

## Chapter 16

### PROGRAM ADMINISTRATION

#### INTRODUCTION

This chapter discusses administrative policies and practices that are relevant to the activities covered in this plan. The policies are discussed in seven parts as described below:

Part I: Administrative Fee Reserve. This part describes BHA's policies with regard to oversight of expenditures from its administrative fee reserve.

Part II: Setting Program Standards and Schedules. This part describes what payment standards are, and how they are updated, as well as how utility allowances are established and revised.

Part III: Informal Reviews and Hearings. This part outlines the requirements and procedures for informal reviews and hearings, and for informal hearings regarding citizenship status.

Part IV: Owner or Family Debts to BHA. This part describes policies for recovery of monies that BHA has loaned for Security Deposits, and monies BHA has overpaid on behalf of families, or to owners, and describes the circumstances under which BHA will offer repayment agreements to owners and families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

Part V: Section 8 Management Assessment Program (SEMAP). This part describes what the SEMAP scores represent, how they are established, and how those scores affect BHA.

Part VI: Record-Keeping. All aspects of the program involve certain types of record-keeping. This part outlines the privacy rights of applicants and participants and record retention policies BHA will follow.

Part VII: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level. This part describes BHA's responsibilities for reporting, data collection, and record keeping relative to children with environmental intervention blood lead levels that are less than six years of age, and are receiving HCV assistance.

Part VIII: Determination of Insufficient Funding. This part describes BHA's policies for determining if there is sufficient funding to issue vouchers, to approve moves to higher cost units or areas, and to continue assistance for all participant families.

## **PART I: ADMINISTRATIVE FEE RESERVE [24 CFR 982.155]**

BHA must maintain an administrative fee reserve for the program to pay program administrative expenses in excess of administrative fees paid by HUD for BHA's fiscal year. If funds in the administrative fee reserve are not needed to cover BHA administrative expenses, BHA may use these funds for other housing purposes permitted by Federal, State and local law.

If BHA has not adequately administered any Section 8 program, HUD may prohibit use of funds in the administrative fee reserve, and may direct BHA to use funds in the reserve to improve administration of the program or to reimburse ineligible expenses. HUD also may prohibit use of the funds for certain purposes.

HUD requires the BHA Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the administrative fee reserve without specific approval.

### BHA Policy

Expenditures from the administrative fee reserve will be made in accordance with all applicable Federal requirements. Expenditures will not exceed \$50,000 per occurrence without the prior approval of BHA's Board of Commissioners.

## **PART II: SETTING PROGRAM STANDARDS AND SCHEDULES**

### **16-II.A. OVERVIEW**

Although many of the program's requirements are established centrally by HUD, the HCV program's regulations recognize that some flexibility is required to allow BHA to adapt the program to local conditions. This part discusses how BHA establishes and updates certain schedules and standards that are used to administer the program locally. Details about how these schedules are applied to individual families are provided in other chapters. The schedules and standards discussed here include:

- *Payment Standards*, which dictate the maximum subsidy a family can receive (application of the payment standards is discussed in Chapter 6); and
- *Utility Allowances*, which specify how a family's payment should be adjusted to account for tenant-paid utilities (application of utility allowances is discussed in Chapter 6).

### BHA Policy

Copies of the payment standard and utility allowance schedules are available for review in BHA's offices during normal business hours and on BHA's website.

BHA will maintain documentation to support its annual review of payment standards and utility allowance schedules. This documentation will be retained for at least 3 years.

### **16-II.B. PAYMENT STANDARDS [24 CFR 982.503; HCV GB, Chapter 7]**

The payment standard sets the maximum subsidy payment a family can receive from BHA each month [24 CFR 982.505(a)]. Payment standards are based on fair market rents (FMRs) published annually by HUD. FMRs are set at a percentile within the rent distribution of standard quality

rental housing units in each FMR area. For most jurisdictions FMRs are set at the 40th percentile of rents in the market area.

BHA must establish a payment standard schedule that establishes payment standard amounts for BHA's jurisdiction, and for each unit size. For each unit size, BHA may establish a single payment standard amount for the whole FMR area, or may set different payment standards for different parts of the FMR area. Unless HUD grants an exception, BHA is required to establish a payment standard within a "basic range" established by HUD – between 90 and 110 percent of the published FMR for each unit size.

### **Updating Payment Standards**

When HUD updates its FMRs, BHA must update its payment standards if the standards are no longer within the basic range [24 CFR 982.503(b)]. HUD may require BHA to make further adjustments if it determines that rent burdens for assisted families in BHA's jurisdiction are unacceptably high [24 CFR 982.503(g)].

#### BHA Policy

BHA will review the appropriateness of the payment standards on an annual basis when the new FMR is published. In addition to ensuring the payment standards are always within the "basic range" BHA will consider one or more of the following factors when determining whether an adjustment should be made to the payment standard schedule:

**Funding Availability:** BHA will review the budget to determine the impact projected subsidy adjustments will have on funding available for the program and the number of families served. BHA will compare the number of families who could be served under revised payment standard amounts with the number assisted under current payment standard amounts.

**Rent Burden of Participating Families:** Rent burden will be determined by identifying the percentage of families, for each unit size, that are paying more than 30 percent of their monthly adjusted income as the family share, or where, if approved, the contract rent would result in the family paying more than 30 percent of their monthly adjusted income. When 40 percent or more of families, for any given unit size, are paying more than 30 percent of adjusted monthly income as the family share, BHA will consider increasing the payment standard. In evaluating rent burdens, BHA will not include families renting a larger unit than their family unit size.

**Quality of Units Selected:** BHA will review the quality of units selected by participant families when making the determination of the percent of income families are paying for housing, to ensure that payment standard increases are only made when needed to reach the mid-range of the market.

**Changes in Rent to Owner:** BHA may review a sample of the units to determine how often owners are increasing or decreasing rents and the average percent of increases/decreases by bedroom size.

**Unit Availability:** BHA will review the availability of units for each unit size, particularly in areas with low concentrations of poor and minority families.

**Lease-up Time and Success Rate:** BHA will consider the percentage of families that are unable to locate suitable housing before the voucher expires and whether families are leaving the jurisdiction to find affordable housing.

**Rent data from Rent Stabilization Program:** BHA will review rent data from the Rent Stabilization Program addressing new rental rates during the preceding six month period.

Changes to payment standard amounts will be implemented in two phases: effective immediately for new contracts, and effective December 1<sup>st</sup> for existing assisted tenancies.

### **Exception Payment Standards [982.503(c)]**

BHA must request HUD approval to establish payment standards that are higher than the basic range. At HUD's sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the FMR area. HUD may approve an exception payment standard amount (in accordance with program requirements) for all units, or for all units of a given size, leased by program families in the exception area. Any PHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount. The total population of all HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.

### **Unit-by-Unit Exceptions [24 CFR 982.503(c)(2)(ii)]**

Unit-by-unit exceptions to BHA's payment standards generally are not permitted. However, an exception may be made as a reasonable accommodation for a family that includes a person with disabilities. (See Chapter 2 for a discussion of reasonable accommodations.) This type of exception does not affect BHA's payment standard schedule.

When needed as a reasonable accommodation, BHA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 120 percent of the applicable FMR for the unit size (HUD PIH Notice 2013-03, *Temporary Compliance Assistance (January 22, 2013)*). BHA may request HUD approval for an exception to the payment standard for a particular family if the required amount is above 120 percent of the FMR.

### BHA Policy

A family that requires a reasonable accommodation may request a higher payment standard at the time the Request for Tenancy Approval (RFTA) is submitted. The family must document the need for the exception. In order to approve an exception, or request an exception from HUD, BHA must determine that:

There is a shortage of modest affordable units that would be appropriate for the family;

The unit's design and/or amenities address the needs of the disabled household member (i.e. wheelchair accessibility);

The family's TTP would otherwise exceed 40 percent of adjusted monthly income; and

The rent for the unit is reasonable.

In accordance with HUD PIH Notice 2013-03, *Temporary Compliance Assistance (January 22, 2013)*, BHA may adopt an Exception Payment Standard equal to 120% of the published Fair Market Rents, as a Reasonable Accommodation, without HUD approval.

### **"Success Rate" Payment Standard Amounts [24 CFR 982.503(e)]**

If a substantial percentage of families have difficulty finding a suitable unit, BHA may request a “success rate payment standard” that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows BHA to set its payment standards at 90-110 percent of a higher FMR (the 50<sup>th</sup>, rather than the 40<sup>th</sup> percentile FMR). To support the request, BHA must demonstrate that during the most recent 6-month period for which information is available:

- Fewer than 75 percent of families who were issued vouchers became participants;
- BHA had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR; and
- BHA had a policy of allowing voucher holders who made sustained efforts to locate units at least 90 days to search for a unit.

Although HUD approves the success rate payment standard for all unit sizes in the FMR area, BHA may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of BHA’s jurisdiction within the FMR area.

### **Decreases in the Payment Standard Below the Basic Range [24 CFR 982.503(d)]**

BHA must request HUD approval to establish a payment standard amount that is lower than the basic range. At HUD’s sole discretion, HUD may approve establishment of a payment standard lower than the basic range. HUD will not approve a lower payment standard if the family share for more than 40 percent of program participants exceeds 30 percent of adjusted monthly income.

### **16-II.C. UTILITY ALLOWANCES [24 CFR 982.517]**

A BHA-established utility allowance schedule is used in determining family share and BHA subsidy. BHA must maintain a utility allowance schedule for (1) all tenant-paid utilities, (2) the cost of tenant-supplied refrigerators and ranges, and (3) other tenant-paid housing services such as trash collection.

The utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, BHA must use normal patterns of consumption for the community as a whole, and current utility rates.

The utility allowance must include the utilities and services that are necessary in the locality to provide housing that complies with housing quality standards. Costs for telephone, cable/satellite television, and internet services are not included in the utility allowance schedule.

In the utility allowance schedule, BHA must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection; other electric; cost of tenant-supplied refrigerator; cost of tenant-supplied range; and other specified housing services.

The cost of each utility and housing service must be stated separately by unit size and type. Chapter 18 of the *HCV Guidebook* provides detailed guidance to BHA about establishing utility allowance schedules.

### **Reasonable Accommodation**

HCV program regulations require BHA to approve a utility allowance amount higher than shown on BHA's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, BHA will approve an allowance for air-conditioning, even if BHA has determined that an allowance for air-conditioning generally is not needed (See Chapter 2 for policies regarding the request and approval of reasonable accommodations).

### **Utility Allowance Revisions**

BHA must review its schedule of utility allowances each year, and must revise the schedule if there has been a change of 10 percent or more in any utility rate since the last time the allowance for that utility was revised.

BHA must maintain information supporting its annual review of utility allowance and any revisions made in its utility allowance schedule.

## **PART III: INFORMAL REVIEWS AND HEARINGS**

### **16-III.A. OVERVIEW**

When BHA makes a decision that has a negative impact on a family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal review; for participants, or for applicants denied admission because of citizenship issues, the appeal takes the form of an informal hearing.

PHAs are required to include in their administrative plans, informal review procedures for applicants, and informal hearing procedures for participants [24 CFR 982.54(d)(12) and (13)].

### **16-III.B. INFORMAL REVIEWS**

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a “minimum hearing requirement” [24 CFR 982.554], and need not be as elaborate as the informal hearing requirements. (Federal Register Volume 60, No. 127, p 36490).

#### **Decisions Subject to Informal Review**

BHA must give an applicant the opportunity for an informal review of a decision denying assistance [24 CFR 982.554(a)]. Denial of assistance may include any or all of the following [24 CFR 982.552(a)(2)]:

- Denying listing on BHA waiting list
- Denying or withdrawing a voucher
- Refusing to enter into a HAP contract or approve a lease
- Refusing to process or provide assistance under portability procedures
- Denial of assistance based on an unfavorable history that may be the result of domestic violence, dating violence or stalking. (See Section 3-III.G.)

Informal reviews are *not* required for the following reasons [24 CFR 982.554(c)]:

- Discretionary administrative determinations by BHA
- General policy issues or class grievances
- A determination of the family unit size under BHA subsidy standards
- A BHA determination not to grant approval of the tenancy
- A BHA determination that the unit is not in compliance with the HQS
- A BHA determination that the unit is not in accordance with the HQS due to family size or composition

### BHA Policy

BHA will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying or withdrawing a voucher; refusing to enter into a HAP contract or approve a lease; refusing to process or provide assistance under portability procedures. BHA will not offer an informal review to a family that was not selected from a lottery pool for placement on BHA wait list.

### **Notice to the Applicant [24 CFR 982.554(a)]**

BHA must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for the BHA decision, and must also state that the applicant may request an informal review of the decision. The notice must describe how to obtain the informal review.

### **Scheduling an Informal Review**

#### BHA Policy

A request for an informal review must be made in writing and delivered to BHA either in person or by first class mail, or by email to [bha@ci.berkeley.ca.us](mailto:bha@ci.berkeley.ca.us) by the close of the business day, no later than 10 business days from the date of BHA's denial of assistance.

Except as provided in Section 3-III.G, BHA must schedule and send written notice of the informal review within 10 business days of the family's request.

Any correspondence mailed via US Postal Service to the assisted address is presumed received unless it is returned.

### **Informal Review Procedures [24 CFR 982.554(b)]**

#### BHA Policy

The informal review must be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

The applicant must be provided an opportunity to review BHAs documentation prior to the review meeting, and to present written or oral objections to the decision of BHA under review.

The person conducting the review will make a recommendation to BHA, but BHA is responsible for making the final decision as to whether assistance should be granted or denied.

For reviews of "factual matters" (i.e. denial of placement on a senior housing list by a person under 62 years of age, or admission of a lifetime registrant sex offender) BHA may conduct the review by review of documents, and not provide a "meeting" to discuss the appeal.

### **Informal Review Decision [24 CFR 982.554(b)]**

BHA must notify the applicant of BHA's final decision, including a brief statement of the reasons for the final decision.

#### BHA Policy

In rendering a decision, BHA will evaluate the following matters:

Whether or not the grounds for denial were stated factually in the Notice.

The validity of grounds for denial of assistance.

The validity of the evidence.

BHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. Two copies of the notice will be mailed within 10 business days of the informal review, to the applicant and his or her representative, if any, via regular and certified mail.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume.

If the family fails to appear for their informal review, the denial of admission will stand and the family will be so notified.

Any correspondence mailed via US Postal Service to the assisted address is presumed received unless it is returned.

### **16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555, Pub.L. 109-162]**

PHAs must offer an informal hearing for certain BHA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to the BHA's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether BHA's decisions related to the family's circumstances are in accordance with the law, HUD regulations and BHA policies.

BHA is not permitted to terminate a family's assistance until the time allowed for the family to request an informal hearing has elapsed, and any requested hearing has been completed. Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease
- Terminating housing assistance payments under an outstanding HAP contract
- Refusing to process or provide assistance under portability procedures

#### **Decisions Subject to Informal Hearing**

Circumstances for which BHA must give a participant family an opportunity for an informal hearing are as follows:

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from BHA utility allowance schedule
- A determination of the family unit size under BHA's subsidy standards
- A determination that a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under BHA's subsidy standards, or BHA determination to deny the family's request for exception from the standards
- A determination to terminate assistance for a participant family because of the family's actions or failure to act

- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under BHA policy and HUD rules
- A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)]
- A determination to deny admission based on an unfavorable history that may be the result of domestic violence, dating violence, or stalking.

Circumstances for which an informal hearing is not required are as follows:

- Discretionary administrative determinations by BHA
- General policy issues or class grievances
- Establishment of BHA schedule of utility allowances for families in the program
- A BHA determination not to approve an extension or suspension of a voucher term
- A BHA determination not to approve a unit or tenancy
- A BHA determination that a unit selected by the applicant is not in compliance with the HQS
- A BHA determination that the unit is not in accordance with HQS because of family size
- A determination by BHA to exercise or not to exercise any right or remedy against an owner under a HAP contract

#### BHA Policy

BHA will only offer participants the opportunity for an informal hearing when required to by the regulations.

### **Informal Hearing Procedures**

#### ***Notice to the Family* [24 CFR 982.555(c)]**

When BHA makes a decision that is subject to informal hearing procedures, BHA must inform the family of its right to an informal hearing at the same time that it informs the family of the decision.

For decisions related to the family's annual or adjusted income, the determination of the appropriate utility allowance, and the determination of the family unit size, BHA must notify the family that they may ask for an explanation of the basis of the determination, and that if they do not agree with the decision, they may request an informal hearing on the decision.

For decisions related to the termination of the family's assistance, or the denial of a family's request for an exception to BHA's subsidy standards, the notice must contain a brief statement of the reasons for the decision, a statement that if the family does not agree with the decision, the family may request an informal hearing on the decision, and a statement of the deadline for the family to request an informal hearing.

## BHA Policy

In cases where BHA makes a decision for which an informal hearing must be offered, the notice to the family will include all of the following:

The proposed action or decision of BHA.

A brief statement of the reasons for the decision including the regulatory reference.

A copy of all documents BHA will rely upon during the hearing

The date the proposed action will take place.

A statement of the family's right to an explanation of the basis for BHA's decision.

A statement that if the family does not agree with the decision the family may request an informal hearing of the decision.

A deadline for the family to request the informal hearing.

To whom the hearing request should be addressed.

Contact information for East Bay Community Law Center and Bay Area Legal Aid

Information regarding BHAs Reasonable Accommodation policy

### ***Scheduling an Informal Hearing [24 CFR 982.555(d)]***

When an informal hearing is required, BHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

## BHA Policy

A request for an informal hearing must be made in writing and delivered to BHA either in person or by first class mail, or email to [bha@ci.berkeley.ca.us](mailto:bha@ci.berkeley.ca.us) by the close of the business day, no later than 10 business days from the date of BHA's decision or notice to terminate assistance.

BHA must schedule and send written notice of the informal hearing to the family within 10 business days of the family's request.

Any correspondence mailed via US Postal Service to the assisted address is presumed received unless it is returned.

The family will be asked to advise the preferred day of the week, and morning or afternoon. BHA will attempt to accommodate the family in scheduling the hearing. Additionally, the family may reschedule once for convenience, provided at least 24 hour notice is provided. Thereafter, a hearing will only be rescheduled for "good cause". Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, BHA may request documentation of the "good cause" prior to rescheduling the hearing. Failure to secure legal representation in a timely manner is not good cause.

If the family does not appear at the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact BHA within

24 hours of the scheduled hearing date, excluding weekends and holidays. BHA will reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

If the family delays BHA's ability to conduct the hearing beyond 30-days, and the delay impacts the amount of subsidy paid by BHA, BHA will (a) conduct the hearing by review of documents or (b) suspend all benefits for a maximum of 60-days to allow for a hearing.

### ***Other Reviews***

BHA will not suspend or delay the informal hearing process more than 30-days to await adjudication by another entity (i.e. civil or criminal case).

### ***Pre-Hearing Right to Discovery [24 CFR 982.555(e)]***

Participants and BHA are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any BHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If BHA does not make the document available for examination on request of the family, BHA may not rely on the document at the hearing.

BHA hearing procedures may provide that BHA must be given the opportunity to examine at BHA offices before the hearing, any family documents that are directly relevant to the hearing. BHA must be allowed to copy any such document at BHA's expense. If the family does not make the document available for examination on request of BHA, the family may not rely on the document at the hearing.

For the purpose of informal hearings, *documents* include records and regulations.

### **BHA Policy**

BHA will include with the proposed termination notice, a copy of all documents BHA will rely upon in the hearing. Additional copies may be obtained for \$.10 per page. If additional documents are received prior to the hearing, BHA will provide client a copy as soon as possible, whenever possible, at least 48 hours prior to the hearing.

BHA must be given an opportunity to examine at BHA offices before the hearing any family documents that are directly relevant to the hearing. Whenever a participant requests an informal hearing, BHA include in the letter scheduling the hearing, a request to copy of all documents that the participant intends to present or utilize at the hearing. The participant must make the documents available no later than 12:00 pm on the business day prior to the scheduled hearing date.

### ***Participant's Right to Bring Counsel [24 CFR 982.555(e)(3)]***

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

### ***Informal Hearing Officer [24 CFR 982.555(e)(4)]***

Informal hearings will be conducted by a person or persons approved by BHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

## BHA Policy

BHA has designated the following to serve as hearing officers:

- Hearing Examiner, Rent Stabilization Program
- Housing Operations Manager/Deputy Director or equivalent from another Public Housing Authority
- Current or prior employee of a Public Housing Authority with Informal Hearing experience
- BHA Housing Occupancy Manager
- BHA Management Analyst
- BHA Executive Director

### ***Attendance at the Informal Hearing***

#### BHA Policy

Hearings may be attended by a hearing officer and the following applicable persons:

A BHA representative(s) and any witnesses for BHA

The participant and any witnesses for the participant

The participant's counsel or other representative

Any other person approved by BHA as a reasonable accommodation for a person with a disability

Head of household, if incarcerated, has 30 days (versus 14 days) to request an Informal Hearing; such hearing may occur via telephone, via a designated advocate, or submission of a written statement/response to evidence.

### ***Recording of the Hearing***

#### BHA Policy

All hearings will be recorded at BHA's expense and maintained on record for 90-days. The family may request a copy by providing a blank CD or flash drive; there will not be any charge for the duplication; BHA will not provide a transcript of the audio taped hearing unless requested for legal proceeding. A transcript required for legal proceeding will be provided at BHA expense.

### ***Conduct at Hearings***

The person who conducts the hearing may regulate the conduct of the hearing in accordance with BHA's hearing procedures [24 CFR 982.555(4)(ii)].

#### BHA Policy

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct. Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer.

### ***Evidence [24 CFR 982.555(e)(5)]***

BHA and the family must be given the opportunity to present evidence and question any witnesses. In general, all evidence is admissible at an informal hearing. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

#### BHA Policy

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

**Oral evidence:** the testimony of witnesses

**Documentary evidence:** a writing which is relevant to the case, for example, a letter written to BHA. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.

**Demonstrative evidence:** Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

**Real evidence:** A tangible item relating directly to the case.

*Hearsay Evidence* is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If either BHA or the family fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence.

Other than the failure of a party to comply with discovery, the hearing officer has the authority to overrule any objections to evidence.

### ***Hearing Officer's Decision [24 CFR 982.555(e)(6)]***

The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the hearing decision must be furnished promptly to the family.

#### BHA Policy

In rendering a decision, the hearing officer will consider the following matters:

**BHA Notice to the Family:** The hearing officer will determine if the reasons for BHA's decision are factually stated in the Notice.

**Discovery:** The hearing officer will determine if BHA and the family were given the opportunity to examine any relevant documents in accordance with BHA policy.

**BHA Evidence to Support BHA Decision:** The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support BHA's conclusion.

**Validity of Grounds for Termination of Assistance (when applicable):** The hearing officer will determine if the termination of assistance is for one of the grounds specified in the HUD regulations and BHA policies. If the grounds for termination are not specified in the regulations or in compliance with BHA policies, then the decision of BHA will be overturned.

To overturn the decision of BHA, the Hearing Officer must find that BHA failed to meet one or more of the standards identified above.

The hearing officer will issue a written decision directly to the family and BHA no later than 10 business days after the hearing. BHA will mail a second copy to the family, certified mail. The report will contain the following information:

**Hearing information:**

- Name of the participant;
- Date, time and place of the hearing;
- Name of the hearing officer;
- Name of BHA representative(s); and
- Name of family representative(s), if any.

**Background:** A brief, impartial statement of the reason for the hearing.

**Summary of the Evidence:** The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

**Findings of Fact:** The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

**Conclusions:** The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold BHA's decision.

**Order:** The hearing report will include a statement of whether BHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct BHA to change the decision in accordance with the hearing officer's determination. In the case of termination of assistance, the hearing officer will instruct BHA to restore the participant's program status.

## ***Procedures for Rehearing or Further Hearing***

### **BHA Policy**

The hearing officer may ask the family for additional information and/or might adjourn the hearing (for a maximum of 30-days) in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of BHA will take effect and another hearing will not be granted.

A rehearing or a further hearing may be requested for the purpose of rectifying any obvious mistake of law made during the hearing or any obvious injustice not known at the time of the hearing.

It shall be within the sole discretion of BHA to grant or deny the request for further hearing or rehearing. A further hearing may be limited to written submissions by the parties, in the manner specified by the hearing officer.

### ***BHA Notice of Final Decision [24 CFR 982.555(f)]***

BHA is not bound by the decision of the hearing officer for matters in which BHA is not required to provide an opportunity for a hearing, decisions that exceed the authority of the hearing officer, decisions that conflict with or contradict HUD regulations, requirements, or are otherwise contrary to Federal, State or local laws.

If BHA determines it is not bound by the hearing officer's decision in accordance with HUD regulations, BHA must promptly notify the family of the determination and the reason for the determination.

### **BHA Policy**

If BHA determines that it will not be bound by the decision of the Hearing Officer, BHA will mail a "Notice of Final Decision" including a copy of the hearing officer's report, to the participant and their representative. Two copies of this Notice will be sent by first-class mail, postage pre-paid including one via certified mail. The participant will be mailed the original "Notice of Final Decision". A copy of the "Notice of Final Decision" along with the certified mail receipt notice will be maintained in BHA's file.

Any correspondence mailed via US Postal Service to the assisted address is presumed received unless it is returned.

## **16-III.D. HEARING AND APPEAL PROVISIONS FOR NON-CITIZENS [24 CFR 5.514]**

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the PHA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or BHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

#### **Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]**

As discussed in Chapters 3 and 11, the notice of denial or termination of assistance for noncitizens must advise the family:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a participant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with the PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

#### **USCIS Appeal Process [24 CFR 5.514(e)]**

When BHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, BHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide BHA with a copy of the written request for appeal and the proof of mailing.

#### **BHA Policy**

BHA will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results.

The family must provide BHA with a copy of the written request for appeal and proof of mailing within 10 business days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to BHA, of its decision. When the USCIS notifies BHA of the decision, BHA must notify the family of its right to request an informal hearing.

### BHA Policy

BHA will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.

Any correspondence mailed via US Postal Service to the assisted address is presumed received unless it is returned.

### **Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that BHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of BHA notice of denial, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

#### ***Informal Hearing Officer***

BHA must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision. See Section 16-III.C. for a listing of positions that serve as informal hearing officers.

#### ***Evidence***

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of BHA pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

### BHA Policy

The family will be allowed to copy any documents related to the hearing at a cost of \$.10 per page. The family must request discovery of BHA documents no later than 12:00 p.m. on the business day prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by BHA, and to confront and cross-examine all witnesses on whose testimony or information BHA relies.

#### ***Representation and Interpretive Services***

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or BHA, as may be agreed upon by the two parties.

#### ***Recording of the Hearing***

The family is entitled to have the hearing recorded by audiotape. BHA is not required to provide a transcript of the hearing.

## BHA Policy

All hearings will be recorded at BHA's expense and maintained on record for 90-days. The family may request a copy by providing a blank CD or flash drive; there will not be any charge for the duplication; BHA will not provide a transcript of the audio taped hearing unless requested for legal proceeding. A transcript required for legal proceeding will be provided at BHA expense.

### ***Hearing Decision***

BHA must provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The decision must state the basis for the decision.

### **Informal Hearing Procedures for Residents [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that BHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of BHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

For the informal hearing procedures that apply to participant families whose assistance is being terminated based on immigration status, see Section 16-III.C.

### **Retention of Documents [24 CFR 5.514(h)]**

BHA must retain for a minimum of 5 years the following documents that may have been submitted to BHA by the family, or provided to BHA as part of the USCIS appeal or BHA informal hearing process:

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form
- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision

## **PART IV: OWNER OR FAMILY DEBTS TO THE PHA**

### **16-IV.A. OVERVIEW**

BHA is required to include in the Administrative Plan, policies concerning repayment by a family of amounts owed to BHA [24 CFR 982.54]. This part describes BHA's policies for recovery of monies that have been overpaid on behalf of families, or to owners or loans extended to families.

#### BHA Policy

When an action or inaction of an owner or participant results in failure to honor a contractual obligation (e.g. loan) or the overpayment of housing assistance, BHA holds the owner or participant liable to return any overpayments to BHA.

BHA will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments.

When an owner or participant refuses to repay monies owed to BHA, BHA will utilize other available collection alternatives including, but not limited to, the following:

- Collection agencies
- Small claims court
- Civil law suit
- State income tax set-off program

### **16-IV.B. REPAYMENT POLICY**

#### **Owner Debts to BHA**

##### BHA Policy

Any amount due to BHA by an owner must be repaid by the owner within 30 days of the BHA determination of the debt.

If the owner fails to repay the debt within the required time frame and is entitled to future HAP payments, BHA will reduce the future HAP payments by the amount owed until the debt is paid in full.

If the owner is not entitled to future HAP payments BHA will offer to enter into a repayment agreement in accordance with the policies below.

If the owner refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, BHA will ban the owner from future participation in the program and pursue other modes of collection.

#### **Family Debts to the BHA**

##### BHA Policy

Any amount due to BHA by an HCV participant must be repaid by the family. If the family is unable to repay the debt within 30 days, BHA will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, BHA will terminate the assistance upon notification to the family,

report the debt in HUD's "Debts Owed to PHAs & Terminations" database tracking system, and pursue other modes of collection.

### **Repayment Agreement [24 CFR 792.103]**

The term *repayment agreement* refers to a formal document signed by a tenant or owner and provided to BHA in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

### **Repayment Agreement Guidelines**

#### ***Down Payment Requirement***

##### BHA Policy

Prior to the execution of a repayment agreement, the owner or family must pay 25 percent of the balance owed to BHA. The Executive Director may authorize a different down payment to avoid a financial hardship for the family.

#### ***Payment Thresholds***

##### BHA Policy

- Amounts over \$3,000 must be repaid within 36 months.
- Amounts between \$2,000 and \$2,999 must be repaid within 30 months.
- Amounts between \$1,000 and \$1,999 must be repaid within 24 months.
- Amounts under \$1,000 must be repaid within 12 months.

The Executive Director may authorize a different payment term to eliminate a situation where the current family rent plus the repayment amount exceeds 50% of the current gross monthly household income.

If the amount owed is greater than \$6,000, a repayment agreement may only be entered into with the Executive Director's written approval.

#### ***Execution of the Agreement***

##### BHA Policy

The head of household and spouse/cohead (if applicable) must sign the repayment agreement.

#### ***Due Dates***

##### BHA Policy

All payments are due by the close of business on the 10<sup>th</sup> day of the month. If the 10<sup>th</sup> does not fall on a business day, the due date is the close of business on the first business day after the 10<sup>th</sup>.

#### ***Non-Payment***

##### BHA Policy

If a payment is not received by the end of the business day on the date due, and prior approval for the missed payment has not been given by BHA, the family is in default and subject to sanctions.

BHA may modify, extend or suspend the terms of the repayment agreement upon a showing that

- a. An extenuating circumstance beyond the control of the family prevented it from complying with the terms of the repayment agreement (e.g. death or medical emergency in the immediate family); or
- b. Household income has decreased significantly, because of changed circumstances, including loss of employment or temporary disability

If after receiving a final notice to pay from BHA, a family fails to bring the account into good standing, BHA will terminate assistance upon written notification to the family.

BHA may forgive the debt if the offending party dies and the debt is transferred to a remaining head of household who did not have a part in the act(ion) that created the debt.

### ***No Offer of Repayment Agreement***

#### **BHA Policy**

BHA will not enter into a repayment agreement if there is already a repayment agreement in place with the family or owner, or while the matter is under investigation for possible criminal prosecution or is currently being criminally prosecuted.

### ***Debts Owed to Public Housing Agencies and Terminations***

HUD requires housing authorities to report in a nation-wide database on balances owed any PHA or S8 landlord; whether a repayment agreement has been entered; whether a repayment agreement has defaulted; whether the PHA has obtained a judgement against the former participant; whether the former participant filed for bankruptcy; the negative reasons for end of participation status such as fraud, abandoned unit, lease violations, criminal activity, and end of participation date.

## **PART V: MANAGEMENT ASSESSMENT (SEMAP)**

### **16-V.A. OVERVIEW**

The Section 8 Management Assessment Program (SEMAP) is a tool that allows HUD to measure PHA performance in key areas to ensure program integrity and accountability. SEMAP scores translate into a rating for each PHA as high performing, standard, or troubled. Scores on individual SEMAP indicators, as well as overall SEMAP ratings, can affect PHA in several ways.

- High-performing PHAs can be given a competitive advantage under notices of funding availability [24 CFR 985.103].
- PHAs with deficiencies on one or more indicators are required to correct the deficiencies and report to HUD [24 CFR 985.106].
- PHAs with an overall rating of “troubled” are subject to additional HUD oversight, including on-site reviews by HUD staff, a requirement to develop a corrective action plan, and monitoring to ensure the successful implementation of the corrective action plan. In addition, PHAs that are designated “troubled” may not use any part of the administrative fee reserve for other housing purposes [24 CFR 985.107].
- HUD may determine that a PHA's failure to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan required by HUD constitutes a default under the ACC [24 CFR 985.109].

### **16-V.B. SEMAP CERTIFICATION [24 CFR 985.101]**

PHAs must submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year. The certification must be approved by PHA board resolution and signed by the PHA Executive Director.

PHAs with less than 250 voucher units are only required to be assessed every other PHA fiscal year. HUD will assess such PHAs annually if the PHA elects to have its performance assessed on an annual basis; or is designated as “troubled” [24 CFR 985.105].

Failure of BHA to submit its SEMAP certification within the required time frame will result in an overall performance rating of “troubled.”

BHA’s SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time.

Upon receipt of BHA’s SEMAP certification, HUD will rate BHA’s performance under each SEMAP indicator in accordance with program requirements.

#### **HUD Verification Method**

Several of the SEMAP indicators are scored based on a review of a quality control sample selected for this purpose. BHA or the Independent Auditor must select an unbiased sample that provides an adequate representation of the types of information to be assessed, in accordance with SEMAP requirements [24 CFR 985.2].

If the HUD verification method for the indicator relies on data in the Form-50058 module (formerly known as MTCS) in the PIH Information Center (PIC), and HUD determines that

those data are insufficient to verify BHA's certification on the indicator due to BHA's failure to adequately report family data, HUD will assign a zero rating for the indicator [24 CFR 985.3].

**16-V.C. SEMAP INDICATORS [24 CFR 985.3 and form HUD-52648]**

The table below lists each of the SEMAP indicators, contains a description of each indicator, and explains the basis for points awarded under each indicator.

A PHA that expends less than \$300,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor, is not be rated under SEMAP indicators 1-7.

<b>SEMAP Indicators</b>
<p><b>Indicator 1: Selection from the waiting list</b>  <b>Maximum Score: 15</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether the PHA has written policies in its administrative plan for selecting applicants from the waiting list and whether the PHA follows these policies when selecting applicants for admission from the waiting list.</li> <li>• Points are based on the percent of families that are selected from the waiting list in accordance with the PHA’s written policies, according to the PHA’s quality control sample.</li> </ul>
<p><b>Indicator 2: Rent reasonableness</b>  <b>Maximum Score: 20</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether the PHA has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units</li> <li>• Points are based on the percent of units for which the PHA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to the PHA’s quality control sample.</li> </ul>
<p><b>Indicator 3: Determination of adjusted income</b>  <b>Maximum Score: 20</b></p> <ul style="list-style-type: none"> <li>• This indicator measures whether the PHA verifies and correctly determines adjusted income for each assisted family, and where applicable, uses the appropriate utility allowances for the unit leased in determining the gross rent.</li> <li>• Points are based on the percent of files that are calculated and verified correctly, according to the PHA’s quality control sample.</li> </ul>
<p><b>Indicator 4: Utility allowance schedule</b>  <b>Maximum Score: 5</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether the PHA maintains an up-to-date utility allowance schedule.</li> <li>• Points are based on whether the PHA has reviewed the utility allowance schedule and adjusted it when required, according to the PHA’s certification.</li> </ul>

**Indicator 5: HQS quality control inspections****Maximum Score: 5**

- This indicator shows whether a PHA supervisor reinspects a sample of units under contract during the PHA fiscal year, which meets the minimum sample size requirements for quality control of HQS inspections.
- Points are based on whether the required quality control reinspections were completed, according to the PHA's certification.

**Indicator 6: HQS enforcement****Maximum Score: 10**

- This indicator shows whether, following each HQS inspection of a unit under contract where the unit fails to meet HQS, any cited life-threatening deficiencies are corrected within 24 hours from the inspection and all other deficiencies are corrected within no more than 30 calendar days from the inspection or any PHA-approved extension.
- Points are based on whether the PHA corrects all HQS deficiencies in accordance with required time frames, according to the PHA's certification.

**Indicator 7: Expanding housing opportunities****Maximum Points: 5**

- Only applies to PHAs with jurisdiction in metropolitan FMR areas.
- This indicator shows whether the PHA has adopted and implemented a written policy to encourage participation by owners of units located outside areas of poverty or minority concentration; informs voucher holders of the full range of areas where they may lease units both inside and outside the PHA's jurisdiction; and supplies a list of landlords or other parties who are willing to lease units or help families find units, including units outside areas of poverty or minority concentration.
- Points are based on whether the PHA has adopted and implemented written policies in accordance with SEMAP requirements, according to the PHA's certification.

**Indicator 8: FMR limit and payment standards****Maximum Points: 5 points**

- This indicator shows whether the PHA has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in the PHA's jurisdiction, that are within the basic range of 90 to 110 percent of the published FMR.
- Points are based on whether the PHA has appropriately adopted a payment standard schedule(s), according to the PHA's certification.

**Indicator 9: Annual reexaminations****Maximum Points: 10**

- This indicator shows whether the PHA completes a reexamination for each participating family at least every 12 months.
- Points are based on the percent of reexaminations that are more than 2 months overdue, according to data from PIC.

**Indicator 10: Correct tenant rent calculations**

**Maximum Points: 5**

- This indicator shows whether the PHA correctly calculates the family's share of the rent to owner.
- Points are based on the percent of correct calculations of family share of the rent, according to data from PIC.

**Indicator 11: Pre-contract HQS inspections**

**Maximum Points: 5**

- This indicator shows whether newly leased units pass HQS inspection on or before the effective date of the assisted lease and HAP contract.
- Points are based on the percent of newly leased units that passed HQS inspection prior to the effective date of the lease and HAP contract, according to data from PIC.

**Indicator 12: Annual HQS inspections**

**Maximum Points: 10**

- This indicator shows whether the PHA inspects each unit under contract at least annually.
- Points are based on the percent of annual HQS inspections of units under contract that are more than 2 months overdue, according to data from PIC.

**Indicator 13: Lease-up**

**Maximum Points: 20 points**

- This indicator shows whether the PHA enters HAP contracts for the number of units or funding reserved under ACC for at least one year.
- Points are based on the percent of units leased during the last completed PHA fiscal year, or the percent of allocated budget authority that has been expended by the PHA, according to data from the PHA's last year-end operating statement that is recorded in HUD's accounting system.

**Indicator 14: Family self-sufficiency (FSS) enrollment and escrow account balances**

**Maximum Points: 10**

- Only applies to PHAs with mandatory FSS programs.
- This indicator shows whether the PHA has enrolled families in the FSS program as required, and measures the percent of current FSS participants that have had increases in earned income which resulted in escrow account balances.
- Points are based on the percent of mandatory FSS slots that are filled and the percent of families with escrow account balances, according to data from PIC.

**Success Rate of Voucher Holders****Maximum Points: 5**

- Only applies to PHAs that have received approval to establish success rate payment standard amounts, and isn't effective until the second full PHA fiscal year following the date of HUD approval of success rate payment standard amounts.
- This indicator shows whether voucher holders were successful in leasing units with voucher assistance.
- Points are based on the percent of families that were issued vouchers, and that became participants in the voucher program.

**Deconcentration Bonus Indicator****Maximum Points: 5**

- Submission of data for this indicator is mandatory for a PHA using one or more payment standard amount(s) that exceed(s) 100 percent of the published FMR set at the 50 percentile rent, starting with the second full PHA fiscal year following initial use of payment standard amounts based on the FMRs set at the 50<sup>th</sup> percentile.
- Additional points are available to PHAs that have jurisdiction in metropolitan FMR areas and that choose to submit the required data.
- Points are based on whether the data that is submitted meets the requirements for bonus points.

## **PART VI: RECORD KEEPING**

### **16-VI.A. OVERVIEW**

BHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, BHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

### **16-VI.B. RECORD RETENTION [24 CFR 982.158]**

During the term of each assisted lease, and for at least three years thereafter, BHA must keep:

- A copy of the executed lease;
- The HAP contract; and
- The application from the family.

In addition, BHA must keep the following records for at least three years:

- Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants;
- An application from each ineligible family and notice that the applicant is not eligible;
- HUD-required reports;
- Unit inspection reports;
- Lead-based paint records as required by 24 CFR 35, Subpart B.
- Accounts and other records supporting PHA budget and financial statements for the program;
- Records to document the basis for BHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- Other records specified by HUD.

If an informal hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 16-III.D., Retention of Documents.

### **16-VI.C. RECORDS MANAGEMENT**

BHA must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

#### **BHA Policy**

All applicant and participant information will be kept in a secure location and access will be limited to authorized BHA staff.

BHA staff will not discuss personal family information unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action.

## **Privacy Act Requirements [24 CFR 5.212 and Form-9886]**

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or the PHA may release the information collected.

## **Upfront Income Verification (UIV) Records**

PHAs that access UIV data through HUD's Enterprise Income Verification (EIV) System are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with Federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in the HUD issued document, *Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data*.

### BHA Policy

BHA has adopted and implemented an EIV Security Policy.

## **Criminal Records**

BHA may only disclose the criminal conviction records which BHA receives from a law enforcement agency to officers or employees of BHA, or to authorized representatives of BHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

BHA must establish and implement a system of records management that ensures that any criminal record received by BHA from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to BHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

BHA must establish and implement a system of records management that ensures that any sex offender registration information received by BHA from a State or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to BHA action without institution of a challenge or final disposition of any such litigation. This requirement does not apply to information that is public information, or is obtained by BHA other than under 24 CFR 5.905.

### BHA Policy

BHA will maintain copies of Police Reports, logs for service, and other documents in a confidential file in the Executive Office. The participant file will include a note referencing the existence of the document in the Executive Office.

## **Medical/Disability Records**

PHAs are not permitted to inquire about the nature or extent of a person's disability. BHA may not inquire about a person's diagnosis or details of treatment for a disability or medical

condition. If BHA receives a verification document that provides such information, BHA should redact diagnostic/medical information in the document.

#### BHA Policy

BHA will review documents submitted for medical expense, determine any appropriate allowance, enter a brief description in the “medical expense” line to document the deduction, and place the documentation in a sealed envelope in the file.

### **PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL**

#### **16-VII.A. OVERVIEW**

BHA has certain responsibilities relative to children with environmental intervention blood lead levels that are receiving HCV assistance. The notification, verification, and hazard reduction requirements are discussed in Chapter 8. This part deals with the reporting requirements, and data collection and record keeping responsibilities that BPHA is subject to.

#### **16-VII.B. REPORTING REQUIREMENT [24 CFR 35.1225(e)]**

BHA must report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional.

#### BHA Policy

BHA will provide the public health department written notice of the name and address of any child identified as having an environmental intervention blood lead level.

#### **16-VII.C. DATA COLLECTION AND RECORD KEEPING [24 CFR 35.1225(f)]**

At least quarterly, BHA must attempt to obtain from the public health department(s) with a similar area of jurisdiction, the names and/or addresses of children less than 6 years old with an identified environmental intervention blood lead level.

If BHA obtains names and addresses of environmental intervention blood lead level children from the public health department(s), BHA must match this information with the names and addresses of families receiving HCV assistance, unless the public health department performs such a procedure. If a match occurs, BHA must carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

At least quarterly, BHA must also report an updated list of the addresses of units receiving assistance under the HCV program to the same public health department(s), unless the public health department(s) states that it does not wish to receive such a report.

#### BHA Policy

BHA will coordinate reporting of any suspected situations involving positive tests of children with elevated blood lead levels with the City of Berkeley Public Health Department.

## **PART VIII: DETERMINATION OF INSUFFICIENT FUNDING**

### **16-VIII.A. OVERVIEW**

The HCV regulations allow PHAs to deny families permission to move and to terminate Housing Assistance Payments (HAP) contracts if funding under the consolidated ACC is insufficient to support continued assistance [24 CFR 982.314(e)(1) and 982.454]. Insufficient funding may also impact BHA's ability to issue vouchers to families on the waiting list. This part discusses the methodology BHA will use to determine whether or not BHA has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

### **16-VIII.B. METHODOLOGY**

#### BHA Policy

BHA will determine whether there is adequate funding to issue vouchers, approve moves to higher cost units and areas, and continue subsidizing all current participants by comparing BHA's annual budget authority to the annual total HAP needs on a monthly basis. The total HAP needs for the calendar year will be projected by establishing the actual HAP costs year to date and factoring in any known economic changes that may impact average HAP (e.g. scheduled reductions in SSI benefits). To that figure, BHA will add anticipated HAP expenditures for the remainder of the calendar year. BHA may include the projected costs for vouchers:

- a. that have been issues to families from the waiting list but not yet leased; and
- b. Voucher commitments to project based developments to lease-up during the fiscal year.

## **PART IX: NOTIFICATION REGARDING APPLICABLE PROVISIONS OF THE VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2005 (VAWA)**

The Violence against Women Reauthorization Act of 2005 (VAWA) requires PHAs to inform assisted tenants of their rights under this law, including their right to confidentiality and the limits thereof. Since VAWA provides protections for applicants as well as tenants, PHAs may elect to provide the same information to applicants. VAWA also requires PHAs to inform owners and managers of their obligations under this law [24 CFR 5.2007(3)].

This part describes the steps that the PHA will take to ensure that all actual and potential beneficiaries of its housing choice voucher program are notified about their rights and that owners and managers are notified of their obligations under VAWA.

#### BHA Policy

BHA will post the following information regarding VAWA in its offices and on its Web site. It will also make the information readily available to anyone who requests it.

A summary of the rights and protections provided by VAWA to housing choice voucher program applicants and participants who are or have been victims of domestic violence, dating violence, or stalking (see sample notices in Exhibits 16-1 and 16-2)

The definitions of *domestic violence*, *dating violence*, and *stalking* provided in VAWA (included in Exhibits 16-1 and 16-2)

An explanation of the documentation that the PHA may require from an individual who claims the protections provided by VAWA (included in Exhibits 16-1 and 16-2)

A copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, or Stalking

A statement of BHA's obligation to keep confidential any information that it receives from a victim unless (a) BHA has the victim's written permission to release the information, (b) it needs to use the information in an eviction proceeding, or (c) it is compelled by law to release the information (included in Exhibits 16-1 and 16-2)

The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY) (included in Exhibits 16-1 and 16-2)

Contact information for local victim advocacy groups or service providers

#### **16-IX.A. NOTIFICATION TO PARTICIPANTS [24 CFR 5.2007(3)(i)]**

VAWA requires PHAs to notify HCV program participants of their rights under this law, including their right to confidentiality and the limits thereof.

##### BHA Policy

BHA will provide all participants with notification of their protections and rights under VAWA at the time of admission and at annual reexamination every year.

The notice will explain the protections afforded under the law, inform the participant of BHA confidentiality requirements, and provide contact information for local victim advocacy groups or service providers.

BHA will also include in all assistance termination notices a statement explaining assistance termination protection provided by VAWA (see Section 12-II.E).

#### **16-IX.B. NOTIFICATION TO APPLICANTS**

##### BHA Policy

BHA will provide all applicants with notification of their protections and rights under VAWA at the time they request an application for housing assistance.

The notice will explain the protections afforded under the law, inform each applicant of BHA confidentiality requirements, and provide contact information for local victim advocacy groups or service providers.

BHA will also include in all notices of denial a statement explaining the protection against denial provided by VAWA (see section 3-III.G).

#### **16-IX.C. NOTIFICATION TO OWNERS AND MANAGERS [24 CFR 5.2007(3)(ii)]**

VAWA requires PHAs to notify owners and managers of their rights and responsibilities under this law.

## BHA Policy

Inform property owners and managers of their screening and termination responsibilities related to VAWA. BHA may utilize any or all of the following means to notify owners of their VAWA responsibilities:

As appropriate in day to day interactions with owners and managers.

Inserts in HAP payments, 1099s, owner workshops, classes, orientations, and/or newsletters.

Signs in BHA lobby and/or mass mailings which include model VAWA certification forms

## **EXHIBIT 16-1: SAMPLE NOTICE TO HOUSING CHOICE VOUCHER APPLICANTS AND TENANTS REGARDING THE VIOLENCE AGAINST WOMEN ACT (VAWA)**

*This sample notice was adapted from a notice prepared by the National Housing Law Project.*

A federal law that went into effect in 2006 protects individuals who are victims of domestic violence, dating violence, and stalking. The name of the law is the Violence against Women Act, or “VAWA.” This notice explains your rights under VAWA.

### **Protections for Victims**

If you are eligible for a Section 8 voucher, the housing authority cannot deny you rental assistance solely because you are a victim of domestic violence, dating violence, or stalking.

If you are the victim of domestic violence, dating violence, or stalking, you cannot be terminated from the Section 8 program or evicted based on acts or threats of violence committed against you. Also, criminal acts directly related to the domestic violence, dating violence, or stalking that are caused by a member of your household or a guest can’t be the reason for evicting you or terminating your rental assistance if you were the victim of the abuse.

### **Reasons You Can Be Evicted**

You can be evicted and your rental assistance can be terminated if the housing authority or your landlord can show there is an *actual* and *imminent* (immediate) threat to other tenants or employees at the property if you remain in your housing. Also, you can be evicted and your rental assistance can be terminated for serious or repeated lease violations that are not related to the domestic violence, dating violence, or stalking committed against you. The housing authority and your landlord cannot hold you to a more demanding set of rules than it applies to tenants who are not victims.

### **Removing the Abuser from the Household**

Your landlord may split the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the assisted unit. Also, the housing authority can terminate the abuser’s Section 8 rental assistance while allowing you to continue to receive assistance. If the landlord or housing authority chooses to remove the abuser, it may not take away the remaining tenants’ rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, your landlord must follow federal, state, and local eviction procedures.

### **Moving to Protect Your Safety**

The housing authority may permit you to move and still keep your rental assistance, even if your current lease has not yet expired. The housing authority may require that you be current on your rent or other obligations in the housing choice voucher program. The housing authority may ask you to provide proof that you are moving because of incidences of abuse.

### **Proving that You Are a Victim of Domestic Violence, Dating Violence, or Stalking**

The housing authority and your landlord can ask you to prove or “certify” that you are a victim of domestic violence, dating violence, or stalking. The housing authority you’re your landlord must give you at least 14 business days (i.e. Saturdays, Sundays, and holidays do not count) to provide this proof. The housing authority and your landlord are free to extend the deadline.

There are three ways you can prove that you are a victim:

- Complete the certification form given to you by the housing authority or your landlord. The form will ask for your name, the name of your abuser, the abuser’s relationship to you, the date, time, and location of the incident of violence, and a description of the violence.
- Provide a statement from a victim service provider, attorney, or medical professional who has helped you address incidents of domestic violence, dating violence, or stalking. The professional must state that he or she believes that the incidents of abuse are real. Both you and the professional must sign the statement, and both of you must state that you are signing “under penalty of perjury.”
- Provide a police or court record, such as a protective order.

If you fail to provide one of these documents within the required time, the landlord may evict you, and the housing authority may terminate your rental assistance.

### **Confidentiality**

The housing authority and your landlord must keep confidential any information you provide about the violence against you, unless:

- You give written permission to the housing authority or your landlord to release the information.
- Your landlord needs to use the information in an eviction proceeding, such as to evict your abuser.
- A law requires the housing authority or your landlord to release the information.

If release of the information would put your safety at risk, you should inform the housing authority and your landlord.

### **VAWA and Other Laws**

VAWA does not limit the housing authority’s or your landlord’s duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, or stalking.

### **For Additional Information**

If you have any questions regarding VAWA, please contact Alameda County Family Justice Center, 470 27<sup>th</sup> St, Oakland, CA 94612, at (510) 267-8800.

For help and advice on escaping an abusive relationship, call the National Domestic Violence Hotline at 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY).

### **Definitions**

For purposes of determining whether a tenant may be covered by VAWA, the following list of definitions applies:

VAWA defines *domestic violence* to include felony or misdemeanor crimes of violence committed by any of the following:

- A current or former spouse of the victim
- A person with whom the victim shares a child in common

- A person who is cohabitating with or has cohabitated with the victim as a spouse
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies
- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

VAWA defines *dating violence* as violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim AND (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship.

VAWA defines *stalking* as (A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person OR (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person AND (B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (i) that person, (ii) a member of the immediate family of that person, or (iii) the spouse or intimate partner of that person.

## **EXHIBIT 16-2: SAMPLE NOTICE TO HOUSING CHOICE VOUCHER OWNERS AND MANAGERS REGARDING THE VIOLENCE AGAINST WOMEN ACT (VAWA)**

*This sample notice was adapted from a notice prepared by the National Housing Law Project.*

A federal law that went into effect in 2006 protects individuals who are victims of domestic violence, dating violence, and stalking. The name of the law is the Violence against Women Act, or “VAWA.” This notice explains your obligations under VAWA.

### **Protections for Victims**

You cannot refuse to rent to an applicant solely because he or she is a victim of domestic violence, dating violence, or stalking.

You cannot evict a tenant who is the victim of domestic violence, dating violence, or stalking based on acts or threats of violence committed against the victim. Also, criminal acts directly related to the domestic violence, dating violence, or stalking that are caused by a household member or guest cannot be cause for evicting the victim of the abuse.

### **Permissible Evictions**

You can evict a victim of domestic violence, dating violence, or stalking if you can demonstrate that there is an *actual* or *imminent* (immediate) threat to other tenants or employees at the property if the victim is not evicted. Also, you may evict a victim for serious or repeated lease violations that are not related to the domestic violence, dating violence, or stalking. You cannot hold a victim of domestic violence, dating violence, or stalking to a more demanding standard than tenants who are not victims.

### **Removing the Abuser from the Household**

You may split the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the unit. If you choose to remove the abuser, you may not take away the remaining tenants’ rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, you must follow federal, state, and local eviction procedures.

### **Certification of Domestic Violence, Dating Violence, or Stalking**

If a tenant asserts VAWA’s protections, you can ask the tenant to certify that he or she is a victim of domestic violence, dating violence, or stalking. You are not required to demand official documentation and may rely upon the victim’s statement alone. If you choose to request certification, you must do so in writing and give the tenant at least 14 business days to provide documentation. You are free to extend this deadline. A tenant can certify that he or she is a victim by providing any one of the following three documents:

- By completing a HUD-approved certification form. The most recent form is HUD-50066. This form is available at the housing authority, or online at <http://www.hud.gov/offices/adm/hudclips/>.
- By providing a statement from a victim service provider, attorney, or medical professional who has helped the victim address incidents of domestic violence, dating violence, or stalking. The professional must state that he or she believes that the incidents of abuse are real. Both the victim and the professional must sign the statement under penalty of perjury.
- By providing a police or court record, such as a protective order.

If the tenant fails to provide one of these documents within 14 business days, you may evict the tenant if authorized by otherwise applicable law and lease provisions.

### **Confidentiality**

You must keep confidential any information a tenant provides to certify that he or she is a victim of domestic violence, dating violence, or stalking. You cannot enter the information into a shared database or reveal it to outside entities unless:

- The tenant provides written permission releasing the information.
- The information is required for use in an eviction proceeding, such as to evict the abuser.
- Release of the information is otherwise required by law.

The victim should inform you if the release of the information would put his or her safety at risk.

### **VAWA and Other Laws**

VAWA does not limit your obligation to honor court orders regarding access to or control of the property. This includes orders issued to protect the victim and orders dividing property among household members in cases where a family breaks up.

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, or stalking.

### **Additional Information**

- If you have any questions regarding VAWA, please contact Alameda County Family Justice Center, 470 27<sup>th</sup> St, Oakland, CA 94612, at (510) 267-8800..
- HUD Notice PIH 2006-42 contains detailed information regarding VAWA's certification requirements. The notice is available at <http://www.hud.gov/offices/adm/hudclips/>.
- An overview of VAWA's housing provisions is available at <http://edocket.access.gpo.gov/2007/pdf/E7-4795.pdf>.

### **Definitions**

For purposes of determining whether a tenant may be covered by VAWA, the following list of definitions applies:

VAWA defines *domestic violence* to include felony or misdemeanor crimes of violence committed by any of the following:

- A current or former spouse of the victim
- A person with whom the victim shares a child in common
- A person who is cohabitating with or has cohabitated with the victim as a spouse
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies
- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction

VAWA defines *dating violence* as violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim AND (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

VAWA defines *stalking* as (A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person OR (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person AND (B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (i) that person, (ii) a member of the immediate family of that person, or (iii) the spouse or intimate partner of that person.