

HOUSING AUTHORITY OF THE CITY OF ALAMEDA
RALPH M. BROWN ACT, CA. PUBLIC RECORDS ACT, AND
COMMISSIONER ROLES AND RESPONSIBILITIES
PRESENTATION

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BROWN ACT

THE BROWN ACT

- Public bodies shall take their actions openly and deliberations should be conducted openly
 - ▣ Open meetings
 - ▣ Dates and times of meetings must be noticed
 - ▣ Agenda captions must describe all matters to be discussed or considered at the meeting
 - ▣ Meaningful opportunity for public comments
- Government Code Section 54950
- All three AHA boards (AHA, AAHC, ICD) currently follow Brown Acts requirements

WHAT IS A QUORUM?

- Quorum: Unique to California Housing Authorities
 - ▣ Health and Safety Code Section 34276
 - Seven Commissioners Appointed to Board
 - Two Commissioners Appointed Must be Tenants of the Housing Authority and one must be over 62 years of age
- Qualifications for Tenant Commissioners:
 - ▣ Must be named on the lease and participate in the Housing Choice Voucher (HCV) Program; or
 - ▣ Must be named on the lease and (i) participate in the Project Based Voucher (PBV) Program, or (ii) participate in the HCV Program, or (iii) live in a property directly owned by the Housing Authority of the City of Alameda

WHAT IS A QUORUM, CONT.

- Vote of the Board of Commissioners
 - ▣ Majority of Commissioners Empowered to Vote (unless larger number required by Bylaws)
 - Four Commissioners Constitutes a Quorum

HOUSING AUTHORITY COMMITTEES

- Standing Committees- Are Subject to the Brown Act
 - ▣ i.e., Development and Finance Committee
 - Quorum= majority of the appointed members (2)
- Ad-Hoc Advisory Committees- Are Not Subject to the Brown Act (limited duration)

THE "LESS THAN A QUORUM" EXCEPTION

- Committee- An advisory body composed solely of members of the Board of Commissioners and less than a quorum of the members
 - Ad-Hoc Committee Formed for Specific Purpose, limited duration
 - A Standing Committee has:
 - Continuing subject matter jurisdiction, and
 - A meeting schedule set by formal action of the Board of Commissioners
 - AHA does not currently have any standing committees

WHAT IS A MEETING?

- A "meeting" includes any congregation of a majority of the members of the Board of Commissioners at the same place and time to hear, discuss or deliberate on any matter which is within the subject matter jurisdiction of the Housing Authority. (Virtual spaces constitute "same place")
 - Workshops, study sessions, retreats and field trips
 - HUD Meetings – Housing Authority Matters - if Quorum is present
 - Action need not be taken
- If less than a majority of members are present- then there is no meeting (issue- if a member leaves early)

WHAT IS A MEETING? (CONT.)

- Any use of direct communication, personal intermediaries, or technological devices through which a majority of the members develop a collective concurrence as to action to be taken on an item is prohibited.
 - Serial meetings
 - Daisy Chains
 - Hubs and Spokes
 - E-mail – the common e-mail practice of forwarding or replying to messages can easily lead to a serial meeting prohibited by the Brown Act
 - Text messages (including during the meetings), Twitter, Facebook, Instagram, internet based social media (Gov. Code 54952.2(b)(3).)

SOCIAL MEDIA COMMUNICATION

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"A member of the legislative body ***shall not*** respond directly to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body."

A MEETING IS NOT

- Community meeting, conferences and social gatherings
 - ▣ Individual contacts or conversations between a Commissioner and any other person
 - ▣ Conferences or similar gatherings open to the public that involve a discussion of issues of general interest
 - ▣ Open and public meetings organized to address topics of local community concern by a person or organization other than the Housing Authority
 - ▣ Social or ceremonial events

A MEETING IS NOT (CONT.)

- Attendance by a majority at other open, noticed meetings
 - ▣ Legislative body of another local agency
 - ▣ Standing Committee of the Housing Authority if the Commissioner (who is not on the committee) attends only as an observer
- So long as no business is discussed among the members

TYPES OF MEETINGS

- Regular meeting
- Special meetings
 - ▣ 48-hour advance notice required by Housing Authority Law (Health and Safety Code Section 34283) (Brown Act allows 24 hours advance notice)
 - ▣ Public comment only on agenda items
- Adjourned to future date if within five (5) days for items not heard at Regular or Special Meeting

MEETING LOCATION

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- Meetings must be held within the jurisdiction of the Housing Authority, with exceptions
- Teleconference options....



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TELECONFERENCING

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- Teleconferencing may be used and must comply with Brown Act Requirements:
 - ▣ All votes must be taken by roll call
 - ▣ Notice and agendas as required by Brown Act
 - ▣ Members of public must be able to access the meeting and an opportunity to address legislative body
 - ▣ Agendas must be posted at teleconference locations and locations identified in agenda and notices
 - ▣ At least a quorum must participate from within boundaries of jurisdiction

TELECONFERENCING, CONT.

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- Provide at least:
 - ▣ A 2-way audiovisual platform, and/or
 - Online platform that provides the ability to participate in a meeting via both interactive video conference and 2-way telephonic service
 - ▣ A 2-way telephonic service and live webcast of the meeting
 - Telephone service that does not require internet access and allows participants to dial a phone number to listen and verbally participate
- When giving notice of time of meeting or post agenda, must also give notice of how the public may access the meeting and offer comment
 - ▣ Must identify and include an opportunity to attend via a call-in option or internet based service option

TELECONFERENCING, CONT.

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- If disruption that prevents broadcasting of the meeting:
 - ▣ Take no further action until public access to the meeting via call-in or internet based service is restored
- Public comments cannot be required to be submitted in advance of meeting; must provide opportunity for public to offer comments in real time
 - ▣ Written comments received by AHA by noon the day of the meeting will be published
- Individuals desiring to provide public comment through use of an online platform that is not under control of the legislative body may be required to register by the third-party platform

TELECONFERENCING, CONT.

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- If there is a timed public comment period for each agenda item, public comment period for that item cannot be closed before the time has elapsed
- If no timed public comment period, then a reasonable time per agenda item must be allowed for members of the public to provide comment
- If timed general public comment period that does not correspond to a specific agenda item, the public period shall not be closed until the time has elapsed

TELECONFERENCING, CONT.

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- If Commissioner participates in teleconference meeting from a remote location it must be listed in the meeting minutes along with provision of law relied on for remote participation
- Legislative body must have and implement procedures to receive and resolve request for reasonable accommodation for individuals with disabilities
- If participate from remote location, must identify anyone 18+ years old present in room and general nature of relationship

TELECONFERENCING: DISABILITY

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- Commissioners with a disability that require remote participation as a reasonable accommodation:
 - ▣ Must have both audio and visual
 - But camera can be turned off if there is a physical condition related to the disability that requires it
 - ▣ Must disclose at the meeting before any action is taken whether any other individuals 18+ years old are present in the room and general nature of relationship
 - ▣ Remote participation is treated as attendance in the physical meeting location

TELECONFERENCING: DISABILITY, CONT.

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- Disability = physical disability or mental disability as defined in Title 42 of US Code
- Remote participation = participation in a meeting by teleconference at a location other than the physical meeting location designated in the meeting notice

TELECONFERENCING: REDUCED REQUIREMENTS

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- Several circumstances; applicable to AHA:
 - ▣ Just Cause
 - ▣ Proclaimed State of Emergency
- Not required to post agendas at remote location and not required to make remote location accessible to the public

TELECONFERENCING: REDUCED REQUIREMENTS, CONT.

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- Just Cause:
 - ▣ At least a quorum must participate in person in a singular physical location identified in the agenda
 - ▣ Must comply with teleconferencing requirements
 - ▣ Commissioner must notify legislative body at earliest opportunity of need to participate remotely and general description of circumstances
 - ▣ Must participate through both audio and visual technology
 - ▣ Can only be used 2 times per year
 - ▣ Meeting minutes must identify just cause provision relied on

TELECONFERENCING: REDUCED REQUIREMENTS, CONT.

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- Just Cause is any of the following:
 - ▣ Childcare or caregiving need
 - ▣ Need related to a physical or mental condition
 - ▣ Travel while on official business of legislative body or another state or local agency
 - ▣ Immunocompromised child, parent, grandparent, sibling, spouse, domestic partner
 - ▣ Physical or family medical emergency
 - ▣ Military service obligations under official written orders

TELECONFERENCING: REDUCED REQUIREMENTS, CONT.

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- Proclamation of State of Emergency or Local Emergency:
 - ▣ Teleconferencing used for either:
 - Purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to health or safety of attendees
 - After determination above is made, as a result of the emergency, meeting in person would present imminent risks to health or safety of attendees
 - ▣ May use 2-way telephonic service without a live webcasting of meeting

TELECONFERENCING: REDUCED REQUIREMENTS, CONT.

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- Proclamation of State of Emergency or Local Emergency:
 - ▣ If emergency remains active, in order to continue to teleconference, legislative body shall, no later than 45 days after first teleconference, and every 45 days thereafter make findings:
 - Legislative body reconsidered the circumstances of the emergency, and
 - Emergency continues to directly impact ability of members to meet safely in person

ADDITIONAL EXCEPTIONS

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- Additional Exceptions applicable to a Housing Authority:
- To inspect real property
- To participate in interagency meetings
- To comply with a court order
- To meet with federal or state officials



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CONDUCT OF MEETINGS

- All meeting locations must be accessible to the disabled
- No meetings may be held in a facility that discriminates
- No meetings may be held in a location which requires payment by the public in order to be present
- List of meeting locations must be provided to the Board of Commissioners

CONDUCT OF MEETINGS (CONT.)

- All meetings to be open to the public
- Audio and video taping, photographing, or broadcasting by the public and the media must be allowed unless it cannot be done without noise, illumination, or obstruction of views that would constitute a persistent disruption of the proceedings
- No mandatory sign-in
- No secret ballots
- Teleconferencing – OK if prior requirements met

PUBLIC COMMENT

- Public comment must be permitted before or during the Board of Commissioners' consideration of an item on the agenda, including closed session.
- Board of Commissioners may limit time allocated for public testimony on particular issues and for each individual speaker.
 - ▣ This is currently 3 minutes; time must be extended if translation is needed
- Cannot prohibit public criticism of the policies, procedures, programs, or services of the Housing Authority (unless disruptive to meeting)
- Special meetings must include public comment on the items on the special meeting agenda only

ITEMS NOT ON AGENDA

- Board of Commissioners cannot discuss or take action on any item not on the agenda
 - Except:
 - May respond briefly to statements made or questions posed by members of the public under public comment
 - May ask questions for clarification, provide a referral to staff, ask staff to report back or schedule an item for a subsequent meeting
 - May make brief report on his or her activities

AGENDA REQUIREMENTS

- Agenda must be posted at least 72 hours before a regular meeting, listing time and place of meeting
- Agenda captions must contain a brief general description of each item of business to be transacted or discussed at the meeting
- Must contain information as to how and to whom a request for disability-related modifications or accommodations may be made

ADDING ITEMS TO THE AGENDA

- Items can only be added to regular meeting agenda if:
 - ▣ The Commission finds that there is an immediate need to take action and the action came to the attention of the Authority after the posting of the agenda and there is a 2/3rds vote of the Commission members present must vote to add an item (the vote must be unanimous if less than 2/3rds of the Commissioners are present);
 - ▣ Upon determination by a majority vote that an emergency situation exists; or
 - ▣ The item was listed on a posted agenda for a prior meeting occurring not more than five (5) days before, and the item was continued from the prior meeting.

WRITTEN MATERIALS

- Any Written Materials Provided to Board Must be Available to Public
 - If provided by Government Agency
 - Must be available at the meeting (ie a paper copy)
 - On-line if meeting virtually
 - If provided by any person
 - Must be made available after the meeting, except if meeting virtually
 - Public Records

CLOSED SESSIONS

- May only be held if specifically authorized by the Brown Act
- All items to be discussed in Closed Session must be disclosed on the agenda
- Permissible Closed Sessions
 - ▣ Conference with Real Property Negotiators to discuss price and terms of payment
 - ▣ Conference with Legal Counsel re Potential or Actual Litigation
 - ▣ Threat to Public Services or Facilities
 - ▣ Appointment, Employment, Evaluation of performance, Discipline, or Dismissal of a Public Employee
 - ▣ Conference with Labor Negotiators

CLOSED SESSION (CONT.)

- Closed Session Minutes are not required, but are confidential if kept
 - ▣ Vote by Consensus - Directions to Staff/Legal Counsel
 - ▣ Formal Votes Required: Action
 - Settlement of claims and litigation
 - Filing or defending an appeal in litigation
 - Filing amicus brief in litigation
 - Litigation
 - Approving Real Estate Agreement
 - Approving Labor Agreement
 - Employ, Dismiss or Accept Resignation of Employee

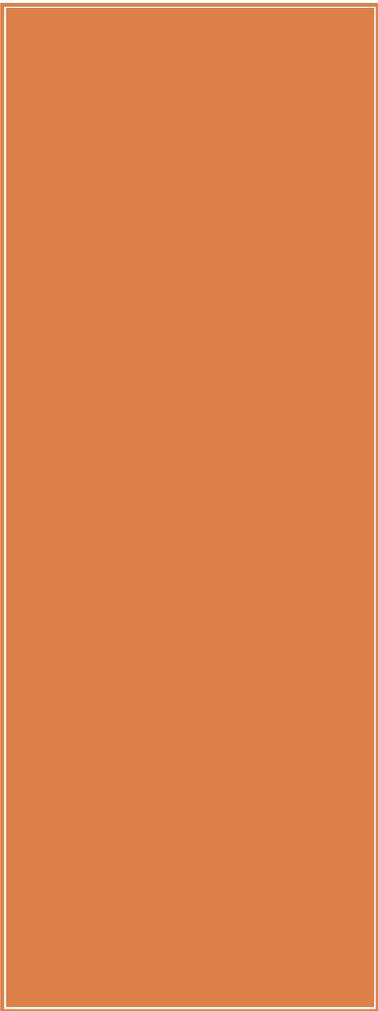
- Reporting Out of Closed Session

VIOLATIONS OF THE BROWN ACT

- Can lead to invalidation of the action taken
- Criminal
 - ▣ Each Commissioner who attends a meeting where action is taken in violation of the Brown Act, with the wrongful intent to deprive the public of information to which it is entitled is guilty of a misdemeanor.
- Civil
 - ▣ Any person can bring an action to enjoin a violation of the Brown Act, after first requesting a cure. The successful plaintiff can be awarded attorneys' fees and costs.



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California Public Records Act

CALIFORNIA PUBLIC RECORDS ACT

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Government Code Section 7920.000 et seq.

- Fundamental precept is that government records should be available to the public upon request, unless there is a specific reason not to do so
- Requests for records are not required to be on a specific form, nor even in writing
- AHA has a duty to respond to PRA requests-they can't be ignored, even if exempt from disclosure
- There is no duty to create a record that does not exist at the time of the request

CALIFORNIA PUBLIC RECORDS ACT (CONT.)

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- **What is a public record?** Any “writing containing information relating to the conduct of the public’s business prepared, owned, used, or maintained by any state or local agency regardless of physical form or characteristics.”
- **What is a writing?** Any “handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.”
- **Personal email/personal phones** – subject to the PRA if used for Authority business.

CALIFORNIA PUBLIC RECORDS ACT (CONT.)

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- The requester is not required to state the reason for the request.
- Public records are to be available for inspection during the Authority's normal office hours
- The Authority may provide a form for requesting public records, but the requester is not required to use it. Authority staff can assist requester in filling out the form, or simply fill out the form as a record of the request
- The PRA request must be focused, specific, and reasonably clear so the Authority can determine what record or records are being sought. If the request isn't clear, or is overly broad, the Authority has a duty to assist the requester in reformulating the request to make it cleared or less broad

CALIFORNIA PUBLIC RECORDS ACT (CONT.)

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Timing for responding to a request for copies of records.

- The Authority must respond promptly, but no later than 10 calendar days from the date of the request, as to whether or not the records will be disclosed
- The Authority may extend the 10 day response time for up to 14 calendar days because of the need to search for and collect the records from field facilities or other separate location, because the request is voluminous, to consult with another agency with a substantial interest in the request, or, in the case of electronic records, to compile data, write programming language or a computer program. This must be done in writing
- Can try negotiating a longer response time. If so, make sure to confirm in writing

CALIFORNIA PUBLIC RECORDS ACT (CONT.)

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Examples of exemptions applicable to AHA:

- Personnel, medical or similar records - Disclosure would constitute an unwarranted invasion of personal privacy
- Deliberative process (decision making process)
- Preliminary, notes, drafts, and memos
- Investigative reports
- Litigation and attorney records
- Real estate appraisals and engineering evaluations – before property acquired or the terms of the contract have been agreed upon
- Personally identifiable information protected under the Privacy Act (i.e., social security number etc..)
- Disclosure of recipients of public benefits – Welfare & Institutions Code Section 10850
- Public Interest balancing test – Based on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record

CALIFORNIA PUBLIC RECORDS ACT (CONT.)

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- Once a record is disclosed, unless by mistake, all exemptions that apply to that particular record are waived and it becomes subject to disclosure
- Options for response:
 - ▣ 1) disclose the record;
 - ▣ 2) withhold the record; or
 - ▣ 3) disclose the record in redacted form



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COMMISSIONER ROLES AND RESPONSIBILITIES

COMMISSIONER ROLES AND RESPONSIBILITIES

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□ **Board Appointment**

- Individual state laws dictate Board of Commissioners composition and size.
- Most appointed by the local elected official(s).
- Federal law dictates the Board must have at least one resident member.
 - ▣ Individuals bring unique skills and assets and perspective of living in public housing and the concerns of fellow residents.

BOARD ROLE COMPONENTS

Leadership

- Set and champion the mission.
- Provide strategic direction.
- Ensure financial solvency.
- Speak up regarding concerns.

Oversight

- Compliance: Statutory, regulatory, contractual.
- Financial: Budgets, financial documents, corrective actions, audits, expenditures.
- Performance: Quality of the housing, services, and adherence to policies.

Board proceedings/Board conduct/minutes/resolutions

COMMISSIONER RESPONSIBILITIES

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- ❑ Stay informed on issues facing AHA.
- ❑ Create AHA Policy.
- ❑ Support, monitor and evaluate the Executive Director.
- ❑ Represent AHA within the community.
- ❑ Dedicate sufficient time to the job; review the materials, get training, and read trade publications.
- ❑ Provide fiduciary oversight; keep up to date on agency financials.

COMMISSIONER RESPONSIBILITIES CONT.

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- Ensure that AHA remains financially viable.
- Evaluate AHA progress and recommend corrective actions when needed.
- View sites periodically.
- Respect staff, Board and tenant confidentiality.

WHAT SHOULD YOU KNOW

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ROLE OF THE EXECUTIVE STAFF AND HUD

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EXECUTIVE DIRECTOR/MANAGERS	HUD
Manages AHA and staff.	Interpret congressional laws.
Oversees day-to-day operations.	Develop regulations.
Oversee AHA's finances.	Resource for PHAs.
Executes/implements Board approved policies.	Distribute funding to PHAs.
Ensures compliance with federal, state and local laws and guidance.	
Acts as a bridge between the Board, HUD, staff, residents, and the community.	
Responsible for all personnel functions.	
Maintains units and programs.	
Keeps commissioners informed.	



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CONFLICTS OF INTEREST

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- **AHA Employee or Representative (Board Member) may not participate in contract selection IF:**
 - They or an immediate family member may be awarded the contract.
 - They or an immediate family member have financial or other interest in the firm selected for award.
 - The firm awarded employs or is about to employ them or an immediate family member.
 - *HUD Procurement Handbook 7460.8 rev. 2/ and 2 CFR 200.318(c)*

- **AHA may not enter into contract if the following individuals have an interest in the firm during or 1 year after their AHA tenure:**
 - Present or former AHA staff or Board members or close relatives.
 - Public officials, state or local legislators, or family associated with AHA.
 - AHA employees or immediate family members who were involved in procurement.

NEPOTISM

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- AHA may not hire an employee if they are an immediate family member of:
 - ▣ A present or former member or officer of the Board
 - ▣ An employee of AHA who makes policy or influences decisions.
 - ▣ A public official who exercises functions or responsibilities with AHA.

NEPOTISM CONT.

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- The prohibition applies during and for 1 year after the Board member's term.
- Board members must disclose family ties to AHA.



"We were very impressed by your resume.
Especially the part where you mention that your grandfather is our CEO."

HOUSING CHOICE VOUCHER (HCV) CONFLICT OF INTEREST REGULATIONS

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PROCUREMENT RESTRICTIONS

- **None of the following people shall have direct or indirect interest in an HCV contract during their tenure or for 1 year thereafter, and AHA contractors/subcontractors may not enter into contracts in connection HCV programs if any of the following people have interest:**
 - ▣ Present or former members/officers of AHA (except tenant).
 - ▣ Employees, contractors, subs, agents who are in decision-making role.
 - ▣ Public officials who have functions regarding program.
 - ▣ Members of Congress.

24 CFR 982.161 Conflict of Interest, Section 8 Housing Assistance Payment (HAP) Contract

- ▣ Within the Section 8 HAP contract, there are many different HAP contracts and HAP COI provisions that govern PHAs that administer Project-Based Assistance.

HCV CONFLICT OF INTEREST(COI) REGULATIONS CONT.

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- COIs must be disclosed to AHA and to HUD.
- COI prohibitions may be waived by the HCV office in HUD Headquarters on a case-by-case basis.

HATCH ACT

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- To prohibit employees in the executive branch of the federal government from engaging in partisan political activity.
 - ▣ Applies to Housing Authority because receipt and use of federal funds

QUESTIONS?

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