

## 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 MBHA'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 MBHA. This part describes policies for recovery of monies that MBHA has overpaid on behalf of families, or to owners, and describes the circumstances under which MBHA 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 a MBHA.

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 MBHA will follow.

Part VII: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level. This part describes MBHA'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 MBHA'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 IX: Violence against Women Act (VAWA): Notification, Documentation, Confidentiality. This part contains key terms used in VAWA and describes requirements related to notifying families and owners about their rights and responsibilities under VAWA; requesting documentation from victims of domestic violence, dating violence, sexual assault and stalking; and maintaining the confidentiality of information obtained from victims.



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

MBHA will maintain administrative fee reserves, or unrestricted net position (UNP) for the program to pay program administrative expenses in excess of administrative fees paid by HUD for a PHA fiscal year. HUD appropriations acts beginning with FFY 2004 have specified that administrative fee funding may be used only for activities related to the provision of HCV assistance, including related development activities. Notice **PIH 2012-9** cites two examples of related development activities: unit modification for accessibility purposes and development of project-based voucher units. The notice makes clear that other activities may also qualify as related development activities. Administrative fees that remain in the UNP account from funding provided prior to 2004 may be used for “other housing purposes permitted by state and local law,” in accordance with **24 CFR 982.155(b)(1)**.

MBHA has not adequately administered its HCV program, HUD may prohibit use of funds in the UNP Account and may direct the PHA to use funds in that account to improve administration of the program, for HCV HAP expenses, or to reimburse ineligible expenses in accordance with the regulation at **24 CFR 982.155(b)(3)**.

HUD requires the PHA Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the UNP account without specific approval

### MBHA Policy

Expenditures from the administrative fee reserve will be made in accordance with all applicable Federal requirements. Expenditures will not exceed \$10,000 per occurrence without the prior approval of MBHA’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 MBHA to adapt the program to local conditions. This part discusses how MBHA 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).

#### MBHA Policy

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

Families, owners, and members of the public may submit written comments on the schedules discussed in this part, at any time, for consideration during the next revision cycle.

MBHA 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.

Establishing and updating MBHA passbook rate, which is used to calculate imputed income from assets, is covered in Chapter 6 (see Section 6-I.G.).

### 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 MBHA 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.

MBHA must establish a payment standard schedule that establishes payment standard amounts for each FMR area within MBHA's jurisdiction, and for each unit size within each of the FMR areas. For each unit size, MBHA 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, MBHA 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, MBHA must update its payment standards if the standards are no longer within the basic range [24 CFR 982.503(b)]. HUD may require MBHA to make further adjustments if it determines that rent burdens for assisted families in MBHA's jurisdiction are unacceptably high [24 CFR 982.503(g)].

### MBHA Policy

MBHA will review the appropriateness of the payment standards on an annual basis when the new FMR is published, and at other times as determined necessary. However, may review more often if deemed necessary. In addition to ensuring the payment standards are always within the "basic range" MBHA will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

**Funding Availability:** MBHA 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. MBHA 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. 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, MBHA will consider increasing the payment standard. In evaluating rent burdens, MBHA will not include families renting a larger unit than their family unit size.

**Quality of Units Selected:** MBHA may 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:** MBHA 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:** MBHA 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:** MBHA 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.

Changes to payment standard amounts will be effective on December 1<sup>st</sup> of every year unless, based on the proposed FMRs, it appears that one or more of MBHA's current payment standard amounts will be outside the basic range when the final FMRs are published. In that case, MBHA's payment standards will be effective October 1<sup>st</sup> instead of December 1<sup>st</sup>.

If MBHA has already processed reexaminations that will be effective on or after October 1<sup>st</sup>, and the effective date of the payment standards is October 1<sup>st</sup>, MBHA will make retroactive adjustments to any such reexaminations if the new payment standard amount is higher than the one used by MBHA at the time the reexamination was originally processed.

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

MBHA 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(b), 24 CFR 982.505(d), Notice PIH 2010-26]**

Unit-by-unit exceptions to MBHA'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 MBHA's payment standard schedule.

When needed as a reasonable accommodation, MBHA 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 [24 CFR 982.503(b)]. MBHA may request HUD approval for an exception to the payment standard for a particular family if the required amount exceeds 120 percent of the FMR.

#### MBHA 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, MBHA must determine that:

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

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

The rent for the unit is reasonable.

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

If a substantial percentage of families have difficulty finding a suitable unit, MBHA may request a "success rate payment standard" that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows MBHA 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, MBHA 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;
- MBHA had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR; and
- MBHA 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, MBHA may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of MBHA's jurisdiction within the FMR area.

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

MBHA 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 PHA-established utility allowance schedule is used in determining family share and housing assistance subsidy. MBHA 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, MBHA 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, MBHA 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 MBHA about establishing utility allowance schedules.

### **Air Conditioning**

An allowance for air-conditioning must be provided when the majority of housing units in the market have central air-conditioning or are wired for tenant-installed air conditioners.

#### MBHA Policy

MBHA has included an allowance for air-conditioning in its schedule. Central air-conditioning or a portable air conditioner must be present in a unit before MBHA will apply this allowance to a family's rent and subsidy calculations.

### **Reasonable Accommodation**

HCV program regulations require MBHA to approve a utility allowance amount higher than shown on MBHA'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, MBHA will approve an allowance for air-conditioning, even if MBHA 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**

MBHA 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.

MBHA 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

Both applicants and participants have the right to disagree with, and appeal, certain decisions of MBHA that may adversely affect them. MBHA decisions that may be appealed by applicants and participants are discussed in this section.

The process for applicant appeals of MBHA decisions is called the “informal review.” For participants (or applicants denied admission because of citizenship issues), the appeal process is called an “informal hearing.” PHAs are required to include in their administrative plans, informal review procedures for applicants, and informal hearing procedures for participants in their administrative plans [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

MBHA 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 MBHA 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

#### MBHA Policy

Denying listing on MBHA pre-application list

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

- Discretionary administrative determinations by MBHA
- General policy issues or class grievances
- A determination of the family unit size under MBHA subsidy standards
- MBHA determination not to approve an extension or suspension of a voucher term
- MBHA determination not to grant approval of the tenancy
- A MBHA determination that the unit is not in compliance with the HQS
- A MBHA determination that the unit is not in accordance with the HQS due to family size or composition

### MBHA Policy

MBHA will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying listing on MBHA pre-application list or 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.

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

MBHA must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for MBHA 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**

#### MBHA Policy

A request for an informal review must be made in writing and delivered to MBHA either in person or by first class mail, by the close of the business day, no later than 14 calendar days from the date of MBHA's denial of assistance.

MBHA must schedule and send written notice of the informal review within 14 calendar days of the family's request.

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

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 present written or oral objections to the decision of MBHA.

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

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

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

### MBHA Policy

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

Whether or not the grounds for denial were stated factually in the notice to the family.

The validity of the grounds for denial of assistance. If the grounds for denial are not specified in the regulation or in MBHA policy, then the decision to deny assistance will be overturned.

The validity of the evidence. MBHA will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are grounds for denial, and the denial is required by HUD, MBHA will uphold the decision to deny assistance.

If the facts prove the grounds for denial, and the denial is discretionary, MBHA will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

MBHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 14 calendar days of the informal review, to the applicant and his or her representative, if any, along with proof of mailing.

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. The family must contact MBHA to reschedule within 30 day of the scheduled informal review date.

If the family fails to show for the informal review, MBHA may allow the family to reschedule the appointment providing the family show good cause. Under no circumstances, will a family be allowed to reschedule more than twice.

### **16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555]**

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

MBHA 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 MBHA 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 MBHA utility allowance schedule
- A determination of the family unit size under MBHA'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 MBHA's subsidy standards, or MBHA 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 MBHA 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)**]

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

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

MBHA Policy

MBHA 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 MBHA makes a decision that is subject to informal hearing procedures, MBHA 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, MBHA 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 MBHA'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.

#### MBHA Policy

In cases where MBHA 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 MBHA.

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

The date the proposed action will take place.

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.

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

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

#### MBHA Policy

A request for an informal hearing must be made in writing and delivered to MBHA either in person or by first class mail, by the close of the business day, no later than 14 calendar days from the date of MBHA's decision or notice to terminate assistance.

MBHA must schedule and send written notice of the informal hearing to the family within 14 calendar days of the family's request.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. 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, MBHA may request documentation of the "good cause" prior to rescheduling the hearing.

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 MBHA within 30 days of the scheduled hearing date. MBHA 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.

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

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

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

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

MBHA Policy

The family will be allowed to copy any documents related to the hearing at a cost of \$.50 per page. The family must request discovery of MBHA documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date

MBHA must be given an opportunity to examine at MBHA offices before the hearing any family documents that are directly relevant to the hearing. Whenever a participant requests an informal hearing, MBHA may mail a letter to the participant requesting a 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 MBHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

***Attendance at the Informal Hearing***

MBHA Policy

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

A MBHA representative(s) and any witnesses for MBHA

The participant and any witnesses for the participant

The participant's counsel or other representative

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

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

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

#### MBHA 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)]***

MBHA 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.

#### MBHA 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 MBHA. 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 MBHA 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 must be furnished promptly to the family.

#### MBHA Policy

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

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

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

**MBHA Evidence to Support MBHA 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 MBHA'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 MBHA policies. If the grounds for termination are not specified in the regulations or in compliance with MBHA policies, then the decision of MBHA will be overturned.

The hearing officer will issue a written decision to the family and MBHA no later than 14 calendar days after the hearing. 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 MBHA representative; and
- Name of family representative (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 MBHA's decision.

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

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

### **MBHA Policy**

The hearing officer may ask the family for additional information and/or might adjourn the hearing 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 MBHA will take effect and another hearing will not be granted.

In addition, within 14 calendar days after the date the hearing officer's report is mailed to MBHA and the participant, MBHA or the participant may request a rehearing or a further hearing. Such request must be made in writing and postmarked or hand-delivered to the hearing officer and to the other party within the 14 calendar day period. The request must demonstrate cause, and be supported by specific references and documentation that was not presented at the time of the hearing and substantiate why the request should 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 MBHA 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.

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

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

### **MBHA Policy**

MBHA will mail a "Notice of Final Decision" including the hearing officer's report, to the participant and their representative. This Notice will be sent by first-class mail.

A copy of the "Notice of Final Decision" will be maintained in MBHA's file.

#### **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 MBHA 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 MBHA 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 MBHA 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 MBHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, MBHA 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 MBHA with a copy of the written request for appeal and the proof of mailing.

### MBHA Policy

MBHA will notify the family in writing of the results of the USCIS secondary verification within 14 calendar days of receiving the results.

The family must provide MBHA with a copy of the written request for appeal and proof of mailing within 14 calendar 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 MBHA, of its decision. When the USCIS notifies MBHA of the decision, MBHA must notify the family of its right to request an informal hearing.

### MBHA Policy

MBHA will send written notice to the family of its right to request an informal hearing within 14 calendar days of receiving notice of the USCIS decision regarding the family's immigration status.

## **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 MBHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of MBHA 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***

MBHA 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 MBHA 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.

#### **MBHA Policy**

The family will be allowed to copy any documents related to the hearing at a cost of \$.50 per page. The family must request discovery of MBHA 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 MBHA, and to confront and cross-examine all witnesses on whose testimony or information MBHA 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 MBHA, as may be agreed upon by the two parties.

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

The family is entitled to have the hearing recorded by audiotape. MBHA may, but is not required to provide a transcript of the hearing.

#### **MBHA Policy**

MBHA will not provide a transcript of an audio taped hearing.

### ***Hearing Decision***

MBHA 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 MBHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of MBHA 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)]**

MBHA must retain for a minimum of 5 years the following documents that may have been submitted to MBHA by the family, or provided to MBHA as part of the USCIS appeal or MBHA 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 MBHA**

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

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

#### MBHA Policy

When an action or inaction of an owner or participant results in the overpayment of housing assistance, MBHA holds the owner or participant liable to return any overpayments to MBHA.

MBHA may 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 MBHA, MBHA 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 MBHA**

#### MBHA Policy

The owner must repay any amount due to MBHA by an owner within 30 days of MBHA determination of the debt.

If the owner fails to repay the debt within the required time frame and is entitled to future HAP payments, MBHA 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 MBHA may, in its sole discretion 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, MBHA will ban the owner from future participation in the program and pursue other modes of collection.

### **Family Debts to MBHA**

#### MBHA Policy

Any amount owed to MBHA by an HCV family must be repaid by the family. If the family is unable to repay the debt within 30 days, MBHA 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, MBHA will terminate assistance in accordance with the policies in Chapter 12 and pursue other modes of collection.

MBHA will calculate the repayment amount by using the gross earnings for the period of time of the overpayment of assistance if the unreported income was for 30 days or less. MBHA will calculate the repayment amount by using the average earnings and annualize for the unreported income that is 31 days and over.

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

The term *repayment agreement* refers to a formal document signed by a tenant or owner and provided to MBHA 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***

#### MBHA Policy

At the execution of a repayment agreement, the owner or family must pay no less than \$1.00 to MBHA.

### ***Payment Thresholds***

Notice **PIH 2010-19** recommends that the total amount that a family must pay each month—the family’s monthly share of rent plus the monthly debt repayment amount—should not exceed 40 percent of the family’s monthly adjusted income. However, a family may already be paying 40 per cent or more of its monthly adjusted income in rent. Moreover, Notice **PIH 2010-19** acknowledges that PHAs have the discretion to establish “thresholds and policies” for repayment agreements with families [**24 CFR 982.552(c)(1)(vii)**].

#### MBHA Policy

Amounts between \$3,000 and the Federal or State threshold for criminal prosecution 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.

If a family can provide evidence satisfactory to MBHA that the threshold applicable to the family’s debt would impose an undue hardship, MBHA may, in its sole discretion, determine that a lower monthly payment amount is reasonable. In making its determination, MBHA will consider all relevant information, including the following:

The amount owed by the family to MBHA

The reason for the debt, including whether the debt was the result of family action/inaction or circumstances beyond the family’s control

The family’s current and potential income and expenses

The family’s current family share, as calculated under **24 CFR 982.515**

The family’s history of meeting its financial responsibilities

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

#### MBHA Policy

Any repayment agreement between MBHA and a family must be signed and dated by MBHA and by the head of household and spouse/cohead (if applicable).

### ***Due Dates***

#### MBHA Policy

Participants may schedule their payment due date of either the 1<sup>st</sup> or 15<sup>th</sup> of the month. If the 1<sup>st</sup> or 15<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 1<sup>st</sup> or 15<sup>th</sup>.

## ***Non-Payment***

### MBHA Policy

In the event that a repayment is owed to MBHA, the participant will pay all costs of collection of unpaid bills. MBHA has the right pursuant to the South Carolina Setoff Debt Collection Act to collect any sum due and owed by the participant through offset of their state income tax refund. If MBHA chooses to pursue debts owed by the participant through the Setoff Debt Collection Act, the participant will pay all fees and costs incurred through the setoff process, including fees charged by the Department of Revenue, the South Carolina Association of Counties, the Municipal Association of South Carolina, and/or MBHA. If MBHA chooses to pursue debts in a manner other than setoff the participant will pay the costs and fees associated with the selected manner as well.

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

### MBHA Policy

MBHA will not enter into a repayment agreement if there is already a repayment agreement in place with the family or owner, or the amounts owed by the family or owner exceed the Federal or State threshold for criminal prosecution without approval from the Executive Director.

## **Repayment Agreements Involving Improper Payments**

Notice **PIH 2010-19** requires certain provisions to be included in any repayment agreement involving amounts owed by a family because it underreported or failed to report income:

- A reference to the items in the family briefing packet that state the family's obligation to provide true and complete information at every reexamination and the grounds on which the MBHA may terminate assistance because of a family's action or failure to act
- A statement clarifying that each month the family not only must pay to MBHA the monthly payment amount specified in the agreement but must also pay to the owner the family's monthly share of the rent to owner
- A statement that the terms of the repayment agreement may be renegotiated if the family's income decreases or increases
- A statement that late or missed payments constitute default of the repayment agreement and may result in termination of assistance

## **PART V: SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)**

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

The Section 8 Management Assessment Program (SEMAP) is a tool that allows HUD to measure MBHA 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 MBHA 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]**

MBHA 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 MBHA board resolution and signed by MBHA executive director. If MBHA is a unit of local government or a state, a resolution approving the certification is not required, and the certification must be executed by the Section 8 program director.

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

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

An MBHA SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time.

Upon receipt of MBHA’s SEMAP certification, HUD will rate MBHA’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. MBHA 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 MBHA's certification on the indicator due to MBHA'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 MBHA 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 MBHA has written policies in its administrative plan for selecting applicants from the waiting list and whether MBHA 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 MBHA's written policies, according to MBHA'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 MBHA 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 MBHA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to MBHA'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 MBHA 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 MBHA'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 MBHA maintains an up-to-date utility allowance schedule.</li><li>• Points are based on whether MBHA has reviewed the utility allowance schedule and adjusted it when required, according to MBHA's certification.</li></ul>

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

- This indicator shows whether a MBHA supervisor reinspects a sample of units under contract during MBHA 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 MBHA'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 MBHA-approved extension.
- Points are based on whether MBHA corrects all HQS deficiencies in accordance with required time frames, according to MBHA's certification.

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

- Only applies to PHAs with jurisdiction in metropolitan FMR areas.
- This indicator shows whether MBHA 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 MBHA'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 MBHA has adopted and implemented written policies in accordance with SEMAP requirements, according to MBHA's certification.

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

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

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

- This indicator shows whether MBHA 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 MBHA 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 MBHA 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 MBHA 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 MBHA fiscal year, or the percent of allocated budget authority that has been expended by MBHA, according to data from MBHA'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 MBHA 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 MBHA 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

MBHA 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, MBHA 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, MBHA must keep:

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

In addition, MBHA 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 MBHA budget and financial statements for the program;
- Records to document the basis for MBHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- Other records specified by HUD.
- Notice **PIH 2014-20** requires PHAs to keep records of all complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act or the equal access final rule.

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**

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

### MBHA Policy

All applicant and participant information will be kept in a secure location and access will be limited to authorized MBHA staff. Inactive records will be retained for a minimum of 3 years.

MBHA 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 MBHA 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*.

### MBHA Policy

Prior to utilizing HUD's EIV system, MBHA will adopt and implement EIV security procedures required by HUD.

## **Criminal Records**

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

MBHA must establish and implement a system of records management that ensures that any criminal record received by MBHA 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 MBHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

MBHA must establish and implement a system of records management that ensures that any sex offender registration information received by MBHA 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 MBHA action without institution of a challenge or final disposition of any such litigation. However, a record of the screening, including the type of screening and the date performed must be retained [Notice PIH 2012-28]. This requirement does not apply to information that is public information, or is obtained by a MBHA other than under 24 CFR 5.905.

## **Medical/Disability Records**

MBHA are not permitted to inquire about the nature or extent of a person's disability. MBHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If MBHA receives a verification document that provides such information, MBHA should not place this information in the tenant file. MBHA should destroy the document.

## **Documentation of Domestic Violence, Dating Violence, Sexual Assault or Stalking**

For requirements and PHA policies related to management of documentation obtained from victims of domestic violence, dating violence, sexual assault or stalking, see section 16-IX.E.



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

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

MBHA 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 MBHA is subject to.

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

MBHA 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.

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

At least quarterly, MBHA 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 MBHA obtains names and addresses of environmental intervention blood lead level children from the public health department(s), MBHA 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, MBHA must carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

At least quarterly, MBHA 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.



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

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

The HCV regulations allow MBHA 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 MBHA's ability to issue vouchers to families on the waiting list. This part discusses the methodology MBHA will use to determine whether or not MBHA has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

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

#### MBHA Policy

MBHA 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 MBHA'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. To that figure, MBHA will add anticipated HAP expenditures for the remainder of the calendar year. Projected HAP expenditures will be calculated by multiplying the projected number of units leased per remaining months by the most current month's average HAP. The projected number of units leased per month will take into account the average monthly turnover of participant families. If the total annual HAP needs equal or exceed the annual budget authority, or if MBHA cannot support the cost of the proposed subsidy commitment (voucher issuance or move) based on the funding analysis, MBHA will be considered to have insufficient funding.



## **PART IX: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, CONFIDENTIALITY**

### **16-IX.A. OVERVIEW**

The Violence against Women Act of 2013 (VAWA) provides special protections for victims of domestic violence, dating violence, sexual assault and stalking who are applying for or receiving assistance under the housing choice voucher (HCV) program. If your state or local laws provide greater protection for such victims, those laws take precedence over VAWA.

In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and PHA policies in three areas: notification, documentation, and confidentiality. Specific VAWA requirements and PHA policies are located primarily in the following sections: 3-I.C, “Family Breakup and Remaining Member of Tenant Family”; 3-III.G, “Prohibition against Denial of Assistance to Victims of Domestic Violence, Dating Violence, Sexual Assault and Stalking”; 10-I.A, “Allowable Moves”; 10-I.B, “Restrictions on Moves”; 12-II.E, “Terminations Related to Domestic Violence, Dating Violence, Sexual Assault or Stalking”; and 12-II.F, “Termination Notice.”

### **16-IX.B. DEFINITIONS [24 CFR 5.2003]**

As used in VAWA:

- The term *bifurcate* means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members’ lease and occupancy rights are allowed to remain intact.
- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and 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
- The term *domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by 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.

- The term *affiliated individual* means, with respect to a person:
  - A spouse, parent, brother or sister, or child of that individual, or an individual to whom that individual stands in the position or place of a parent; or
  - Any other individual, tenant, or lawful occupant living in the household of the victim of domestic violence, dating violence, sexual assault, or stalking.
- The term *sexual assault* means:
  - Any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks the capacity to consent
- The term *stalking* means:
  - To engage in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

## **16-IX.C. NOTIFICATION [24 CFR 5.2005(a)]**

### **Notification to Public**

The PHA adopts the following policy to help ensure that all actual and potential beneficiaries of its HCV program are aware of their rights under VAWA.

#### PHA Policy

The PHA 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, sexual assault or stalking (see sample notices in Exhibits 16-1 and 16-2)

The definitions of *domestic violence*, *dating violence*, *sexual assault* 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, Sexual Assault or Stalking

A statement of the PHA's obligation to keep confidential any information that it receives from a victim unless (a) the PHA 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

### **Notification to Program Applicants and Participants [24 CFR 5.2005(a)(1)]**

MBHA is required to inform program applicants and participants of their rights under VAWA, including their right to confidentiality and the limits thereof, when they are denied assistance, when they are admitted to the program, and when they are notified of an eviction or termination of housing benefits.

#### MBHA Policy

MBHA will provide all applicants with information about VAWA at the time they request an application for housing assistance. MBHA will also include information about VAWA in all notices of denial of assistance (see section 3-III.G).

MBHA will provide all participants with information about VAWA at the time of admission (see section 5-I.B) and at annual reexamination. MBHA will also include information about VAWA in notices of termination of assistance, as provided in section 12-II.F.

The VAWA information provided to applicants and participants will consist of the notice in Exhibit 16-1 and a copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, Sexual Assault, and Stalking.

### **Notification to Owners and Managers [24 CFR 5.2005(a)(2)]**

MBHA is required to notify owners and managers participating in the HCV program of their rights and obligations under VAWA.

#### MBHA Policy

MBHA will provide owners and managers with information about their rights and obligations under VAWA when they begin their participation in the HCV program and at least annually thereafter.

The VAWA information provided to owners will consist of the notice in Exhibit 16-2 and a copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, Sexual Assault and Stalking.

## **16-IX.D. DOCUMENTATION [24 CFR 5.2007]**

When MBHA is presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, sexual assault, stalking, or criminal activity related to any of these forms of abuse may—but is not required to—request that the individual making the claim document the abuse. Any request for documentation must be in writing, and the individual must be allowed at least 14 calendar days after receipt of the request to submit the documentation. MBHA may extend this time period at its discretion. [24 CFR 5.2007(a)]

The individual may satisfy MBHA's request by providing any one of the following three forms of documentation [24 CFR 5.2007(b)]:

- (1) A completed and signed HUD-approved certification form (**HUD-50066**, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), which must include the name of the perpetrator only if the name of the perpetrator is safe to provide and is known to the victim
- (2) A federal, state, tribal, territorial, or local police report or court record
- (3) Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; or a medical professional. Acceptable documentation also includes a record of an administrative agency, and documentation from a mental health professional. The person signing the documentation must attest under penalty of perjury to the person's belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

MBHA may not require third-party documentation (forms 2 and 3) in addition to certification (form 1), except as specified below under "Conflicting Documentation," nor may it require certification in addition to third-party documentation [VAWA final rule].

### MBHA Policy

Any request for documentation of domestic violence, dating violence, sexual assault or stalking will specify a deadline of 14 calendar days following receipt of the request, will describe the three forms of acceptable documentation, will provide explicit instructions on where and to whom the documentation must be submitted, and will state the consequences for failure to submit the documentation or request an extension in writing by the deadline.

MBHA may, in its discretion, extend the deadline for 14 calendar days. Any extension granted by MBHA will be in writing.

### **Conflicting Documentation [24 CFR 5.2007(e)]**

In cases where MBHA receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, MBHA may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3). The PHA must honor any court orders issued to protect the victim or to address the distribution of property.

#### MBHA Policy

If presented with conflicting certification documents (two or more forms HUD-50066) from members of the same household, MBHA will attempt to determine which is the true victim by requiring each of them to provide third-party documentation in accordance with 24 CFR 5.2007(b)(2) or (3) and by following any HUD guidance on how such determinations should be made.

### **Discretion to Require No Formal Documentation [24 CFR 5.2007(d)]**

MBHA has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of abuse in accordance with 24 CFR 5.2007(b).

#### MBHA Policy

If MBHA accepts an individual's statement or other corroborating evidence of domestic violence, dating violence, sexual assault or stalking, MBHA will document acceptance of the statement or evidence in the individual's file.

### **Failure to Provide Documentation [24 CFR 5.2007(c)]**

In order to deny relief for protection under VAWA, MBHA must provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to provide the documentation within 14 calendar days from the date of receipt, or such longer time as MBHA may allow, MBHA may deny relief for protection under VAWA.

### **16-IX.E. CONFIDENTIALITY [24 CFR 5.2007(b)(4)]**

All information provided to MBHA regarding domestic violence, dating violence, sexual assault or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence. This means that MBHA (1) may not enter the information into any shared database, (2) may not allow employees or others to access the information unless they are explicitly authorized to do so and have a need to know the information for purposes of their work, and (3) may not provide the information to any other entity or individual, except to the extent that the disclosure is (a) requested or consented to by the individual in writing, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

#### MBHA Policy

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, MBHA will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

## **EXHIBIT 16-1: NOTICE TO HOUSING CHOICE VOUCHER APPLICANTS AND PARTICIPANTS 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 2013 protects individuals who are victims of domestic violence, dating violence, sexual assault or 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, sexual assault or stalking.

If you are the victim of domestic violence, dating violence, sexual assault 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, sexual assault 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, sexual assault, 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 participants 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, Sexual Assault, 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, sexual assault or stalking. The housing authority and your landlord must give you at least 14 calendar days 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. You are only required to provide the name of the abuser if it is safe to provide and you know their name.
- Provide a statement from a victim service provider, attorney, or medical professional who has helped you address incidents of domestic violence, dating violence, sexual assault 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.

Additionally, at its discretion, the housing authority can accept a statement or other evidence provided by the applicant or participant.

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, sexual assault or stalking.

## For Additional Information

If you have any questions regarding VAWA, please contact MBHA at (843) 918-1525.

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).

Local Victim Advocacy call Family Justice Center 24 hour toll-free crisis line (844) 208-0161.

## Definitions

For purposes of determining whether a participant 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.

VAWA defines *sexual assault* as "any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent" (42 U.S.C. 13925(a)).



<b>EXHIBIT 16-2: NOTICE TO HOUSING CHOICE VOUCHER OWNERS AND MANAGERS REGARDING THE VIOLENCE AGAINST WOMEN ACT (VAWA)</b>
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A federal law that went into effect in 2013 protects individuals who are victims of domestic violence, dating violence, sexual assault 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, sexual assault or stalking.

You cannot evict a tenant who is the victim of domestic violence, dating violence, sexual assault or stalking based on acts or threats of violence committed against the victim. Also, criminal acts directly related to the domestic violence, dating violence, sexual assault 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, sexual assault 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, sexual assault, or stalking. You cannot hold a victim of domestic violence, dating violence, sexual assault 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, Sexual Assault 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, sexual assault 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 calendar 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/forms/hud5.cfm>.
- 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, sexual assault 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 calendar 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, sexual assault 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, sexual assault or stalking.

### **Additional Information**

- If you have any questions regarding VAWA, please contact MBHA at (843) 918-1525.
- 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/notices/pih/06pihnotices.cfm>.

- For a discussion of VAWA’s housing provisions, see the preamble to the final VAWA rule, which is available at <http://www.gpo.gov/fdsys/pkg/FR-2010-10-27/pdf/2010-26914.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.

VAWA defines *sexual assault* as “any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent” (42 U.S.C. 13925(a)).



## Appendix 16-A

### MBHA EIV Procedures

All users will be required to acknowledge their understanding of requirements imposed under the Privacy Act before continuing to use the EIV system to access the upfront income verification data

All users will be required to acknowledge that a form HUD-9886, HUD-9887, or equivalent consent form is on file for the household whose income information is being accessed before the user can have access to the EIV system

All screens and/or pages containing tenant information contain a Privacy Act statement that indicates: "Confidential Privacy Act Data. Civil and criminal penalties apply to misuse of this data."

MBHA will ensure that access rights, roles, and responsibilities within the agency are appropriately and adequately assigned and will maintain security related records, monitor programmatic security issues, maintain, communicate, and enforce standard operating procedures related to securing EIV system's data.

Each user is required to have their own User ID and Password and before accessing the EIV application, all users acknowledge that they understand that the EIV data is covered by the Privacy Act and may only be used for governmental purposes and affirm that a Form HUD-9886 or HUD-9887 is on file.

All passwords are kept in the financial office in a secured file cabinet.

All EIV users will ensure that EIV system's data is not left lying unattended in printers and will avoid leaving a computer unattended with EIV system's data displayed on the screen

MBHA will destroy EIV information as soon as it has served its purpose or as prescribed by the Field Office's. EIV system's originals and copies may be filed in the tenant file or a separate file. EIV records will be maintained for a period of at least three years from the effective date of the action and no longer than three years from the end of participation date.

MBHA will maintain a log of all EIV Users and obtain a *User Agreement* on each user.

MBHA will conduct a bi-annual review of all User Ids to determine if the user still has or requires EIV access.

MBHA will ensure that access rights are modified or revoked as appropriate.

MBHA will maintain a log of all documents that have been shredded including the name of the employee who conducted the disposal, a description of the document, and the date of disposal.

MBHA will participate in training on EIV security policies at least annually and will maintain a record of who attended the training sessions

Each User will be given access to the User Guide and Security Procedures manual and MBHA will record the receipt of the access.