

To: Laure Rawson, Office of Public and Indian Housing, Office of Voucher Management Operations  
From: Chung-yiu "Andrew" Lee, Office of General Counsel, Assisted Housing Division  
Date: June 25, 2013  
Re: South Jersey Legal Services, Inc. Inquiry Regarding PIH 2011 – 28

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### NOTE

Our office in receipt of South Jersey Legal Services, Inc.'s (SJLS) June 17, 2013 letter requesting the Office of General Counsel provide clarification regarding Notice PIH 2011 – 28. SJLS provided us with the following information.

SJL represents a Housing Choice Voucher (HCV) participant residing in a two-bedroom unit. The entire apartment building, including the HCV participant's dwelling unit, is infested with bed bugs. As a result, the HCV participant sought to terminate the tenancy and find another decent, safe and sanitary unit elsewhere. Unfortunately, the Housing Authority of Gloucester County (HAGC) has been uncooperative for almost two years in addressing the HCV participant's request for the move and only recently provided her with a one-bedroom voucher. SJLS seeks guidance on whether HAGC issuing a one-bedroom voucher to the HCV participant, a family of three individuals (one adult and two minor females), is consistent with PIH 2011- 28 and the applicable HCV regulations. We answer in the negative.

We begin with the brief review of the applicable HCV regulations and administrative guidance. In explaining subsidy standards, the regulations provide that:

- (1) The PHA must establish subsidy standards that determine the number of **bedrooms** needed for families of different sizes and compositions.
- (2) For each family, the PHA determines the appropriate number of **bedrooms** under the PHA subsidy standards (family unit size).
- (3) The family unit size number is entered on the voucher issued to the family. The PHA issues the family a voucher for the unit size when the family is selected for participation in the program.  
24 C.F.R. § 982.402(a) (Emphasis added.)

Additionally, the regulations states:

- (1) The subsidy standards must provide for the smallest number of **bedrooms** needed to house a family without overcrowding.
- (2) The subsidy standards must be consistent with space requirements under the housing quality standards (See § 982.401(d)).
- (3) The subsidy standards must be applied consistently for all families of like size and composition.  
24 C.F.R. § 982.402(b) (Emphasis added.)

Chapter 5 of the Housing Choice Voucher Program Guidebook (Guidebook) section on “Determination of Unit Size Requirements” is consistent with the above regulatory requirements. Additionally, the Guidebook includes a chart entitled “Typical PHA Standards Used to Issue Housing Choice Voucher” and “Standards Used to Determine Acceptability of Unit Size (HQS Rules)”.

To fully understand the two charts referenced above, we must understand subsidy standards. A key principle of subsidy standards is that the voucher is always tied to the number of **bedrooms** needed by the family. There are no HCV statutory, regulatory or administrative authority that considers a living room a “bedroom”. Once a PHA determines the family size and composition and provides the family with the voucher, noting the maximum number of **bedrooms** the family is eligible for, the family must identify a suitable unit that meets the Housing Quality Standards (HQS).

The chapter 5 Guidebook chart outlining the “Standards Used to Determine Acceptability of Unit Size (HQS Rules)” must not be confused with the subsidy standards of § 982.402 and the chart “Typical PHA Standards Used to Issue Housing Choice Voucher”. The HQS requirements of § 982.401 are distinct requirements and are intended to apply *after the family has selected the unit*. Generally speaking, the HQS requirements do not come into play in determining the number of bedrooms needed for the family of a particular size and composition. While there is a close relationship between subsidy standards and HQS requirements, these two requirements are not one in the same.

Based on the SJLS letter, it appears HAGC erroneously merged the HQS and subsidy standards concepts together. HAGC may have focused heavily on the HQS requirement at § 982.401(d)(2)(ii), which states “[t]he dwelling unit must have at least one bedroom or living/sleeping room for each two persons. Children of opposite sex, other than very young children, may not be required to occupy the same bedroom or living/sleeping room.”, to reach the conclusion HAGC can issue a one-bedroom voucher to a family of three. Such an interpretation of § 982.401(d)(2)(ii) is flawed.

As stated earlier, the HQS requirements come into play *after the family has selected the unit*. What § 982.401(d)(2)(ii) is intended to address and avoid are situations of overcrowding by the family. While uncommon, families can select a dwelling unit with fewer bedrooms than the maximum bedrooms listed on the voucher, so long as the dwelling unit meets HQS. 24 C.F.R. § 982.402(d)(1). Renting a dwelling unit with fewer bedrooms is entirely voluntary on the family. Under no circumstances may a PHA compel a family to have its family member(s) reside in a living room or accept fewer bedrooms than what the family needs. Therefore, based on the facts presented, we find no legal basis for HAGC to compel the HCV participant to accept a one-bedroom voucher.

We now address the PIH 2011 – 28 “Cost-Saving Measures in the Housing Choice Voucher Program” (Notice) issue. SJLS indicated that HAGC referred to the Notice as the basis to deny a two-bedroom voucher to the HCV participant and only provide her a one-bedroom voucher. HAGC’s reliance on the Notice is also flawed.

The Notice was not intended to suggest PHAs can begin counting a living room as a bedroom for the purposes of administering the PHAs’ subsidy standards. While we understand the confusion of the “Subsidy Standard” section of the Notice as it did reference HQS and did reiterate that “a dwelling unit must have at least one bedroom or living sleeping area for each two persons.”, the Notice language was intended to address situations where families are over-housed (more **bedrooms** in the dwelling unit than needed based on the family size and composition). Under these circumstances, PHAs were reminded to apply the payment standard based on the maximum number of bedrooms the family is eligible for, and not the payment standard based on the number of actual bedrooms in the dwelling unit. Therefore, we find that HAGC’s reliance on PIH 2011 – 28 as the basis to compel the HCV participant to accept a one-bedroom voucher is without legal merit.

Lastly, we note our legal conclusions regarding the proper interpretation of the subsidy standards and HQS regulations are applicable to all HCV participants, regardless of whether they are new admissions, HCV families moving within the PHA jurisdiction, or HCV families reporting a change in family size and composition at annual or interim reexaminations. With respect to subsidy standards in particular, this means PHAs’ subsidy standards “must be applied consistently for all families of like size and composition.” 24 C.F.R. § 982.402(b).

If you have any questions please feel free to contact Chung-yiu “Andrew” Lee at (202) 402 – 6190.