IV. Definitions, Section (B).

6. DECISION ON A CLIENT'S REASONABLE ACCOMODATION REQUEST

[6.1] The decision on a Client's Request for Reasonable Accommodation, Form #2 or alternative format request for reasonable accommodation shall be made by the Assistant Administrator or his/her designee of Leased Housing within 30 days after the date upon which the request is submitted, or, if applicable, within 30 days after the date upon which any additional information or verification reasonably necessary for his or her decision is provided.

[6.2] The Assistant Administrator or his/her designee shall not deny a Client's reasonable accommodation request based on insufficient information or documentation where the Division has not informed the Client of the need for additional information or afforded the Client a reasonable opportunity to provide such information. Where a third party verification source fails to provide the Division with requested information by the date given, the Assistant Administrator or his/her designee shall advise the Client of that fact and provide the Client with an additional 10 days to respond and/or to provide the requested information before taking adverse action based on insufficient information.

[6.3] Any denial of a Client's request for reasonable accommodation shall explain to the Client in writing the basis for the decision and the reason(s) why the request is being denied. The Client shall also be advised of his or her right to request in writing an informal review or an informal hearing on the decision (See Part V. Chapter 8. Appeal Processes). A sample Denial of Request for Reasonable Accommodation form is attached as Form #8, and shall be used by the Assistant Administrator or his/her designee for Leased Housing to communicate and document any denial.

[6.4] Any approval or conditional approval of a Client's request for reasonable accommodation shall be communicated in writing to the Client. It shall describe the accommodation that will be provided, including any terms, conditions and performance expectations that would be subject to the Client's agreement, and shall indicate the date for implementation in the approval notice, which shall be as soon as practicable. The Client shall also be informed that if s/he believes the accommodation approved will not meet his or her needs, or will take too long to provide, an informal review or an informal hearing may be requested by writing to the Assistant Administrator for Leased Housing. (See Part V., Chapter 8. Appeal Processes). A Reasonable Accommodation Approval Notice, attached as Form #9, shall be used by the Assistant Administrator or his/her designee for Leased Housing.

[6.5] Where a Client's eligibility for program participation to the Division depends on whether his or her request for reasonable accommodation will be granted, the Division will not take final action on the eligibility determination until a final decision has been made on the reasonable accommodation request, provided that the Client is not determined to be ineligible based on other grounds.

[6.6] Where a written request has been made for an informal review or an informal hearing on a Client's Request for Reasonable Accommodation, Form #2, the informal review or informal hearing will be scheduled within 30 days of the hearing or review request and held within a total of 60 days. Following an informal review or an informal hearing, a written decision will be issued in 30 days and forwarded to the Assistant Administrator of Leased Housing. The Assistant Administrator or his or her designee will implement the final decision as

soon as practicable and as a general rule no later than 30 days from receipt of the written decision, unless s/he advises the Client in writing of the reason for the delay and provides an estimated implementation date. Any such decision by the hearing officer shall be made in writing and shall explain its basis and shall state that the Client also has the right to file a fair housing complaint with HUD or MCAD or in court.

7. DENIAL OF A CLIENT'S REQUEST FOR REASONABLE ACCOMMODATION

[7.1] A Manager shall determine whether to approve a Client's request for reasonable accommodation or alternative format request within 10 days after the date upon which the request is submitted, or if applicable, within 10 days after the date upon which any additional information or verification reasonable necessary for his or her decision is provided. If the Manager decides to approve the request, s/he shall follow the procedure set forth at paragraph [6.4] above.

[7.2] If the Manager proposes to recommend denial of the request, s/he shall make the recommendation in writing to the Assistant Administrator or his or her designee, who shall have 10 additional days to review all pertinent information and make a determination on the denial. If the Assistant Administrator or his or her designee decides to approve the request, s/he shall issue an approval notice as set forth above. If the Assistant Administrator or his/her designee proposes to deny the request, s/he shall within three (3) additional business days request the Client, in writing, to attend a private conference at which the reasonable accommodation request will be discussed and an attempt will be made to informally resolve the request.

[7.3] The private conference shall be held within seven (7) business days from the date of the letter to the Client, unless a later date is requested by the Client. The participants shall be the Client; any representative s/he requests to attend; the Leasing Officer, and the Manager (or only the New Lease Team Manager for Clients who are not yet assigned to a Leasing Officer). If an informal hearing or an informal review is proposed at the conference, it shall be explained to the Client by the Manager, with the supporting reasons. If an agreement is reached at the conference, it shall be reduced to writing, signed by the parties, and a copy sent to the Client.

[7.4] If, during the private conference with the Client, the Manager determines that additional information is needed from the Client or that verification or documentation regarding the request is required from a medical professional or qualified service provider whose function is to provide services to the disabled, the Manager shall follow the procedure set forth in Part V. Chapter 4 above.

[7.5] Immediately following the private conference, if no agreement or other resolution has been reached and provided that no further information has been deemed necessary, the Manager shall make a recommendation to the Assistant Administrator or his/her designee who shall issue in writing his or her decision on the reasonable accommodation request. If the request is denied, the Assistant Administrator or his/her designee shall explain the basis and reasons for the denial, and shall inform the Client of the right to request an informal review or an informal hearing on the denial. The Assistant Administrator or his/her designee shall use the Denial of Request for Reasonable Accommodation, Form #8, and shall also include an Informal Hearing or Informal Review Request Form.

[7.6] If a Client who has been denied a reasonable accommodation by the Assistant Administrator or his or her Designee, and the Client wishes to appeal by requesting an informal hearing or an informal review, s/he shall follow the time requirements and process for requesting an informal hearing or review set forth in Part V. Chapter 8. Appeal Processes. Where an informal hearing or review is requested, the procedures governing the scheduling of that informal hearing or review and the decision shall be as described in Part V, Chapter 8. Appeal Processes below.

[7.7] If the BHA has requested that the U.S. Department of Housing and Urban Development (HUD) approve a reasonable accommodation request made by the Leased Housing Division on behalf of a Client, a Client who has been denied a reasonable accommodation by HUD may appeal by requesting a review of the decision by HUD's Fair Housing Enforcement Office.

8. APPEAL PROCESSES

[8.1] There are three kinds of appeal processes for Clients of the Section 8 program: informal reviews for Applicants only; or informal hearings and administrative hearings for Participants only. If a Client with a disability believes s/he needs reasonable accommodation in order to participate in an informal hearing (Participants only) or an informal review (Applicants only) on any issue, s/he shall request the accommodation in writing, specify the nature of the accommodation sought; and direct it to his/her Leasing Officer (or to the Manager of the New Lease Team if no Leasing Officer is assigned as of the time of the request) who will in turn present such request to his/her Manager (except in the case where the request is received directly by the New Lease Team Manager). Any notice of adverse action will include notice of the right to request an informal hearing or review, the right to request reasonable accommodation in the hearing and review procedures, and the procedures for requesting such hearing or review. Such notice of adverse action will also include the Notice to Clients with a Disability Regarding Reasonable Accommodation, Form #1. The time period to request an informal hearing shall be fourteen (14) days from the date of the notice of adverse action. Upon receipt of a Client's request for an informal hearing or review in writing, an informal hearing or review shall be scheduled.

Upon request, and upon a showing of “good cause” and/or as a reasonable accommodation for an individual with a disability the Assistant Administrator or his/her Designee may allow an informal review or hearing to proceed in spite of the fact that a Client did not request such review or hearing in a timely manner as described to the Client in the relevant notice of adverse action.

[8.2] If the Manager proposes to deny the reasonable accommodation request, that decision shall be reviewed by the Assistant Administrator or his or her designee. If the Manager recommends denial to the Assistant Administrator, or his or her designee, the Assistant Administrator or his or her designee will document in writing his or her approval of the proposed denial. Any denial by the Assistant Administrator or his/her designee shall be made in writing before the hearing or review date and shall explain its basis and provide a right of appeal; and shall state that the Client also has the right to file a fair housing complaint with HUD or MCAD or in court. Copies of all reasonable accommodation requests involving an informal review or hearing and the Division’s responses thereto shall be filed in the individual Client’s file and the Division’s reasonable accommodation log, as provided at paragraph [2.1] and [2.3] above.

[8.3] Clients who are denied admission to the Section 8 program may request an informal review of the BHA’s determination. This informal review will be conducted by a BHA hearing officer. Clients who are denied admission to the Section 8 program because the Client or a member did not pass a criminal records screening may request an informal review before the Director of Section 8 Operations or his/her designee. Clients who are removed from the Section 8 program waiting list for a reason other than for failure to pass a criminal records screening may request an informal review before a BHA hearing officer.

[8.4] Clients for whom the BHA has proposed termination from the Section 8 program for any reason will be informed of the right to request an informal hearing before a BHA hearing officer. Clients who are subject to a damage claim or vacancy loss claim by a former landlord will be informed of the right to request an administrative hearing on liability for the claim(s) before a BHA hearing officer.

[8.5] In all appeal processes Clients will be afforded the following:

1. An informal review or hearing before an impartial party.
2. The opportunity to copy documents from the Client’s BHA file. The Client will be given the opportunity to examine before the informal review or hearing any BHA documents⁵ that are directly related to the hearing. The Client will be allowed to copy any such documents at the Client’s expense.
3. The opportunity to present any relevant evidence.
4. The opportunity to respond to any BHA allegation and to cross-examine any witnesses. The Client may present witnesses or oral objections to any relevant evidence.

⁵ The term “documents” includes records and regulations.

5. The opportunity to obtain representation at the Client's own expense.
6. The opportunity to arrange for an interpreter.
7. The opportunity to request a copy of the hearing audiotape.
8. The opportunity to receive a written hearing decision within a reasonable time of the hearing.
9. The opportunity to request reasonable accommodation in the manner in which the informal review or hearing is conducted.

[8.6] Evidence may be considered without regard to admissibility under the rules of evidence applicable under judicial proceedings; and factual determinations relating to the individual circumstances of the participant shall be based on the evidence presented at the hearing.

[8.7] If a Client who has been denied reasonable accommodation requests an informal review or hearing the time period to request an informal hearing shall be fourteen (14) days from the date of the notice of adverse action. Upon receipt of a Client's request for an informal hearing or review in writing, an informal hearing or review shall be scheduled. Upon request, and upon a showing of "good cause" and/or as a reasonable accommodation for an individual with a disability the Assistant Administrator or his/her Designee may allow an informal review or hearing to proceed in spite of the fact that a Client did not request such review or hearing in a timely manner as described to the Client in the relevant notice of adverse action.

[8.8] The BHA shall present evidence only to support its proposed reasons for denying the reasonable accommodation in the Denial for Request for Reasonable Accommodation letter Form #8. If the BHA wishes to amend the grounds for the proposed denial, the BHA must notify the Client by letter no fewer than fourteen (14) days prior to the informal hearing or review date.

[8.9] The hearing officer may be any employee of the BHA designated to conduct informal hearings or informal reviews. The hearing officer shall not be the person who made the decision in question nor that person's subordinate. The hearing officer shall make a factual determination relating to the individual circumstances of the Client that shall be based on a preponderance of the evidence presented at the hearing or review. The hearing officer shall promptly render a written decision stating briefly the reasons for the decision and shall forward a copy of the decision to the leasing officer. The hearing officer shall promptly furnish to the Client a copy of the decision by certified and first class regular mail. Upon request from a Client who is an individual with a disability, the Assistant Administrator may exercise his/her discretion to reconsider a BHA hearing officer's adverse decision as a reasonable accommodation where new information surfaces during or within 30 days after such informal review or hearing which may justify reconsideration of the decision.

[8.10] The BHA is not bound by informal hearing or review decisions that exceed the authority of the person conducting the hearing or are contrary to HUD regulations or requirements contrary to Federal, State or local law. If the Assistant Administrator or his or her designee determines that the BHA is not bound by the informal hearing or review decision, the BHA must promptly notify the Client of the determination and the reason for such a decision. Any such decision by the Assistant Administrator or his/her designee shall be made in writing and shall explain its basis and shall state that the Client also has the right to file a fair housing complaint with HUD or MCAD or in court.

[8.11] The Division shall in writing inform any Client whose reasonable accommodation request has been denied whether by the Division, or where applicable by HUD, or who disagrees with an approval notice, of his or her right to file a fair housing complaint, whether or not a Division informal hearing or review procedure is pursued, with the following administrative agencies or in court:

Department of Housing and Urban Development (HUD)
Office of Fair Housing and Equal Opportunity
10 Causeway Street
Boston, MA 02222
Telephone 1 (800) 827-5005, or (617) 565-5308
TDD (617) 565-5453

Massachusetts Commission Against Discrimination (MCAD)
One Ashburton Place, Room 601
Boston, MA 02108
Telephone: (617) 727-3990
TDY (617) 727-3990, ext. 588

9. THIRD PARTY REPRESENTATIVES

[9.1] Any individual with a disability who makes a reasonable accommodation request may authorize a third party representative to act on his or her behalf in dealing with the Division or with verification sources on the request.

[9.2] Upon presentation of appropriate authorization, a third party representative may fill out and sign the Request for Reasonable Accommodation form for an individual with a disability.

[9.3] Upon submission of a written request by an individual with a disability who has asked for reasonable accommodation, an authorized third party representative shall be given access to all documents in the Client's file which relate to his or her reasonable accommodation request.

10. REASONABLE ACCOMMODATION FOR
PROGRAM VIOLATIONS

[10.1] Where a Participant with a disability engages in a violation of the Client's obligations under a rental assistance program as set forth in the Division's Administrative Plan, Division staff shall approach the situation as with any other Client except that if the Client requests reasonable accommodation in order to comply with an obligation under the program, the request shall be considered. All documents sent by the Division regarding action on a program violation shall identify the program violation and inform the Client of his/her right to request reasonable accommodation, if necessary, to comply with the program. At any private conference with a Client on a program violation, Division management shall discuss the right to request reasonable accommodation, and have the form readily available.

[10.2] Where a Participant faces rental subsidy termination proceedings because of a program violation(s) which is/are related to a disability, s/he shall be advised by management of the right to request reasonable accommodation. Both the Notice of Private Conference and Notice of Termination sent to Clients shall set forth the basis for the proposed program termination and shall state that if the Client is an individual with a disability, s/he has the right to request reasonable accommodation to enable compliance with the program on forms available at the Division office at 52 Chauncy Street, 4th, 5th, and 9th floors, Boston, MA 02111.

[10.3] Although the Division must make reasonable accommodation to enable a person with a disability to comply with the requirements of his/her program, an accommodation is not reasonable if it would require a fundamental alteration in the nature of the program or would impose an undue financial and administrative burden on the Division. See Part V, paragraph [5.7] through [5.14] above for considerations on whether a requested accommodation would fundamentally alter the nature of the housing program. In addition, the provision of reasonable accommodation shall not require the lowering or waiving of essential eligibility requirements for the rental assistance program.

[10.4] A Client with a disability has the right to refuse to request reasonable accommodation. However, if a Client who has refused reasonable accommodation continues to engage in program violating behavior, the Division may enforce the program requirements and seek appropriate remedies including subsidy termination as with any other Client.

[10.5] If a disabled Client who has committed a program violation requests a reasonable accommodation in order to comply with the Division's programs, the appropriate Manager must, in considering the request, determine whether it is reasonable to believe that the program violation is not likely to recur with the accommodation sought. For this purpose, the Manager may request the Client to provide appropriate information, documentation or verification within a

reasonable time period. If the Manager believes that, based on objective information, the accommodation is not likely to solve the program violation problem, the accommodation may be denied.

[10.6] The appropriate Manager shall consider the request and may ask the individual given the circumstances of the case to provide appropriate information, documentation or verification within a reasonable time period, that the accommodation is likely to enable the Client to comply with the terms of the program. The Manager may also request verification that the Client is willing to follow any proposed plan agreed to by the Client in order to be program compliant.

[10.7] If the Manager believes, based on objective information, that the accommodation will not enable the Client to comply with the terms of the program or that the accommodation would result in a fundamental alteration of the rental assistance program or impose an undue financial and administrative burden on the Division, s/he may deny the accommodation and proceed with the subsidy termination after such determination has been reviewed by the Assistant Administrator or his or her Designee in accordance with established procedures. For example, if a Client with a psychological disorder resulting in continuing program violations has previously committed to the Division that s/he would follow a treatment plan designed to eliminate such violations, but the Client has failed to do so and has provided no credible reason why s/he would now follow a plan and his/her program violations have continued, there would be an objective basis to proceed with the subsidy termination proceedings or subsidy withdrawal.

[10.8] If the Manager approves a proposed termination, the Leasing Officer will send the Participant a letter (by first class and certified mail) telling the Participant the BHA is proposing termination of his/her rental assistance subsidy and of their right to request an informal hearing. The time period to request an informal hearing shall be in accordance with Part V., Chapter 8. Appeal Processes of these RARAPP Procedures. If the Participant fails to respond, the leasing officer will send them a thirty (30) day Notice of Termination of rental assistance subsidy (also by first class and certified mail) approved by the Director of Section 8 Operations. A copy of the letter is also sent to the owner of the Participant's unit. The time period to request an informal hearing shall be as described above in paragraph [8.7].

11. BHA REASONABLE ACCOMMODATION COORDINATOR

[11.1] The BHA shall designate an individual within the Office of Civil Rights as the BHA Reasonable Accommodation Coordinator, who shall report directly to the Director of Civil Rights.

[11.2] The Division shall notify all Clients on an initial and periodic basis that there is a Reasonable Accommodation Coordinator and shall identify the

Department, address and the telephone number including TDD number. Methods of notification may include periodic posting of notices, distribution of written communications, and statements made in general information format or Client publications. This notice shall also be made available in an accessible form to visually and hearing impaired persons.

[11.3] The Reasonable Accommodation Coordinator shall be responsible for overseeing the implementation and operation of the Division's RARAPP and for coordinating all Division efforts to comply with the various provisions of federal, state and local law governing reasonable accommodation in housing. Where the Coordinator believes corrective action is necessary, s/he shall directly advise the Division staff member involved or, if deemed appropriate, shall make a recommendation to the Director of Civil Rights who will in turn advise the appropriate party. The Reasonable Accommodation Coordinator shall be available to Clients as well as to staff to answer questions and to deal with issues regarding reasonable accommodation requests, although he or she is not the decision maker on a reasonable accommodation request.

[11.4] The Reasonable Accommodation Coordinator may receive complaints or other reports of non-compliance with the RARAPP from Division Clients, staff or interested persons outside the Division and shall investigate such complaints promptly. Following such investigation, the Coordinator shall report his or her findings and any remedial action determined to be necessary to the Director of Civil Rights, who will have the authority to undertake further investigation and to recommend remedial action to the Assistant Administrator. This procedure shall be independent of the appeal procedures set forth in the RARAPP for Division Clients who have requested reasonable accommodation for disability and have been denied.

[11.5] The Reasonable Accommodation Coordinator shall be available for consultation as needed and to provide advice to any Division official making a determination on a reasonable accommodation request.

[11.6] Any Client who has submitted a Request for Reasonable Accommodation may contact the Reasonable Accommodation Coordinator for a status inquiry and the Reasonable Accommodation Coordinator shall reply within five (5) business days.

[11.7] The Reasonable Accommodation Coordinator shall have access to all files containing information on a reasonable accommodation request. S/he shall also be responsible for auditing the reasonable accommodation logs maintained by the Division on a semi-annual basis.

12. CONFIDENTIALITY

[12.1] Except as provided in paragraphs [11.7], [12.3], and [12.4] all information submitted to the Division by a person requesting reasonable accommodation on the basis of disability or by any verification source which relates to the nature or effects of the disability shall be kept confidential and used solely to make a determination on the Reasonable Accommodation Request. The protection of confidentiality shall extend to all information contained within an individual file of a Client, and reasonable accommodation logs, and all other Division files which relate to the nature or effects of an individual's disability. This information may not be revealed to other Clients or to another housing provider who calls for a reference or to any Division or BHA staff not involved in evaluating the reasonable accommodation request. This requirement does not, however, prevent Division employees from stating to another housing provider whether the person has complied with Division program obligations.

[12.2] All decisions made by the Division on a reasonable accommodation request shall be kept confidential except insofar as disclosure is necessary to implement an approved accommodation or to comply with the review and appeal procedures set forth in the RARAPP.

[12.3] Federal, state and local civil rights enforcement agencies shall be provided with such Client information as is authorized by law.

[12.4] Individuals requesting a reasonable accommodation based on disability shall upon request to the Division be entitled to copies of all documents in their Division files which relate to their reasonable accommodation request in accordance with applicable law. In addition, upon written request of an individual with a disability access to such documents shall be provided to his or her authorized third party representative.

13. NON-RETALIATION

[13.1] The Division shall not discriminate or take any retaliatory action against a person who has requested a reasonable accommodation on the basis of a disability, or who has assisted or encouraged any other person to request such an accommodation.

[13.2] The Division shall not discriminate or take any retaliatory action against a person who has exercised his or her right of appeal or filed an administrative agency complaint or sought judicial review on a reasonable accommodation request, or who has assisted or encouraged another person to do so, or who has assisted in the investigation of a reasonable accommodation claim.

14. NOTICE TO BHA EMPLOYEES AND TRAINING

[14.1] All current Division employees shall be advised of the Division's Reasonable Accommodation in Rental Assistance Policies and Procedures (RARAPP) and their responsibilities thereunder. New employees shall be

similarly advised by a letter from the BHA Administrator at the commencement of their employment.

[14.2] All employees in management positions and all persons working in the Leased Housing Division, Office of Civil Rights, Office of General Counsel and Administration offices shall receive a full RARAPP and shall be requested to sign an acknowledgement form within 14 days of receipt.

[14.3] The Division shall provide a training program on the RARAPP for Division staff, staff of the Office of Civil Rights, the Office of General Counsel, and any other BHA employees responsible for implementing the RARAPP, which focuses on identifying, determining and implementing appropriate reasonable accommodations for individuals with disability, within nine (9) months of adoption and implementation by the Division of the RARAPP. Each employee shall sign in at each session acknowledging his or her participation. New Division employees in the offices listed above and any other employees who will have implementation responsibility under the RARAPP shall also be required to undertake the training within seven (7) months of the commencement of employment.

[14.4] The BHA Human Resources Department will maintain records of all Division employees who have participated in the RARAPP training program.

15. SUBSIDY SUSPENSION DURING CLIENT ABSENCE FROM A UNIT

[15.1] If a Participant with a disability is hospitalized or enters a treatment center for a significant length of time (longer than 30 days) because of that disability and notifies his or her Leasing Officer (or if an Applicant notifies the Division by filing a change of address in writing) of this absence, the Participant may request a reasonable accommodation. For example, a Participant may request that the Division suspend his or her rental subsidy for a period of up to six (6) months. If the Division grants such an accommodation in accordance with this RARAPP the Division will send a notice to the Participant (or to his/her authorized representative or emergency contact) to inform him/her that his/her program participation will be suspended.

[15.2] If a Participant with a disability is hospitalized or enters a treatment center for a significant length of time (longer than 30 days) because of that disability but fails to notify the Division of this absence, the Division may send a notice to the Participant (or to his/her authorized representative or emergency contact) to inform him/her that his/her program participation will be terminated. Any such notice shall, however, include a statement by the Division that if the Participant is a qualified individual with a disability and his or her absence is a result of that disability, the Participant may request reasonable accommodation with respect to the Division's customary procedures for a Participant's absence from a unit.

16. PERSONAL CARE ATTENDANTS

[16.1] A Client may request that the Division grant an exception to its subsidy standards in order to accommodate the use of a Personal Care Attendant by utilizing the procedures of this RARAPP.

17. SHARED HOUSING

[17.1] A Client may request that the Division allow the use of the shared housing procedures, which may be found in 24 C.F.R. 982.615 through 982.618, by utilizing the procedures of this RARAPP.

18. SPECIFIC SITUATIONS: SUBSTANCE ABUSE: PSYCHIATRIC DISABILITY; HIV OR AIDS.

[18.1] The laws which protect individuals with disability from discrimination explicitly exclude from their protection individuals who currently and illegally use drugs. The exclusion from protection based on current illegal use of drugs applies to a person whose illegal use of drugs occurred recently enough to justify a reasonable belief that the person's use is current. If such a reasonable belief exists, the Division may terminate a rental assistance subsidy or deny the Client admission even if the person is an individual with a disability. Therefore, the Division must make a reasonable judgment, based on the specific facts relating to the individual, which determines whether s/he is excluded from protection because of current illegal use of drugs. However, for purposes of qualifying for rental assistance programs, an individual who is not currently using drugs but has a history of illegal drug use is protected by the laws but will not be considered a qualified "individual with a disability" for federal rental assistance programs solely on the basis of drug or alcohol dependence.

[18.2] If a person has a history of illegal drug use, is not currently using illegal drugs, and has either successfully completed a drug rehabilitation program or is participating in a drug treatment program or self-help group or has otherwise been rehabilitated successfully, then it is clear that s/he is not a current illegal drug user.

[18.3] A person with alcoholism is not excluded from protection under non-discrimination law but s/he must be "otherwise qualified" for housing with or without reasonable accommodation like any other individual with disability. A person with alcoholism may be excluded or terminated from tenancy if his or her behavior poses a direct threat to the health or safety of others or would result in substantial damage to the property of others or if s/he is not "otherwise qualified" but only if reasonable accommodation will not eliminate that risk. In addition, legislation pertaining to federal housing assistance provides that persons whose

abuse of alcohol would “interfere with the health, safety or right to peaceful enjoyment of the premises” by other Clients may also be excluded or terminated from program participation by a public housing authority (PHA). In determining whether to deny admission or to terminate rental assistance on this basis, the BHA is authorized to consider evidence of successful alcohol rehabilitation as set forth in the statute. However, for purposes of qualifying for federal rental assistance programs, a person with a disability is based solely on drug or alcohol dependence is not a qualified “individual with a disability”.

[18.4] A person with a psychiatric disability is covered under non-discrimination law and may be excluded or terminated from tenancy only if his or her behavior poses a direct threat to the health or safety of others or would result in substantial damage to the property of others or if s/he is not “otherwise qualified,” and, and if reasonable accommodation will not eliminate that risk.

[18.5] The same analysis applies to persons who are HIV positive or who have AIDS. A diagnosis of HIV or AIDS does not by itself pose a direct threat to others. U.S.C. § 13661 and § 13662, as enacted by Pub. L. 104-120 (1996).

19. EXAMPLES OF ACCOMMODATIONS

A. EXAMPLES OF ACCOMMODATIONS LIKELY TO BE CONSIDERED REASONABLE

- Allowing a Client with a physical or mental disability which prevents him or her from attending a recertification appointment as scheduled to reschedule a missed appointment.
- Allowing a Client with a physical mental disability which causes him or her to fail to provide documentation of income in a timely manner more time to provide such documentation.

B. EXAMPLES OF ACCOMMODATIONS NOT LIKELY TO BE CONSIDERED REASONABLE

- Providing a paraplegic Client with a person to do housekeeping.
- Approving a request by a mentally ill Client that s/he not provide income documentation because s/he does not want to provide it.
- Providing a Client who is obese and who cannot take public transportation with cab fare to attend a recertification appointment at the BHA when the BHA can mail the Client the necessary forms to complete the recertification through the mail instead.

20. FEDERAL, STATE AND LOCAL LAWS GOVERNING HOUSING RIGHTS

1. **Title VIII of the Civil Rights Act of 1968**, as amended in 1988 (The Fair Housing Act, 42 U.S.C. §§3601-3619): The Fair Housing Act prohibits all forms of discrimination in the sale or rental of most dwellings because of the handicap of the renter or buyer, or any person residing in the dwelling, or associated with the renter or buyer. It explicitly includes the refusal to make reasonable accommodation in rules and practices and to permit reasonable modifications where necessary as a form of handicap discrimination. The Act's general non-discrimination provisions also cover race, color, religion, sex, national origin, and Clients with children under 18.
2. **Section 504 of the Rehabilitation Act of 1973**, (29 U.S.C. §794): Section 504 makes it unlawful to exclude otherwise qualified individuals with disability from participating in, to deny them the benefits of, or to subject them to discrimination under any program or activity receiving federal financial assistance, solely because of their disability. Section 504 case law and implementing regulations make it clear that a housing authority must provide reasonable modifications and a readily accessible program for the disabled.
3. **Americans with Disabilities Act of 1990, Title II** (42 U.S.C. § 12101 et seq.), (ADA): The ADA (Title II) extends the protections of Section 504 to all activities of state and local governments and their instrumentalities, including housing authorities, regardless of the receipt of federal funding. The ADA protects qualified individuals with disability, requires program access similar to Section 504, and provides for reasonable modifications.
4. **Title VI of the Civil Rights Act of 1964** (42 U.S.C. § 2000d et seq.): Title VI makes it unlawful to exclude any person on the grounds of race, color or national origin or to deny them the benefits of, or to otherwise subject them to discrimination under any program or activity receiving federal financial assistance.
5. **The federal regulations** implementing each of these statutes are set forth in the Code of Federal Regulations as follows:

Title VII – 24 C.F.R. Part 100 et seq.
Section 504 – 24 C.F.R. Part 8
ADA, Title II – 28 C.F.R. Part 35
Title VI – 24 C.F.R. Part I
6. **Massachusetts General Laws, Chapter 151B (The Massachusetts Housing Bill of Rights for People with Disability)** This act makes it unlawful for an owner, lessor, or managing agent of housing accommodations to refuse to rent, program, or to discriminate in the provision of housing to any person or group of persons because of their race, religious creed, color, national origin, sex, sexual orientation, ancestry, age, marital or familial

status, receipt of public assistance or disability. The act specifically provides that refusal to make reasonable accommodations where necessary and (for publicly assisted housing) reasonable modifications constitutes discrimination based on disability.

7. **The Massachusetts Equal Rights Law**, (M.G.L. Chapter 93, § 103): This law states that any person in Massachusetts, regardless of disability or age shall, with reasonable accommodation, have the same rights as other persons to make and enforce contracts, purchase, program, sell, hold and convey property.
8. **Amendment Article 114 of the Massachusetts Constitution**: This amendment states that no otherwise qualified individual with a disability shall, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of or be subject to discrimination under any program or activity within Massachusetts.
9. **City of Boston Fair Housing Ordinance of 1982, as amended**: It is the City of Boston's policy to assure that each individual, regardless of race, color, religious creed, marital or familial status, disability, children, national origin, sex, age, ancestry, sexual preference, or source of income shall have equal access to housing.

Request

RA Form #8 – Denial of Request for Reasonable Accommodation

Inst. RA Form #8 – Instructions for Reasonable Accommodation Form #8

RA Form #9 – Reasonable Accommodation Approval Notice