LEGAL ACTION COMMENTS	CDA RESPONSE
2-I.B. NON-DISCRIMINATION (2-4) **LAW Suggestion:** CDA should list all protected classes in the City of Madison (Chapter 39 of the Madison General Ordinances) and Dane County (Chapter 31 of the Dane County Code of Ordinances), to recognize its obligation to comply with local fair housing and equal opportunity law and specifically incorporate the local ordinances into this section. This was already recognized in the preceding section, so additional protected classes should be incorporated herein. **Providing Information to Families (2-5)** **LAW Suggestion:** CDA should add language indicating that it will inform tenants of their right to request a reasonable accommodation in all notices of adverse action. Language should be added as follows: If the CDA observes an individual experiencing difficulty with a certain rule policy, practice or service, the CDA will ask the applicant or participant if he/she is experiencing difficulty and if s/he is having any difficulties because of physical or mental health conditions. If the applicant or participant answers affirmatively, the CDA will ask the applicant or participant if he/she wants help completing the CDA reasonable accommodation form. Language should be added to ensure that anytime a reasonable accommodation is requested, the CDA has a duty to process it (i.e. investigate , evaluate and decide) before they can come to a determination that it does not qualify for protection for one of the reasons stated in this section. Notification of adverse action should include the following information: *If you believe the issues stated in this notice relate to the disability of you or a family member, you have the right to request a reasonable accommodation to a rule, policy, practice or service on account of the disability. We recommend you make your reasonable accommodation request in writing stating the particular rule, policy, practice or service for which you are seeking an accommodation.*	(2-4) The CDA administers the Public Housing program, which is funded by the federal government. Many of the County and City protected classes are in conflict with the federal regulations that a Public Housing Authority (PHA) must follow (i.e. student status, arrest/conviction record, social security number disclosure, citizenship status, and credit history). The rules set by the federal government supersede MGO 39.03. The overview on page 2-3 clarifies the CDA's responsibility related to non-discrimination. Recommendation: The LAW suggestions violate HUD policies and therefore the CDA should not adopt the changes proposed by LAW. (2-5) The CDA's reasonable accommodation policy is located on page 2-7 and does not need to be repeated again on page 2-5. As indicated on page 2-7, the CDA has a duty to provide notice to program applicants and participants regarding their right to request an accommodation and all reasonable accommodation requests must be verified through a medical provider. HUD Fair Housing has strict guidelines regarding the extent at which the CDA should inquire as to the nature or extent of a person's disability. It would be inappropriate for CDA Staff to make medical judgments of certain customers. As part of the CDA's good customer service, staff will continue to assist customers who have difficulties during transactions and interactions. The CDA developed its reasonable accommodation statement based on Section 8 Administrative Plan discussions with the CDA Housing Operations Subcommittee in 2011 and the statement is working well and appears on all notices (adverse and non-adverse). Recommendation: The LAW suggestions go beyond what is allowed under Fair Housing and therefore the CDA should not adopt the changes as outlined by LAW.

2-II.C. REQUEST FOR AN ACCOMMODATION (2-9) **LAW Suggestion:** Add the following: If it is not obvious what type of accommodation is needed, the family should try to explain the type of accommodation needed. Modify as follows: The CDA will encourage the family to make its request in writing using a reasonable accommodation request form, ~~and the reasonable accommodation request form must be submitted within 10 business days~~. However, the CDA will consider the accommodation any time the family indicates that an accommodation is needed whether or not a formal written request is submitted. ~~If an informal request is made by the family, the family must explain what type of accommodation is needed to the CDA within 10 business days.~~ CDA has a duty to engage in an interactive process with the family once a reasonable accommodation has been requested. [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act.] Both the family and the CDA have a duty to be responsive and communicate during the interactive process to facilitate a resolution regarding the requested accommodation.	(2-9) The CDA's notice of the right to request a reasonable accommodation appears on all notices (adverse and non-adverse). Under the CDA's ACOP policy, the CDA will encourage the family to fill out a reasonable accommodation request form, but filling out the form is not a requirement. In order to effectively administer the program, the CDA must address the need for an accommodation in a timely manner and the interactive process cannot take place without a request to review. 10 business days is a reasonable amount of time to complete a request for a reasonable accommodation either in writing or verbally Recommendation: Staff does not feel the language change is necessary and do not recommend adoption.
3-I.C. FAMILY BREAKUP AND REMAINING MEMBER OF TENANT FAMILY (3-4) **LAW Suggestion:** When the CDA makes a decision regarding who will retain the subsidized housing benefit (tenancy or waitlist spot), it will notify both parties in writing of the decision and the right for the aggrieved party to request a grievance hearing regarding the decision.	(3-4) Public Housing grievance policies apply to the family unit, and when the family breaks up, only one of the new families can be assisted. In absence of a judicial decision, the CDA will rely on what the family decides. Recommendation: LAW suggested change is not needed.

3-I.J. GUESTS [24 CFR 5.100] **LAW Suggestion:** ~~A resident family must notify the CDA when overnight guests will be staying in the unit for more than 3 days.~~ A guest can remain in the unit no longer than ~~7~~ 14 consecutive days or a total of ~~14~~ 45 cumulative calendar days during any 12 month period. The CDA will notify guests that they are prohibited from CDA property by issuing a no-trespassing notice with the resident (if known) and the guest (in person, by mail to a known address, or by posting a notice on the CDA's property). Notices will include information regarding the resident's right to request a grievance hearing regarding the no-trespass decision. ~~Former residents who have been evicted are not permitted as overnight guests.~~	**Guests:** Managers are fine omitting the sentence relating to notifying CDA when overnight guests will be in the unit more than 3 days. Site Managers do not want any other part of the policy changed because the rationale for the policy is that it gives the CDA a way to measure how long someone has been staying on the property who is not part of the household. This diminishes the occurrence of unauthorized live ins which helps us maintain program integrity. Government subsidies are being provided to APPROVED household members and tenant rents are set based upon the income of those approved household members. Approved household members have also been screened for sex offender status, criminal history, and housing history and meet our suitability test. Guests have not been subject to these tests and so staying longer than seven days, or a total of 14 cumulative days during a 12 month period could potentially put other residents, or our property, at risk. Recommendation: Revise to indicate resident must give notice regarding guests staying more than 14 consecutive days. CDA managers do not agree to offer banned individuals the right to grieve the ban. These people are not residents and we are not obligated to offer them the rights afforded to our residents. Further, if they are being banned it is for reason that is consistent with our screening policies, or because they have engaged in an activity that negatively affects, or could potentially negatively affect the safety, and security of our residents and/or property and may impair the social environment of the neighborhood. Recommendation: Do not adopt LAW suggestion. Residents are free to associate with who they wish to, off of CDA properties. CDA Managers want to maintain the sentence about former residents who have been evicted cannot be permitted as overnight guests. People are evicted for lease violations. If they had difficulty following the rules while a resident, it is unlikely they will follow the rules as a guest. Further, we have experience that shows that evicted people may try to live as an unauthorized guest on the property which compromises the integrity of the program, and makes other residents uncomfortable. Recommendation: Do not adopt LAW suggestion. Residents are free to associate with who they wish to, off of CDA properties.

3-II.B. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5, Subpart E] (3-15) ***U.S. Citizens and Nationals*** **LAW Suggestion:** Revise CDA Policy as follows: "Family members who declare citizenship or national status will not be required to provide additional documentation unless the CDA receives information indicating that an individual's declaration may not be accurate. <u>The CDA will provide the information forming the basis for the supplemental documentation request and the source of the information and provide copies of anything in writing regarding the same.</u>"	(3-15) Housing assistance is only available to individuals who are U.S. Citizens, U.S. nationals, or noncitizens that have eligible immigration status. Generally, it is the family member who informs the CDA upon filling out the form incorrectly. In cases where the notification is from a different source, the CDA would provide information to the family. Recommendation: The CDA can accept this recommendation
3.III.B. REQUIRED DENIAL OF ADMISSION [24 CFR 960.204] (3-20) <u>CDA Policy (as drafted)</u> Currently engaged in the illegal use of a drug means a person has engaged in the behavior recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member [24 CFR 960.205(b)(1)] *Currently engaged in* is defined as any use of illegal drugs during the previous 12 months. *Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802] **LAW Suggestion:** The proposed definition for "*currently engaged in"* any use of illegal drugs during the previous six months is too expansive. We propose the definition be limited to the use of illegal drugs within the previous thirty (30) days. <u>CDA Policy (as drafted)</u> The PHA has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents. *Pattern of use of drugs or abuse of alcohol* is defined as more than one incident on or off the premises during the previous 24 months.	(3-20) **"**Currently engaged in," does not mean recent days or weeks and the CDA believes that someone would be a "current" user of illegal drugs if he/she used illegal drugs in some fashion during the weeks or months prior to being screened for the Public Housing program. The CDA believes "pattern" means more than once and two repeated incidents shows a pattern. Recommendation: CDA Staff do not believe that the 12 month period is too expansive and do not recommend LAW suggestions.

LAW Suggestion: Define pattern to include more than two incidents threatening the health, safety, or right to peaceful enjoyment of the premises by other residents on the premises within 12 months. CDA may not make a determination that there is a pattern of use of drugs or abuse of alcohol based solely on hearsay. CDA's determinations under this section are subject to applicable fair housing law and the right of an applicant to a reasonable accommodation.	(3-20) CDA denials of admission are not subject to the rules of evidence that apply to hearings in judicial proceedings. The CDA may base decisions of adverse action on reliable hearsay evidence. Fair Housing and Reasonable Accommodations are covered in Chapter 2. Recommendation: CDA Staff believe that the CDA outlined policy is very reasonable and the LAW suggestion is not warranted and should not be adopted.
3-III.C. OTHER PERMITTED REASONS FOR DENIAL OF ADMISSION **Criminal Activity [24 CFR 960.203(c)]** **LAW Suggestion:** Modify section as follows: <u>CDA Policy</u> **(3-22)** "*Disposition Date*" means • The date the applicant household member completed probation, completed parole, or was released from incarceration for the criminal activity that is being considered as a basis for denial. • If sentencing includes a fine and does not include confinement, parole, or probation, the disposition will be the date the applicant household member was ordered to pay a fine for the criminal activity or civil offense that is being considered as a basis for denial. • <u>Outstanding fines, penalties, restitution or court costs will not be a factor in determining a disposition date</u>. • *~~For criminal activity for which there was not a conviction, the disposition date will be the date the activity occurred~~. *The CDA should not be denying for criminal activity that did not result in a conviction. Decisions to deny may not be based solely on hearsay.	(3-22) The CDA's ACOP policy does not result in the consideration of outstanding fines. In cases where sentencing only involves a fine, the CDA will use the sentencing date as the disposition date. Per 24 CFR 960.203, the CDA must screen family's behavior and suitability for tenancy. In doing so, the CDA would consider criminal activity and negative behavior for which there might not be a conviction. CDA denials of admission are not subject to the rules of evidence that apply to hearings in judicial proceedings. The CDA may base decisions of adverse action on reliable hearsay evidence.

LAW Suggestion: ~~The CDA considers any drug-related civil activity as drug-related criminal activity.~~ ~~The CDA will also consider criminal acts involving drug paraphernalia to be drug-related criminal activity. *Drug paraphernalia* is defined as any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under the Controlled Substances Act [21 USC 863(d)]; or~~ **LAW Suggestion:** Evidence of such criminal activity includes, but is not limited to: **Convictions:** Any conviction for criminal activity listed in 1. through 5. above and with a disposition date within the past two (2) years. ~~**Arrests:** Any arrests for criminal activity listed in 1. through 5. above with a disposition date within the last two (2) years.~~ ~~**Police Contacts:** Any police contact for criminal activity listed in 1. through 5. above with a disposition date within the last two (2) years.~~ ~~**Civil Ordinance Violations:** Any civil ordinance violations for criminal activity listed in 1. through 5. above with a disposition date within the last two (2) years.~~ ~~**Evictions:** Any record of an eviction resulting in an eviction judgment from public or privately-owned housing as a result of criminal activity listed in 1. through 5. above within the past two (2) years (See section 3-111B. REQUIRED DENIAL OF ADMISSION, for mandatory denial based upon an eviction for drug-related criminal activity.)~~ ~~*A conviction for criminal activity will be given more weight than an arrest or police contact for such activity.~~ *Reference to weight given to evidence is unnecessary if the only acceptable evidence is a conviction. A finding of criminal activity should not be based solely on hearsay.	(3-22) The CDA's ACOP policy is designed to help create and maintain a safe and drug free community. The CDA considers any drug listed in the Controlled Substances Act to be illegal drugs, including marijuana. HUD prohibits the admission of marijuana users to the Public Housing program. Drug paraphernalia is used in conjunction with drugs listed in the Controlled Substances Act. In some cases, local police will issue a ticket for Marijuana use and/or possession, as well as for drug paraphernalia, and the CDA would consider as drug related "activity." (3-22) Arrest, police, civil ordinance violation, and eviction records, along with conviction records are relevant information and will allow the CDA to responsibly screen family behavior and suitability for tenancy. Under 24 CFR 960.203(c), the CDA may consider all relevant information, which may include, but is not limited to: (1) An applicant's past performance in meeting financial obligations, especially rent; (2) A record of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences which may adversely affect the health, safety or welfare of other tenants; and (3) A history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety or welfare of other tenants. CDA denials of admission are not subject to the rules of evidence that apply to hearings in judicial proceedings. The CDA may base decisions of adverse action on reliable hearsay evidence. Recommendation: CDA Staff have worked with ex offenders and applicants and residents who have been involved in drug or criminal activity. Each situation is evaluated on a case by case basis. The changes proposed by LAW would weaken the ability of staff to screen or take necessary adverse action. The changes proposed by LAW should not be adopted.

Previous Behavior [960.203(c) and (d) and PH Occ GB, p. 48] (3-25)
LAW Suggestion:
The CDA ~~will~~ may deny admission to an applicant family if the CDA determines that the family:

Owes rent or other amounts to the CDA or to any other PHA or owner in connection with any assisted housing program which is known by the family, undisputed, and the family has failed to take any responsibility for the debt. In cases where the CDA determines that any member of an applicant household owes a debt to the CDA or to another PHA and the applicant family member has included the PHA in a bankruptcy filing or the PHA debt has been discharged by the bankruptcy court, the CDA will consider the amount owed to the PHA to be discharged, but will may deny admission based on the previous negative behavior and suitability for tenancy.

The CDA will not consider an undisputed debt to a previous landlord that is in the process of being paid as sole or automatic grounds for denial. A debt that has been disputed by the applicant family will not be grounds for denial.

Families may not have a present ability to immediately pay undisputed debts and should not be denied solely on the basis of that debt so long as reasonable good faith efforts have been made to repay the debt.

~~If any household member has engaged in criminal activity listed in 6. through 8. above, or if any household member is currently required to register as a sex offender on any state sex offender registry for a period of less than a lifetime, the CDA will consider all credible evidence, including but not limited to convictions and arrests with a disposition date more than two (2) years from the date of application as permitted by 24 CFR 960.203(c)(3)(ii).~~

Resources Used to Check Applicant Suitability [PH Occ GB, pp. 47-56] (3-30)

LAW Suggestion:
Applicants will not be denied for a failure to meet a financial obligation, including rent, during a time when their housing burden was more than 50% of their monthly income.

(3-25) In selection of families for admission to its public housing program, the CDA is responsible for screening family behavior and suitability for tenancy. The CDA may consider all relevant information, which may include, but is not limited to an applicant's past performance in meeting financial obligations, especially rent [24 CFR 960.203(c)]. In following HUD's EIV reporting system requirements and guidelines, the CDA would not admit a family, or place a family on a waiting list, if the family owes money to any PHA. Denied applicants have appeal rights and the CDA will consider verifiable mitigating circumstances.

Recommendation: In compliance with HUD's policy, the CDA should not adopted LAW's suggestions.

(3-30) The CDA's ACOP policy allows the CDA to consider verifiable mitigating circumstances along with evidence to show that the family has made responsible efforts to resolve a nonpayment problem.

Recommendation: Do not adopt LAW recommendation. To prohibit action against money owed creates a disincentive for people to pay monies owed. Staff work and can better assess resident making good faith efforts.

(**3-31) LAW Suggestion:** Applicants must be able to demonstrate the ability to pay rent and other charges as required by the lease. The CDA must verify that applicants can pay the CDA's minimum rent payment, utilities if applicable, and a security deposit~~. Insufficient income to pay the cost of rent, utilities if applicable, and to make standard security deposit payments will be grounds for denial of admission.~~ CDA Policy (as drafted) *Disturbances of Neighbors, Destruction of Property or Living or Housekeeping Habits at Prior Residences that May Adversely Affect Health, Safety, or Welfare of Other Tenants, or Cause Damage to the Unit or the Development* Police and court records will be used to check for any evidence of disturbance of neighbors or destruction of property that might have resulted in police contact, arrest, fine, or conviction. **LAW Suggestion:** Add: A decision to deny will not be based solely on hearsay.	(3-31) The CDA must be able to determine that the family can meet the requirements of tenancy under the Public Housing program. Therefore, the family has to be able to pay minimum rent, utilities if applicable, and security deposit, as these are essential lease requirements. CDA denials of admission are not subject to the rules of evidence that apply to hearings in judicial proceedings. The CDA may base decisions of adverse action on reliable hearsay evidence. Recommendation: LAW assertion is incorrect, do not adopt LAW suggestion.
3-III.E. CRITERIA FOR DECIDING TO DENY ADMISSION **Evidence: CDA Policy (3-33)** **LAW Suggestion:** CDA admissions staff will make admissions decisions based on the preponderance of the evidence standard. **Removal of a Family Member's Name from the Application [24 CFR 960.203(c)(3)(i)] (3-34)** CDA Policy (as drafted): As a condition of receiving assistance, the CDA may, on a case-by-case basis, agree to allow a family to remove the culpable family member from the application. In such instances, the head of household must certify that the family member will not be permitted to visit or to stay as a guest in the public housing unit, and the family must provide ~~verifiable~~ evidence of the former applicant family household member's current living address, if any. **LAW Suggestion:** Allow them to visit, so long as the participant certifies he/she will not allow the culpable family member to engage in violent crime or drug activity. Revise the policy to allow them to certify that the excluded household member is not living there even if the excluded household member does not have an address due to homelessness. Certification of shelter residence or self-certification of homelessness, if not served by shelter, should be accepted.	(3-33) The language of this section was drafted and recommended by the City Attorney's Office. Recommendation: Do not accept LAW language, keep as advised by the City Attorney's Office (3-34) In order to allow the rest of the family to receive the Public Housing benefit, the culpable family member has to be removed. The CDA requires verification of the removal of the culpable family member in order to pass a HUD audit. Recommendation: Do not adopt LAW suggestion. Residents are free to associate with who they wish to, off of CDA properties.

3-III.G. NOTICE OF ELIGIBILITY OR DENIAL (3-38) **LAW Suggestion:** CDA Policy If an applicant family appears to be ineligible, the CDA will notify the family of the proposed decision to deny admission in writing. The denial notice will include a brief statement of the reason(s) for the proposed denial, citation to the applicable regulation(s) or CDA policy, the date, the source of the information—including the name and title of individuals contacted—and a resume of the information received, and a summary of the facts that form the basis for each reason for denial (see also Chapter 14.I.B.) The details related to the factual basis for the denial will include, but are not limited to, information such as the following (as applicable): • criminal, police case, or other court case number; • name or description of offense; • offense date; • disposition date; • housing provider information or rental address if related to negative rental information, and eviction, or if related to debts owed to a housing provider or housing authority; • credit reporting agency name and contact information, specific negative credit information the CDA used in making its decision including name of creditor, account number, and account balance if related to negative credit or unsuitable past performance in meeting financial obligations; and • any other facts relevant to the basis for the denial of admission. Denial notices, and all other notices of adverse action, should also include the following language. "Legal Action of Wisconsin, Inc. provides free legal services to low-income clients in housing law matters. You may contact their office by visiting it at 31 S. Mills St. or calling 608-256-3304 or 1-800-362-3904 for more information about applying for their services."	(3-38) The CDA's current notice of denial of admission provides denied applicants with a summary of the facts that form the basis for each reason for denial. The notice contains a thorough description of the process for requesting an informal hearing and also enables the applicant to prepare a defense to adverse evidence. The courts, under Certiorari Review, have agreed that the CDA's denial notice is more than adequate. It would be inappropriate for the CDA to endorse one particular legal services provider. Legal Action of Wisconsin (along with other low-cost legal services providers) is listed on a Community Resources brochure highly distributed by the CDA. Recommendation: Actions in this area are satisfactory to the Courts, LAW suggestions are unnecessary. Do not adopt LAW suggestions.
4-II.F. UPDATING THE WAITING LIST [24 CFR 960.202(a)(2)(iv)] (4-11) **LAW Suggestion:** Regarding waitlist policies and purging the waitlist, we recommend adding a provision requiring the CDA to place at least one phone call to each phone number on file for the family to attempt a telephone contact to obtain current contact information if written notice is returned as undeliverable.	(4-II) Under 24 CFR 960.206(e)(2), the method for selecting applicants must leave a clear audit trail. The CDA must treat all applicants the same in conducting wait list updates and the CDA must maintain paper verification in the applicant file in order to pass a HUD audit. The CDA does not have the resources to phone applicants and not all applicants provide a phone number. The CDA will keep an applicant on the Public Housing wait list, as long as the applicant reports changes promptly and responds to CDA correspondence in a timely manner. The CDA currently mails a copy of wait list updates and correspondence to any advocate, family member, friend, or helper designated by the applicant on the Public Housing application.

LAW Suggestion re preferences (4-14): Restore preferences for homelessness and victims of domestic violence.	(4-14) The *Homeless or Victim of Domestic Abuse Preference* does not provide for a significant reduction in wait time for a family in need of immediate housing. When the preference was adopted, the wait time for a homeless family could be reduced by months. Currently, the homeless preference reduces a family's wait time from 3 years to 2 years and no longer provides relief in an emergency situation. Many families with the homeless preference may be skipped on the waiting list in an effort to meet any goals related to the statutory requirement to deconcentrate poverty and provide for income mixing. The victim of domestic abuse preference is rarely claimed. Recommendation: It is important to streamline application processing to maximize occupancy and get families into housing. LAW suggestions slow down processing and hurts efforts to house City of Madison residents. Do not adopt LAW suggestions.
7-II.D. FAMILY RELATIONSHIPS **Absence of Adult Member (7-17)** **LAW Suggestion:** If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the family (e.g., documentation of another address at which the person resides such as a signed lease or utility bill, or documentation of homeless status). *If the adult family member is incarcerated, a document from the court or prison should be obtained stating how long they will be incarcerated.* If no other proof can be provided, the CDA will accept a notarized statement from the family attesting that the person no longer resides at the address and that they have tried and were unable to provide documentation.	(7-17) Edit the first sentence in the first paragraph – it is confusing…rather it should say: "If an adult member is reported to be permanently absent, the family must …." Not "If an adult member who was formerly a member of the household is reported to be permanently absent…" Recommendation: Do not accept the proposed changes by LAW. Incarceration is discussed in section 6-5 and is adequately covered.
Excess Utility Charges (8-9) CDA Policy When applicable, families will be charged for excess utility usage according to the CDA's current posted schedule. Notices of excess utility charges will be mailed monthly and will be in accordance with requirements regarding notices of adverse actions. Charges are due and payable 14 calendar days after billing. If the family requests a grievance hearing within the required timeframe, the CDA may not take action for nonpayment of the charges until the conclusion of the grievance process. Nonpayment of excess utility charges is a violation of the lease and is grounds for eviction. **Change to:**	

When applicable, families will be charged for excess utility usage according to the CDA's current posted schedule. Notices of excess utility charges will be mailed monthly and will be in accordance with requirements regarding notices of adverse actions. The notice will inform the tenant of their right to request a payment plan and/or grievance hearing within the required timeframe. The notice shall include the specific information used to form the basis of the decision that there was excessive utility usage. If the family requests a grievance hearing within the required timeframe, the CDA may not take action for nonpayment of the charges until the conclusion of the grievance process. The CDA will extend an affordable repayment plan option to the tenant when requested. Failure to repay utility charges due to an inability to pay is not grounds for eviction.	(8-9) There is a fundamental misunderstanding by LAW of what this policy refers to. When reading the proposed changes by LAW it appears that LAW may believe that the CDA determines excess utility fees on a monthly basis. In reality, these charges are set annually, and residents are aware that if they install an AC or an extra appliance, such as a freezer, in units where utilities are paid by CDA, that the resident is charged a nominal fee to cover the cost for the non standard appliances using energy that was not accounted for when the utility reimbursement standards were set. Further, the excess utility fee is specified in the lease, and is billed along with rent on the monthly rent statement as an itemized charge labeled "Excess Utility Fee" All rent statements have a right to grieve notice on them already, and of course nonpayment of any required fee is grounds for eviction. When residents have difficulty paying, and are in arrears, they have always had the opportunity to approach the manager to request a repayment agreement. Recommendation: Do not adopt LAW suggestion, as it is based on misunderstanding.
Maintenance and Damage charges (8-10) CDA Policy When applicable, families will be charged for maintenance and/or damages according to the CDA's current schedule. Work that is not covered in the schedule will be charged based on the actual cost of labor and materials to make needed repairs (including overtime, if applicable). Notices of maintenance and damage charges will be mailed monthly and will be in accordance with requirements regarding notices of adverse actions. Charges are due and payable 14 calendar days after billing. If the family requests a grievance hearing within the required timeframe, the CDA may not take action for nonpayment of the charges until the conclusion of the grievance process. Nonpayment of maintenance and damage charges is a violation of the lease and is grounds for eviction. **LAW Suggestion:** When applicable, families will be charged for maintenance and/or damages to the unit or items damaged by the tenant that is beyond normal wear and tear according to the CDA's current schedule. Work that is not covered in the schedule will be charged based on the actual cost of labor and materials to make needed repairs (including overtime, if applicable). Notices of maintenance and damage charges will be mailed monthly and will be in	

accordance with requirements regarding notices of adverse actions. The notice will inform the tenant of their right to request a payment plan and/or grievance hearing within the required timeframe. The notice shall include the specific information that was used to form the basis of the decision that the maintenance charges are the responsibility of the tenant and/or the damages were both caused by the tenant and beyond normal wear and tear. If the family requests a grievance hearing within the required timeframe, the CDA may not take action for nonpayment of the charges until the conclusion of the grievance process. The CDA will extend an affordable repayment plan option to the tenant when requested. Failure to repay maintenance charges due to an inability to pay is not grounds for eviction.	(8-10) Do not accept the changes as proposed by LAW because the damage could be caused by another household member, guest, or person under the tenant's control. Further, this is explained in the lease and the CFR indicates the responsibility of the tenant to pay for damages due to violence, accidents, misuse, or neglect beyond normal wear & tear. Further, charges are itemized on rent statements. Residents are told at move in of these policies, the lease outlines the obligation to repay for damages outside of normal wear and tear and CDA Management has always been willing to sign repayment agreements for arrearages when there are no other payment agreements already on file, and/or when previous repayment agreements have been honored. Nonpayment of fees is grounds for eviction. This is a business, and the CDA has to be able to maintain the affordable housing in which people live. It costs money to repair damages. Recommendation: Do not accept changes suggested by LAW.
12-III.C. ELIGIBILITY FOR TRANSFER (12-10) **LAW Suggestion:** Except where reasonable accommodation is being requested, the CDA will only consider transfer requests from residents that are in good standing, including, but not limited to meeting the following requirements: Have no negative rental history, including delinquency in rent or other charges, currently owe back rent, other charges, or a debt to the CDA, have a pattern of late payment, or have housekeeping lease violations. The CDA may consider a transfer if the tenant has cured previous problems related to negative rental history, delinquency in rent or other charges, owing back rent or other charges, debts to the CDA, a pattern of late payments or housekeeping lease violations.	(12-10) CDA Managers do not accept the proposed change by LAW. The CDA has to consider a resident's history because it has a significant impact on the present and the future. In cases of housekeeping and delinquencies of money owed, we see residents who gain support to get out of a jam, but then the support system backs out, and the problems recur. Just passing one housekeeping inspection while a team of support is involved doesn't imply that the support will continue, or that the violations won't recur. Recommendation: Do not accept changes suggested by LAW.
13-III.B. MANDATORY LEASE PROVISIONS [24 CFR 966.4(l)(5)] **Drug Crime On or Off the Premises [24 CFR 966.4(l)(5)(i)(B)] (13-9), Illegal Use of a Drug [24 CFR 966.4(l)(5)(i)(B)] (13-10), Threat to Other Residents [24 CFR 966.4(l)(5)(ii)(A)] (13-10), Alcohol Abuse [24 CFR 966.4(l)(5)(vi)(A)] (13-11), Furnishing False or Misleading Information Concerning Illegal Drug Use or Alcohol Abuse or Rehabilitation [24 CFR 966.4(l)(5)(vi)(B)] (13-11), Other Serious or Repeated Violations of Material Terms of the Lease – Mandatory Lease Provisions [24 CFR 966.4(l)(2)(i) and 24 CFR 966.4(f)] (13-12, 13)** **LAW Suggestion:** Add language that makes it clear that is the CDA's burden, by a preponderance of credible evidence, that the household member has engaged in criminal activity/other program violation. **Drug Crime On or Off the Premises [24 CFR 966.4(l)(5)(i)(B)] (13-9)**	(13-12, 13) CDA Property Managers do not agree with LAW proposal for changing the language as this is language directly from the Code of Federal Regulations (CFR). The changes are not in line with CFR standards. Our burden is to illustrate how a lease violation occurred, not to prepare for a court hearing in an eviction notice. Recommendation: Do not accept changes suggested by LAW.

LAW Suggestion: CDA Policy "The CDA ~~will~~ may terminate the lease for drug-related criminal activity engaged in on or off the premises by any tenant, member of the tenant's household or guest, and any such activity engaged in on the premises by any other person under the tenant's control." Add language that makes it clear that drug-related criminal activity engaged in by a guest of the tenant off the premises that the tenant did not know of, or had no reason to know of is not grounds for lease termination. The CDA ~~will~~ may consider all credible evidence, including ~~but not limited to~~, any record of conviction, ~~arrest, police contact, or civil ordinance violation~~ or nuisance notices from law enforcement agencies of covered persons related to the drug-related criminal activity.	(13-9) CDA Property Managers do not agree with LAW proposal to change the word "will" to "may". The One Strike rule applies. We do not agree to add the language in the next paragraph about evicting based on drug related criminal activity of guests that the resident wasn't aware of. The CDA does not evict based on what we believe a resident did or did not know. The CDA evicts based on activity. We do not agree to change the next paragraph to say "may" rather than "will" and do not agree to strike any of the existing language, but will add the phrase "or nuisance notices from law enforcement agencies…" Recommendation: Do not accept changes suggested by LAW.
13-III.C. OTHER AUTHORIZED REASONS FOR TERMINATION [24 CFR 966.4(l)(2) and (5)(ii)(B)] ***Family Absence from Unit [24 CFR 982.551(i)]*** **(13-15)** **LAW Suggestion:** Add language that CDA may permit an absence exceeding 90 days in case of verifiable medical treatment with proper notification to CDA.	(13-15) The CDA has language regarding permitting absence exceeding 90 days in the Reasonable Accommodation section and in the Absence of Adults sections. This does not need to be added here. Recommendation: Do not accept changes suggested by LAW.
13-III.D. ALTERNATIVES TO TERMINATION OF TENANCY **Exclusion of Culpable Household Member [24 CFR 966.4(l)(5)(vii)(C)] (13-16)** **LAW Suggestion:** CDA Policy As a condition of the family's continued occupancy, the head of household must certify that the culpable household member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former household member's current living address upon CDA request. If no such evidence is available to the family, the CDA will accept a notarized statement from the head of household that the former household member no longer resides at the address and that the head of household attempted but was unable to obtain such evidence.	(13-16) The CDA is already asking the Head of Household to certify that the culpable household member has vacated, a notarized statement does not carry more weight for us. We would accept a statement from a homeless shelter, doubled up, etc., as CDA Admissions does when asking for housing history verifications. Recommendation: Do not accept changes suggested by LAW.

13.III.D ALTERNATIVES TO TERMINATION OF ASSISTANCE **Change in Household Composition (13-16)** **LAW Suggestion:** We recommend removing the complete prohibition of the excluded family member visiting in the unit. We believe this may be problematic for the family, particularly in cases where there are children involved.	(13-16) The CDA is not prohibiting people from seeing their family members; we are prohibiting that visitation from taking place on our premises due to a history of problem behavior as a result of not following rules while a Public Housing resident. Recommendation: Do not accept changes suggested by LAW.
13-IV.D. LEASE TERMINATION NOTICE [24 CFR 966.4(l)(3)] **Form, Delivery, and Content of the Notice (13-27)** **LAW Suggestion:** The notice must state the specific grounds for termination, specifically what rules, regulations or published standards were violated, the individual who committed the violation, what specific program obligation was violated, the date(s) of the violation, the source of the information—including the name and title of individuals contacted, a resume of the information received, and a summary of the facts that form the basis for each reason for denial. The notice must also include the date the termination will take place, the resident's right to reply to the termination notice, and their right to examine PHA documents directly relevant to the termination or eviction. If the PHA does not make the documents available for examination upon request by the tenant, the PHA may not proceed with the eviction [24 CFR 966.4(m)]. When the PHA is required to offer the resident an opportunity for a grievance hearing, the notice must also inform the resident of their right to request a hearing in accordance with the PHA's grievance procedure and their right to be represented by legal counsel at the hearing. In these cases, the tenancy shall not terminate until the time for the tenant to request a grievance hearing has expired and the grievance procedure has been completed. The notice should also contain the following language "Legal Action of Wisconsin, Inc. provides free legal services to low-income clients in housing law matters. You may contact their office by visiting it at 31 S. Mills St. or calling 608-256-3304 or 1-800-362-3904 for more information about applying for their services."	(13-27) The CDA does not agree with the proposed changes as this is CFR language that cannot be changed. We will not add in language advising residents that they can contact LAW – we cannot endorse any particular agency over another. Recommendation: Do not accept changes suggested by LAW.
14-I.B. INFORMAL HEARING PROCESS [24 CFR 960.208(a) and PH Occ GB, p. 58] (14-3) **LAW Suggestion:** The informal hearing will be conducted in accordance with hearing procedures laid out in Chapter 68 of Wisconsin Statutes or Madison General Ordinances § 9.49.	**(14-3) Informal Hearing Process:** The CDA, pursuant to Wis. Stat. 66.1335 and MGO 3.17(2), was created as a body separate from the City of Madison. The CDA must follow hearing procedures laid out in federal regulation 24 CFR 960.208(a) and federal regulations have the force of law. Wis. Stat. Chapter 68 and MGO 9.49 do not apply to the CDA's hearing process. Recommendation: Do not accept changes suggested by LAW.

Notice of Denial [24 CFR 960.208(a)] (14-3) **LAW Suggestion:** The PHA must give an applicant prompt notice of a decision denying eligibility for admission. The notice must contain The denial notice will include a brief statement of the reason(s) for the proposed denial, citation to the applicable regulation(s) or CDA policy, the date, the source of the information—including the name and title of individuals contacted—and a resume of the information received, a summary of the facts that form the basis for each reason for denial a brief statement of the reasons for the PHA decision, and must also state that the applicant may request an informal hearing to dispute the decision. (see also Chapter 3-III.G.) The notice must describe how to obtain the informal hearing.	**(14-3) Notice of Denial:** The CDA's notice of denial of admission provides denied applicants with a summary of the facts that form the basis for each reason for denial. The notice contains a thorough description of the process for requesting an informal hearing. The denial notice enables the applicant to prepare a defense to adverse evidence. The courts, under Certiorari Review, have agreed that the CDA's denial notice is more than adequate. Recommendation: Do not accept changes suggested by LAW.
Scheduling an Informal Hearing (14-4) A request for an informal hearing must be made by the applicant, in writing, and delivered to the CDA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of the CDA's notification of denial of admission. **LAW Suggestion:** Notice of a scheduled hearing will also inform the applicant of their right to be represented by counsel at the informal hearing, to review and copy documents directly relevant to their denial prior to the hearing, and that the hearing shall be recorded by a recording device.	**(14-4) Scheduling an Informal Hearing:** The CDA's notice of denial informs the applicant of their right to by represented and their right to review documents upon request prior to the hearing. The CDA is not required to record informal hearings. The CDA already does notify residents of their right to representation, review and copy documents, etc. We do not have to record informal hearings per our policy, nor do we want to start as this is an *informal* procedure and should be conducted as such. Recommendation: Do not accept changes suggested by LAW.
Conducting an Informal Hearing [PH Occ GB, p. 58] (14-4) **LAW Suggestion:** The person conducting the informal hearing or a person employed for that purpose shall take notes of the testimony and shall mark and preserve all exhibits. The hearing shall be recorded by a recording device. **LAW Suggestion:** Add language allowing for the rescheduling of a hearing upon request if the participant's attorney can't attend.	**(14-4) Conducting an Informal Hearing:** The CDA already does reschedule when attorneys notify in advance. We should probably put some time limits on this as we don't want to open ourselves up to strategic delays. E.g. **The CDA will not reschedule if the attorney does not show up to the hearing unless the attorney has provided 24 hours notice in advance and a new mutually agreed upon appointment can be rescheduled within three days.** Recommendation: To accept LAW suggestions with modification as outlined above.

14-III.E. PROCEDURES TO OBTAIN A HEARING [24 CFR 966.55] **Expedited Grievance Procedure [24 CFR 966.55(g)] (14-16)** **LAW Suggestion:** Remove language that creates an expedited grievance procedure. Ongoing criminal activity and any resulting threat to the health, safety or right to peaceful enjoyment of premises can be appropriately handled within the criminal justice system.	(14-16) The policy allows the CDA to respond in a quicker fashion is regards to matters which threaten the safety of CDA residents, and so we feel this is important to retain. Recommendation: Do not accept changes suggested by LAW.
14-III.G. PROCEDURES GOVERNING THE HEARING [24 CFR 966.56] **Rights of Complainant [24 CFR 966.56(b)] (14-18)** The opportunity to examine before the grievance hearing any PHA documents, including records and regulations that are directly relevant to the hearing. The tenant must be allowed to copy any such document at the tenant's expense. If the PHA does not make the document available for examination upon request by the complainant, the PHA may not rely on such document at the grievance hearing. <u>CDA Policy</u> The tenant will be allowed a copy of any documents related to the hearing at a charge equal to the current rate published under local general ordinance, MGO 3.70… **LAW Suggestion:** Add language that the hearing will follow procedures laid out in Wisconsin Statutes Chapter 68 or MGO §9.49 and shall be recorded either by a recording device or stenographer.	(14-18) The CDA must follow federal regulations related to grievance hearings under 24 CFR 966 Subpart B. The CDA's grievance and hearing process does not fall under Chapter 68 nor does it fall under MGO 9.49. Recommendation: Do not accept changes suggested by LAW.
16-III.B. Repayment Policy (16-10,11) **LAW Suggestion:** We suggest adding language to require the CDA to cooperate with, abide by and honor all petitions and orders for amortization of debts pursuant to Chapter 128, Wis. Stats. We also suggest adding a provision which allows the CDA to deviate from their repayment scheme if the person meets the earnings garnishment exceptions in Wis. Stat. 812.34.	(16-10, 11) The CDA does not agree with this suggestion as Chapter 128 states that if someone's income is under the poverty line that they do not have to repay . . . all of the CDA's consumers are under the poverty line, so nobody would have to repay debts owed . . . The CDA is a business and must be allowed to sustain our product. Recommendation: Do not accept changes suggested by LAW.