



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

Special Attention of:
Directors of HUD Regional and Field
Offices of Public Housing; Public Housing
Agencies

Notice PIH 2020-32

Issued: November 20, 2020

Expires: This notice remains in effect
until amended, superseded, or rescinded

Cross References: 24 CFR 882.514, 24
CFR 960.208, 24 CFR 966.54; 24 CFR
966.56; 24 CFR 982.554; 24 CFR
982.555; 24 CFR 982.301(a); 24 CFR
983.252(a); Notice PIH 2013-27; Notice
PIH-2015-06; Notice PIH-2019-05

Subject: Guidance for PHAs on the Allowability of Remote Hearings and Remote Briefings

- 1. Purpose.** The Coronavirus Disease 2019 (COVID-19) and social distancing requirements present significant challenges for public housing agencies (PHAs) to conduct in-person hearings and briefings. As remote environments become more common, this guidance presents best practices for determining if barriers exist to conducting a remote hearing or remote briefing. If the remote hearing or remote briefing is scheduled, this guidance also outlines PHA requirements to ensure equal opportunity and nondiscrimination for individuals with disabilities and limited English proficient (LEP) persons under Section 504 of the Rehabilitation Act of 1973 (Section 504), the Americans with Disabilities Act of 1990 (ADA), Title VI of the Civil Rights Act of 1964, and the Fair Housing Act. This notice will remain in effect post-COVID-19. This notice provides a summary and hyperlinks to guidance that discuss approaches to remote hearings. Readers are advised that this document is not exhaustive.

The contents of this notice, except when based on statutory or regulatory authority or law, do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

- 2. Background.** The activities in HUD-assisted programs listed below require an individual or group meeting to convey or meet regulatory requirements. Advances in technology provide

options for PHAs and families to participate remotely. Hearings and briefings may be conducted telephonically, via video-teleconferencing, or through other virtual platforms absent a request by a party for an in-person hearing or briefing. Below are the regulatory program requirements for a hearing or oral briefing.

Public Housing program:

- a.** Applicant: The PHA must provide an applicant an opportunity for an informal hearing following the PHA's determination of applicant ineligibility and denial of admission to a project (24 CFR 960.208).
- b.** Participant: PHA grievance procedures are required to assure that a tenant is afforded an opportunity for a hearing if the tenant disputes any PHA action, or failure to act, involving the tenant's lease or adverse effects on the tenant's rights, duties, welfare, or status (24 CFR Part 966, Subpart B). These include termination of tenancy, denial of household composition changes, denial of transfers, determination of rent, and other adverse actions such as fees.

Housing Choice Voucher (HCV), Project-Based Voucher (PBV), and Moderate Rehabilitation programs:

- c.** Applicant: An oral briefing is required for all new applicants to the HCV program (24 CFR 982.301(a)) and the PBV program (24 CFR 983.252(a)). A briefing is required for all new applicants to the Moderate Rehabilitation program (24 CFR 882.514(d)).
- d.** Applicant: The PHA must provide an applicant an opportunity for an informal review of the PHA decision denying assistance to the applicant (24 CFR 982.554; 24 CFR 882.514(f)).
- e.** Participant: The PHA must provide a participant an opportunity for an informal hearing if a participant contests the PHA's determination of the family's income, utility allowance, or unit size, or if the participant contests the PHA's proposed termination of the participant's assistance. If the PHA seeks to terminate the participant's assistance, the PHA must first provide the opportunity for an informal hearing before it terminates housing assistance payments (HAP) for the family under a HAP contract (24 CFR 982.555(a)(2); 24 CFR 882.514(f)).
- f.** Tenant Protection Voucher (TPV) Family Briefing: Notice PIH-2013-27 requires PHAs to conduct a family briefing prior to obtaining a family's voluntary written consent to relinquish their right to tenant-based assistance for families electing to remain in a project with TPVs. This applies to projects selected for PBV assistance that have undergone a Housing Conversion Action and projects that will undergo a Housing Conversion Action prior to the PHA's selection of the PBV project. Likewise, Notice PIH-2019-05 also requires a family briefing prior to obtaining a family's voluntary written consent to relinquish their right to tenant-based assistance

if a PHA plans to use PBVs as part of, or immediately following, a Section 22 streamlined voluntary conversion of a public housing property.

3. Applicability. This notice applies to all PHAs, including Moving to Work agencies, administering Public Housing, HCV/PBV and the Moderate Rehabilitation programs.

4. Definitions.

a. Remote Hearing. Under this notice, a “remote hearing” in public housing refers to the informal hearing for a denial of admission (24 CFR 960.208(a)), the informal settlement of a grievance for a participant (24 CFR 966.54) and the grievance hearing for a participant (24 CFR 966.56). In the HCV program, a “remote hearing” refers to the informal review for denial of assistance (24 CFR 982.554) and an informal hearing for a participant (24 CFR 982.555). In the Moderate Rehabilitation program, a “remote hearing” refers to the informal hearing for denial of assistance or termination of assistance (24 CFR 882.514(f)).

b. Remote Briefing. Under this notice, a “remote briefing” refers to the oral briefing PHAs are required to provide to every new HCV program applicant (24 CFR 982.301(a)), including project-based voucher applicants (24 CFR 983.252(a)) and the TPV family briefing (as described in Section 2.f above. It also refers to the briefing PHAs are required to provide to every new Moderate Rehabilitation applicant (24 CFR 882.514(d)).

5. Requirements for the Technology Platform.

a. Accessibility requirements for persons with disabilities. Under Section 504 and the ADA, PHAs are obligated to take appropriate steps to ensure effective communication with applicants, participants, members of the public, and companions with disabilities through the use of appropriate auxiliary aids and services (AA/S) (28 CFR 35.160(a)(1); 24 CFR 8.6). PHAs are required to furnish appropriate auxiliary aids and services to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, each of the PHA’s services, programs, and activities (28 CFR 35.160(b)(1); 24 CFR 8.6). The Fair Housing Act has similar requirements (24 CFR 100.202(b); 24 CFR 100.204(a), (b)). In addition, under these laws, PHAs are required to make reasonable accommodations in policies, practices, and procedures to ensure persons with disabilities have equal opportunity to participate in all the PHA’s privileges, benefits, and services (24 CFR 8.33; 28 CFR 35.130(b)(7); 24 CFR 100.204).

i. Accessible Platform. For a remote hearing or remote briefing, steps for an accessible platform include ensuring any information, websites, emails, digital

notifications, and platforms are accessible for persons with vision, hearing, and other disabilities. Helpful guidelines for ensuring the accessibility of web-based and digital materials are available through the World Wide Web Consortium's Web Accessibility Initiative at <https://www.w3.org/WAI/>.

- ii. Individualized auxiliary aids or services.** To provide effective communication in a digital context, individualized AA/S may include audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Examples of AA/S that may be necessary when conducting a remote hearing or remote briefing can be found at 28 CFR 35.104.

Under Section 504 and the ADA, the type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual, the nature, length, and complexity of the communication involved, and the context in which the communication is taking place. Important information is conveyed during hearings and briefings. PHAs must give primary consideration to the auxiliary aid or service requested by the individual with a disability. In order to be effective, auxiliary aids or services as this term is defined in 28 CFR 35.104 and 24 CFR 8.3 must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability as this term is defined in 28 CFR 35.108 (see also 28 CFR 35.160(b)(2); 24 CFR 8.6).

PHAs may never request or require that individuals with disabilities provide their own auxiliary aids or services, including for remote hearings or remote briefings. PHAs may not rely on an adult or minor child accompanying a person with a disability to interpret or facilitate communication for such person, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances. (28 CFR 35.160-164; 24 CFR 8.6).

- iii. Reasonable Accommodations.** PHAs are required to make reasonable accommodations in policies, practices, and procedures to ensure persons with disabilities have a full and equal opportunity to participate in and benefit from all aspects of the hearing process. This obligation is in addition to the obligation to ensure effective communication under Section 504 and the ADA.

If no method of conducting a remote hearing or remote briefing is available that appropriately accommodates an individual's disability, the PHA may not hold against the individual his or her inability to participate in the remote hearing or remote briefing. The PHA should consider whether postponing the hearing or remote briefing to a later date is appropriate or whether there is a suitable alternative to meet the participant's satisfaction more expeditiously.

Disabilities are individualized, and the appropriate auxiliary aid or service necessary or reasonable accommodation depends on the specific circumstances and requirements to ensure the individual with a disability has equal opportunity to participate in and benefit from the remote hearing or remote briefing. For example, individuals with cognitive or learning disabilities may require assistance from an advocate who may not be in the same location as that individual. Individuals with vision disabilities may request documents in different formats in order to increase the font size and to use with assistive technologies. Some persons who are deaf do not use sign language and may request captioning, which must be professionally prepared and not auto-generated by the hearing platform, since that would not result in effective communication (28 CFR 35.160(b)(2); 24 CFR 8.6).

- b. Requirement for persons with limited English proficiency (LEP).** PHAs must take reasonable steps to ensure full and meaningful access to the remote hearing or remote briefing for LEP persons consistent with its obligations under Title VI of the Civil Rights Act of 1964¹. The obligation to provide meaningful access for LEP persons, regarding remote hearings and remote briefings, is particularly important meaning that the PHA will generally need to coordinate with a remote language interpretation service prior to the remote hearing or remote briefing. Further, conferencing technology may provide for remote interpretation; if video technology is available, remote interpretation using video is generally preferred over voice-only because of the additional visual cues. Importantly, though, PHAs cannot rely on minors to interpret.

For written materials, PHAs should engage with a language translation service. All written materials related to the remote hearing or remote briefing, whether paper or electronic, and whether provided before, during, or after the hearing, may need to be provided in translated format.

- 6. Identify and Resolve Technology Barriers Prior to Conducting the Remote Hearing or Remote Briefing.** The lack of technology or inability to use technology for a remote hearing or remote briefing can impose a disadvantage for individuals or families that may

¹ See also *Lau v. Nichols*, 414 U.S. 563 (1974).

not be apparent to the PHA. Thus, the PHA should determine if barriers exist prior to scheduling the remote hearing or remote. **If the participant does not have proper technology access which will allow the individual to fully participate, then the remote hearing or remote briefing should be postponed, or an in-person alternative must be provided².** This includes if an individual's witness for the remote hearing is unable to participate due to a lack of access to technology. If the participant does not have proper technology access and the remote hearing or remote briefing warrants postponement due to the lack of proper technology access, the PHA may not hold against the individual his or her inability to participate in the remote hearing or remote briefing. For use of videos or telephones, all materials to be presented during the remote hearing or remote briefing, whether paper or electronic, must be provided to the individual or family prior to the remote hearing or remote briefing (see Section 7 of this notice for more information) and the participant shall be provided an accessible means by which to transmit the individual's own evidence, such as through email or text. Below are best practices in making the determination if a remote hearing or remote briefing can take place.

- a. Survey the Family to Identify Barriers.** To determine if there are technology barriers, the PHA should survey what technology resources the family has to conduct a remote hearing or remote briefing. For example, the PHA could ask if the resident has a computer, phone, tablet or laptop that has a camera, does the resident have internet access or can the resident go to a place with sufficient privacy *and* internet access (family, friend or neighbor's home), or can technology be borrowed. During such surveys, PHAs must still meet their obligations under Section 504 and the ADA to effectively communicate to persons with disabilities, and under Title VI of the Civil Rights Act of 1964 to provide meaningful access to individuals with LEP.
- b. Resolve Barriers.** Depending on the barriers identified, HUD offers the following best practices that PHAs could consider when resolving a barrier and proceeding with scheduling a remote hearing or remote briefing.
 - i. PHA supplied devices or private PHA office space (community laptop/tablet, building Wi-Fi, mobile hot spot, private room in the PHA office building).** For the public housing program, PHAs can use traditional operating funds to establish community rooms with computers and internet service to conduct the remote hearing or remote briefing. PHAs could also provide the individual or family with temporary access to the property's password protected Wi-Fi or provide a mobile hotspot that can be accessed

² HUD regulations require that the hearing must be scheduled promptly and within a reasonable time. A postponement is not an indefinite delay that would contradict HUD regulations or become a due process violation.

from the parking lot or in the building. PHAs could also consider using a portion of the CARES Act funds (Notice PIH-2020-07) to purchase one (1) or multiple devices that could be delivered or otherwise made available at the participants' residences. Finally, PHAs could offer a private room in the PHA office building.

- ii. Smartphone Apps.** Many video conferencing platforms have smartphone apps, which can be used where the individual or family does not have access to computers. In addition, smartphone apps can operate on Wi-Fi, and this may be advantageous for individuals with restricted data plans.
- iii. Community Resources.** Research community resources, such as broadband internet providers offering free or low-cost internet access, find local charities or other resources for free or low-cost phones or computers, or as stated in Section 6(b)(i) above, offer the individual or family temporary access to the property's password-protected Wi-Fi or provide a mobile hotspot.
- iv. Personal Resources.** Assess personal resources for technology access, such as supportive services, family members, mentors, or friends who could lend the individual or family a phone or computer.
- v. Voice Only Option (Telephone).** Most individuals have, or can use, a telephone. However, conducting a remote hearing or remote briefing by telephone is the least preferred option due to the challenges of not being able to view documents being presented at the remote hearing or remote briefing (e.g., screen sharing) and not being able to identify who is speaking during a phone call with multiple attendees. In addition, the participant should not feel pressured to conduct a remote hearing or remote briefing by telephone. However, if the PHA and participant choose to proceed with a telephone hearing or briefing, the PHA should provide the resident with a consent form, that meets the requirements for accessibility for persons with disabilities and persons with LEP (see Section 5 of this notice), so the resident has complete knowledge of their rights, as well as the risks and benefits of conducting the remote hearing or remote briefing by phone. To obtain valid consent, it may be necessary for the PHA to verbally inform a participant of the content of the consent form prior to signing, or the PHA may need to get consent from the participant's appointed representative or guardian. The PHA should also consider that some residents may have restricted data plans or a limited number of minutes, so a PHA could use voice-only participation through a toll-free phone number. Further, some cell phone carriers charge differently for

incoming and outgoing calls. The PHA should consider calling the resident to minimize cost.

7. Presenting Documents Prior to a Remote Hearing and/or Remote Briefing. If video or telephone conference is used for the remote hearing or remote briefing, all materials being presented, whether paper or electronic, must be provided to the individual or family prior to the remote hearing or remote briefing, and may be submitted electronically to the HUD Field Office of Public Housing for TPV family briefings (see Section 2.f of this notice). Individuals or families may prefer paper printouts over electronic documents, due to lack of access to printers, difficulty viewing detailed documents on a cell phone, or difficulty viewing screen sharing on an app. Any materials made available to the individual or family must meet the requirements for accessibility for persons with disabilities and persons with LEP (see Section 5 of this notice).

a. Establish Procedures. The PHA must establish written procedures of all aspects of how the remote hearing or remote briefing will be conducted and the procedures should be readily available to the public. The procedures should also explain how documents will be presented prior to a remote hearing or remote briefing. Note that when making procedures readily available to the public, PHAs must still meet their obligations under Section 504 and the ADA to effectively communicate to persons with disabilities, and under Title VI of the Civil Rights Act of 1964 to provide meaningful access to individuals with LEP. See Sections 8 and 9 of this notice for program specific requirements regarding written procedures.

b. Personally Identifiable Information (PII). For documents that contain PII and are provided prior to a remote hearing or remote briefing, the PHA is responsible for minimizing the risk of exposure or misuse of the data collected, used, and shared. Safeguard sensitive information, including all PII at all times. PII is information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information directly linked or linkable to a specific individual. Examples of PII include name, social security number, biometric records, date and place of birth, and mother's maiden name. PHAs are reminded not to transmit sensitive PII via an unsecured information system (e.g., electronic mail, Internet, or electronic bulletin board) without first encrypting the information. See Notice PIH-2015-06 for more regarding privacy protection.

c. TPV Family Briefings – Written Consent. In addition to the provisions of this notice, PHAs must follow the provisions of Notice PIH-2013-27 and Notice PIH-2019-05, as applicable, on obtaining the family's voluntary written consent for voluntary relinquishment of their right to tenant-based assistance.

- d. Due Process for Remote Hearings.** For Public Housing, PHAs must follow HUD regulations at 24 CFR part 966, subpart B (public housing grievance process) and include the procedures in the resident’s lease. For the HCV Program, PHAs must follow 24 CFR 982.554 (informal review for applicant) and 982.555 (informal hearing for participant).
- i. Conducting Discovery and Providing Evidence.** PHAs may request and copy any of the individual’s or family’s documents at the PHAs’ own expense in accordance with the applicable regulations. Additionally, the individual or family must be given the opportunity to examine any PHA documents that are directly relevant to the hearing prior to the remote hearing. This may include transmitting documents electronically or by mail that would normally be exchanged at the PHA’s office. Under Section 504, the ADA, and the Fair Housing Act, PHAs may need to make reasonable accommodations and take appropriate steps to ensure effective communication with individuals with disabilities through the provision of AA/S before, during, and after any hearing. This may require changes in how the individual or family seeks discovery of information held by the PHA and the manner in which evidence is made available to persons with disabilities during remote hearings (while still meeting any applicable rules concerning the acceptance of evidence by the hearing officer). PHAs must also take reasonable steps to ensure meaningful access for LEP persons before, during, and after such remote hearings (28 CFR 35.160-164; 24 CFR 8.6; 24 CFR 982.555(e)(2) and (5); 24 CFR 966.56(b)).

8. Public Housing Specific Requirements

- a. PHA’s Grievance Procedure:** PHAs are required to provide reasonable accommodations for persons with disabilities under 24 CFR 966.56(f) and comply with cited guidance for persons with limited English proficiency (LEP) under 24 CFR 966.56(g). If the PHA would like to implement a remote hearing as described in this notice, then the PHA must update its grievance procedure policy as described in 24 CFR 966.52 to include provisions to allow for the use of mail, electronic mail, telephone, and video call, as appropriate and as described in this notice. When considering how the grievance hearing will be conducted under 24 CFR 966.56 (a), “reasonably convenient” must meet the requirements for accessibility for persons with disabilities and persons with LEP in Section 5 of this notice and consider technology barriers in Section 6 of this notice. Under 24 CFR 966.56 (b)(1), the PHA may provide “PHA documents, including records and regulations, that are directly relevant to the hearing” directly to the resident via email, or on a secure website or cloud-based server. The PHA shall ensure that

electronic information stored or transmitted is secure per Notice PIH-2015-06, meets the requirements for accessibility for persons with disabilities and persons with LEP in Section 5 of this notice, considers technology barriers described in Section 6 of this notice, and explains how documents will be presented prior to a remote hearing in Section 7 this notice.

9. HCV Specific Requirements

- a. **Remote Hearings – PHA’s Administrative Plan:** The administrative plan must state the PHA procedures for conducting informal hearings for applicants and participants (see 24 CFR 982.554(b) and 24 CFR 982.555(e)). If the PHA would like to implement a remote hearing as described in this notice, then the PHA must update its administrative plan as described in 24 CFR 982.54 to include provisions to allow for the use of mail, electronic mail, telephone, and video call, as appropriate and as described in this notice. When considering how the informal remote hearing will be conducted, the PHA shall ensure that electronic information stored or transmitted is secure per Notice PIH-2015-06, meets the requirements for accessibility for persons with disabilities and persons with LEP in Section 5 of this notice, considers technology barriers described in Section 6 of this notice, and explains how documents will be presented prior to a remote hearing in Section 7 this notice.
- b. **Remote Briefings:**
 - i. **Further Background:** While the HCV guidebook has provided guidance for in-person briefings and many PHAs have conducted these oral briefings in person, there is no explicit requirement for the briefing to be held in person. Even after the waivers and alternative requirements provided through Notice PIH-2020-13, or its successor, expire, this notice clarifies that PHAs may continue to conduct briefings remotely via webcast, video call, or other methods provided they meet the minimum requirements described in this notice.
 - ii. **Opportunity to Ask Questions:** In addition to the requirements described in Sections 5, 6 and 7 of this notice, PHAs must provide an opportunity for remote briefing participants to ask questions.
 - iii. **PHA’s Administrative Plan:** If the PHA would like to implement a remote briefing as described in this notice, then the PHA must update its administrative plan as described in 24 CFR 982.54(d)(1) to include provisions to allow for use the of mail, electronic mail, webcast, and video call, as appropriate and as described in this notice. When considering how the remote

briefing will be conducted, the PHA shall ensure that electronic information stored or transmitted is secure per Notice PIH-2015-06, meets the requirements for accessibility for persons with disabilities and persons with LEP in Section 5 of this notice, considers technology barriers described in Section 6 of this notice, and explains how documents will be presented prior to a remote briefing in Section 7 this notice.

iv. Best Practices and Considerations:

- 1. Review voucher obligations with families at reexamination.** Use other opportunities, such as the regularly scheduled reexamination, with the family to remind them of their program obligations to help avoid termination.
- 2. Have PHA staff reach out directly to tenants by phone after the briefing.** Particularly if the briefing is not interactive, have staff reach out directly to families by phone to make sure their questions have been answered.
- 3. Consider the impact of families attending briefings remotely on other program functions.** For PHAs that already conduct their reexaminations by mail, conducting remote briefings may mean that families never meet face-to-face with the housing authority. PHAs need to consider if this change impacts any other program functions and plan accordingly.

10. Information Contact: Inquiries about this notice should be directed to the appropriate field office. Find your local field office at:

https://www.hud.gov/program_offices/public_indian_housing/about/field_office.

11. Paperwork Reduction Act: The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C 3520). In accordance with the PRA, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. The following active information collections contained in this notice have been approved under the PRA-OMB Control Numbers 2577-0169, 2577-0083, and 2577-0220.

/s/

R. Hunter Kurtz, Assistant Secretary
for Public and Indian Housing