

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 Elevated Blood Lead Level. This part describes MBHA's responsibilities for reporting, data collection, and record keeping relative to children with elevated 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 1st 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 1st instead of December 1st.

If MBHA has already processed reexaminations that will be effective on or after October 1st, and the effective date of the payment standards is October 1st, 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 50th, rather than the 40th 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 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 to reschedule the hearing. If the family does not appear for a second time to the hearing, 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

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.

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.

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 the 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's 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 the 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 10 business 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 the PHA 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 the MBHA's decision.

Order: The hearing report will include a statement of whether the 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.

Issuance of Decision [24 CFR 982.555(e)(6)]

A copy of the hearing must be furnished promptly to the family.

MBHA Policy

The hearing officer will mail a “Notice of Hearing Decision” to MBHA and to the participant on the same day. This notice will be sent by first-class mail. The participant will be mailed the original “Notice of Hearing Decision” and a copy of the proof of mailing. A copy of the “Notice of Hearing Decision” will be maintained in the MBHA’s file.

Effect 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

The Executive Director has the authority to determine that MBHA is not bound by the decision of the hearing officer because MBHA was not required to provide a hearing, the decision exceeded the authority of the hearing officer, the decision conflicted with or contradicted HUD regulations, requirements, or the decision was otherwise contrary to federal, state, or local laws.

In such a case, MBHA will mail a “Notice of Final Decision” to the PHA and the participant on the same day. The “Notice of Final Decision” will be sent by first-class mail. A copy of this notice will be maintained in the 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 request an interpreter. Upon request, the PHA will provide competent interpretation services, free of charge.

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 1st or 15th of the month. If the 1st or 15th does not fall on a business day, the due date is the close of business on the first business day after the 1st or 15th.

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.

SEMAP Indicators
<p>Indicator 1: Selection from the waiting list Maximum Score: 15</p> <ul style="list-style-type: none"> • 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. • 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.
<p>Indicator 2: Rent reasonableness Maximum Score: 20</p> <ul style="list-style-type: none"> • 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 • 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.
<p>Indicator 3: Determination of adjusted income Maximum Score: 20</p> <ul style="list-style-type: none"> • 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. • Points are based on the percent of files that are calculated and verified correctly, according to MBHA’s quality control sample.

Indicator 4: Utility allowance schedule**Maximum Score: 5**

- This indicator shows whether MBHA maintains an up-to-date utility allowance schedule.
- Points are based on whether MBHA has reviewed the utility allowance schedule and adjusted it when required, according to MBHA's certification.

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 at least 98 percent of the number of the PHA's baseline voucher units in the ACC for the calendar year ending on or before MBHA's fiscal year, or whether MBHA has expended at least 98 percent of its allocated budget authority for the same calendar year. MBHA can receive 15 points if 95 to 97 percent of vouchers are leased or budget authority is utilized.
- Points are based utilization of vouchers and HAP expenditures as reported in the voucher management system (VMS) for the most recently completed calendar year.

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 50th 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.

MBHA must keep confidential records of all emergency transfer requested by victims of domestic violence, dating violence, sexual assault, and stalking under the MBHA's Emergency Transfer Plan, as well as the outcomes of such requests, and retain the records for a period of three years [24 CFR 5.2002(e)(12)].

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 ELEVATED BLOOD LEAD LEVEL

16-VII.A. OVERVIEW

MBHA has certain responsibilities relative to children with elevated 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 elevated 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 elevated blood lead level.

If MBHA obtains names and addresses of elevated 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.

MBHA Policy

The public health department(s) has stated they do not wish to receive a report of an updated list of the addresses of units receiving assistance under the HCV program, on a quarterly basis. Therefore, MBHA is not providing 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]. If MBHA denies a family a portability move based on insufficient funding, MBHA is required to notify the local HUD office within 10 business days [24 CFR 982.354]. 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.

Shortfall

If MBHA is identified as at risk or potentially at risk for a shortfall, the following actions must be taken upon instruction by the Shortfall Prevention Team: 1) continue to work with the Field Office or Shortfall Prevention Team; 2) cease issuing vouchers as of the date notified of the potential shortfall; 3) rescind vouchers that were issued to applicant families and stop leasing rescinded vouchers as of the date MBHA is notified of the potential shortfall; 4) Cease absorbing portable vouchers; and 5) stop issuing vouchers for households that have project-based vouchers, but want to voluntarily move with tenant-based assistance.

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 apply in conjunction with 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, 42 USC 13925]

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 or intimate partner 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 or intimate partner, 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

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

MBHA Policy

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

A copy of the notice of occupancy rights under VAWA to housing choice voucher program applicants and participants who are or have been victims of domestic violence, dating violence, sexual assault or stalking **Form HUD-5380**, see Exhibit 16-1)

A copy of form **HUD-5382**, Certification of Domestic Violence, Dating Violence, Sexual Assault or Stalking and Alternate Documentation (see Exhibit 16-2)

A copy of MBHA's emergency transfer plan **Form HUD-5381** (Exhibit 16-3)

A copy of HUD's Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, **Form HUD-5383** (Exhibit 16-4)

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, as part of the written briefing packet, and at the time the family is admitted to the program. 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 16-2.

MBHA is not limited to providing VAWA information at the times specified in the above policy. If MBHA decides to provide VAWA information to a participant following an incident of domestic violence, **Notice PIH 2017-08** cautions against sending the information by mail, since the abuser may be monitoring the mail. The notice recommends that in such cases MBHA make alternative delivery arrangements that will not put the victim at risk.

MBHA Policy

Whenever MBHA has reason to suspect that providing information about VAWA to a participant might place a victim of domestic violence at risk, it will attempt to deliver the information by hand directly to the victim or by having the victim come to an office or other space that may be safer for the individual, making reasonable accommodations as necessary. For example, MBHA may decide not to send mail regarding VAWA protections to the victim's unit if MBHA believes the perpetrator may have access to the victim's mail, unless requested by the victim.

When discussing VAWA with the victim, MBHA will take reasonable precautions to ensure that no one can overhear the conversation, such as having conversations in a private room.

The victim may, but is not required to, designate an attorney, advocate, or other secure contact for communications regarding VAWA protections.

Notification to Owners and Managers

While MBHA is no longer required by regulation to notify owners and managers participating in the HCV program of their rights and obligations under VAWA, the PHA may still choose to inform them.

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-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault and Stalking and Alternate Documentation.

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-5382**, 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. The form may be filled out and submitted on behalf of the victim.
- (2) A federal, state, tribal, territorial, or local police report or court record, or an administrative 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; a mental health professional; or a medical 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 be in writing, 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. In determining whether to extend the deadline, MBHA will consider factors that may contribute to the victim’s inability to provide documentation in a timely manner, including cognitive limitations, disabilities, limited English proficiency, absence from the unit, administrative delays, the danger of further violence, and the victim’s need to address health or safety issues. Any extension granted by MBHA will be in writing.

Once the victim provides documentation, MBHA will acknowledge receipt of the documentation within 14 calendar days.

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). MBHA may also request third-party documentation when submitted documentation contains information that conflicts with existing information already available to MBHA. Individuals have 30 calendar days to return third-party verification to MBHA. If MBHA does not receive third-party documentation, and MBHA will deny or terminate assistance as a result, MBHA must hold separate hearings for the tenants [**Notice PIH 2017-08**].

MBHA 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 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(e)** and by following any HUD guidance on how such determinations should be made.

When requesting third-party documents, MBHA will provide contact information for local domestic violence and legal aid offices. In such cases, applicants or tenants will be given 30 calendar days from the date of the request to provide such documentation.

If MBHA does not receive third-party documentation within the required timeframe (and any extensions) MBHA will deny VAWA protections and will notify the applicant or tenant in writing of the denial. If, as a result, the applicant or tenant is denied or terminated from the program, MBHA will hold separate hearings for the applicants or tenants.

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). HUD recommends documentation in a confidential manner when a verbal statement or other evidence is accepted.

MBHA Policy

If MBHA accepts an individual's statement or other corroborating evidence (as determined by the victim) 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 OF OCCUPANCY RIGHTS UNDER THE VIOLENCE AGAINST WOMEN ACT, FORM HUD-5380

Housing Authority of Myrtle Beach (MBHA)

Notice of Occupancy Rights under the Violence Against Women Act

To all Participants and Applicants

The Violence Against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. VAWA protections are not only available to women, but are available equally to all individuals regardless of sex, gender identity, or sexual orientation.¹ The U.S. Department of Housing and Urban Development (HUD) is the Federal agency that oversees that the **Housing Choice Voucher Program (HCV), Veterans Administration Supportive Housing (VASH) and Continuum of Care (COC)** programs are in compliance with VAWA. This notice explains your rights under VAWA. A HUD-approved certification form is attached to this notice. You can fill out this form to show that you are or have been a victim of domestic violence; dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA.”

Protections for Applicants

If you otherwise qualify for assistance under HCV, you cannot be denied admission or denied assistance because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Protections for Participants

If you are receiving assistance under **HCV, VASH, or COC** you may not be denied assistance, terminated from participation, or be evicted from your rental housing because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Also, if you or an affiliated individual of yours is or has been the victim of domestic violence, dating violence, sexual assault, or stalking by a member of your household or any guest, you may not be denied rental assistance or occupancy rights under **HCV, VASH, or COC** solely on the basis of criminal activity directly relating to that domestic violence, dating violence, sexual assault, or stalking.

Affiliated individual means your spouse, parent, brother, sister, or child, or a person to whom you stand in the place of a parent or guardian (for example, the affiliated individual is in your care, custody, or control); or any individual, tenant, or lawful occupant living in your household.

¹ Despite the name of this law, VAWA protection is available regardless of sex, gender identity, or sexual orientation.

² Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

Removing the Abuser or Perpetrator from the Household

Your Landlord and the Housing Authority of Myrtle Beach (MBHA) may divide (bifurcate) your lease in order to evict the individual or terminate the assistance of the individual who has engaged in criminal activity (the abuser or perpetrator) directly relating to domestic violence, dating violence, sexual assault, or stalking.

If your landlord and MBHA choose to remove the abuser or perpetrator, they may not take away the rights of eligible tenants to the unit or otherwise punish the remaining tenants. If the evicted abuser or perpetrator was the sole tenant to have established eligibility for assistance under the program, your landlord and MBHA must allow the tenant who is or has been a victim and other household members to remain in the unit for a period of time, in order to establish eligibility under the program or under another HUD housing program covered by VAWA, or, find alternative housing.

In removing the abuser or perpetrator from the household, your landlord must follow Federal, State, and local eviction procedures. In order to divide a lease, YOUR landlord may, but is not required to, ask you for documentation or certification of the incidences of domestic violence, dating violence, sexual assault, or stalking.

Moving to Another Unit

Upon your request, your landlord and MBHA may permit you to move to another unit, subject to the availability of other units, and still keep your assistance. In order to approve a request, MBHA may ask you to provide documentation that you are requesting to move because of an incidence of domestic violence, dating violence, sexual assault, or stalking. If the request is a request for emergency transfer, the housing provider may ask you to submit a written request or fill out a form where you certify that you meet the criteria for an emergency transfer under VAWA. The criteria are:

- 1. You are a victim of domestic violence, dating violence, sexual assault, or stalking.** If your MBHA does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation, as described in the documentation section below.
- 2. You expressly request the emergency transfer.** MBHA may choose to require that you submit a form, or may accept another written or oral request.
- 3. You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit.** This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you expressly request the transfer.

MBHA will keep confidential requests for emergency transfers by victims of domestic violence, dating violence, sexual assault, or stalking, and the location of any move by such victims and their families.

MBHA's emergency transfer plan provides further information on emergency transfers, and MBHA must make a copy of its emergency transfer plan available to you if you ask to see it.

Documenting You Are or Have Been a Victim of Domestic Violence, Dating Violence, Sexual Assault or Stalking

MBHA can, but is not required to, ask you to provide documentation to "certify" that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking. Such request from MBHA must be in writing, and MBHA must give you at least 14 business days (Saturdays, Sundays, and Federal holidays do not count) from the day you receive the request to provide the documentation. MBHA may, but does not have to, extend the deadline for the submission of documentation upon your request.

You can provide one of the following to MBHA as documentation. It is your choice which of the following to submit if MBHA asks you to provide documentation that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

- A complete HUD-approved certification form given to you by MBHA with this notice, that documents an incident of domestic violence, dating violence, sexual assault, or stalking. The form will ask for your name, the date, time, and location of the incident of domestic violence, dating violence, sexual assault, or stalking, and a description of the incident. The certification form provides for including the name of the abuser or perpetrator if the name of the abuser or perpetrator is known and is safe to provide.
- A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency that documents the incident of domestic violence, dating violence, sexual assault, or stalking. Examples of such records include police reports, protective orders, and restraining orders, among others.
- A statement, which you must sign, along with the signature of an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional or a mental health professional (collectively, "professional") from whom you sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, and with the professional selected by you attesting under penalty of perjury that he or she believes that the incident or incidents of domestic violence, dating violence, sexual assault, or stalking are grounds for protection.
- Any other statement or evidence that MBHA has agreed to accept.

If you fail or refuse to provide one of these documents within the 14 business days, MBHA does not have to provide you with the protections contained in this notice.

If MBHA receives conflicting evidence that an incident of domestic violence, dating violence, sexual assault, or stalking has been committed (such as certification forms 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 abuser or perpetrator), MBHA has the right to request that you provide third-party documentation within thirty 30 calendar days in order to resolve the conflict. If you fail or refuse to provide third-party documentation where there is conflicting evidence, MBHA does not have to provide you with the protections contained in this notice.

Confidentiality

MBHA must keep confidential any information you provide related to the exercise of your rights under VAWA, including the fact that you are exercising your rights under VAWA.

MBHA must not allow any individual administering assistance or other services on behalf of MBHA (for example, employees and contractors) to have access to confidential information unless for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

MBHA must not enter your information into any shared database or disclose your information to any other entity or individual. MBHA, however, may disclose the information provided if:

- You give written permission to MBHA to release the information on a time limited basis.
- MBHA needs to use the information in an eviction or termination proceeding, such as to evict your abuser or perpetrator or terminate your abuser or perpetrator from assistance under this program.
- A law requires MBHA or your landlord to release the information.

VAWA does not limit MBHA'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.

Reasons a Participant Eligible for Occupancy Rights under VAWA May Be Evicted or Assistance May Be Terminated

You can be evicted and your assistance can be terminated for serious or repeated lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking committed against you. However, MBHA cannot hold participants who have been victims of domestic violence, dating violence, sexual assault, or stalking to a more demanding set of rules than it applies to participants who have not been victims of domestic violence, dating violence, sexual assault, or stalking.

The protections described in this notice might not apply, and you could be evicted and your assistance terminated, if MBHA can demonstrate that not evicting you or terminating your assistance would present a real physical danger that:

1. Would occur within an immediate time frame, and
2. Could result in death or serious bodily harm to other tenants or those who work on the property.

If MBHA can demonstrate the above, MBHA may offer a voucher to move. MBHA should only terminate your assistance or evict you if there are no other actions that could be taken to reduce or eliminate the threat.

Other Laws

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. You may be entitled to additional housing protections for victims of domestic violence, dating violence, sexual assault, or stalking under other Federal laws, as well as under State and local laws.

Non-Compliance with The Requirements of This Notice

You may report a covered housing provider's violations of these rights and seek additional assistance, if needed, by contacting or filing a complaint with the Housing Authority of Myrtle Beach or HUD Columbia office of Fair Housing at (800) 669-9777 and for the hearing impaired, please call TTY (800)927-9275

For Additional Information

You may view a copy of HUD's final VAWA rule at <https://www.gpo.gov/fdsys/pkg/FR-2016-11-16/pdf/2016-25888.pdf>.

Additionally, MBHA must make a copy of HUD's VAWA regulations available to you if you ask to see them.

For questions regarding VAWA, please contact **Amy Bogan, Assistant Director, MBHA 843-918-1534**.

For help regarding an abusive relationship, domestic violence, dating violence or sexual assault you may call the National Domestic Violence Hotline at 1-800-799-7233 or, for persons with hearing impairments, 1-800-787-3224 (TTY). You may also contact the Family Justice Center at 1-844-208-0161 or 843-445-2583.

For participants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

For help regarding sexual assault, you may contact the Rape, Abuse & Incest National Network's National Sexual Assault Hotline at 800-656-HOPE, or visit the online hotline at <https://ohl.rainn.org/online/>. Alternatively, they can contact the local Rape Crises Center 843-448-7273

Attachment: Certification form HUD-5382

EXHIBIT 16-2: CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING, AND ALTERNATE DOCUMENTATION
Form HUD-5382

**CERTIFICATION OF
DOMESTIC VIOLENCE,
DATING VIOLENCE,
SEXUAL ASSAULT, OR STALKING,
AND ALTERNATE DOCUMENTATION**

**U.S. Department of Housing
and Urban Development**

OMB Approval No. 2577-0286
Exp. 06/30/2017

Purpose of Form: The Violence Against Women Act (“VAWA”) protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. Despite the name of this law, VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

Use of This Optional Form: If you are seeking VAWA protections from your housing provider, your housing provider may give you a written request that asks you to submit documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.

In response to this request, you or someone on your behalf may complete this optional form and submit it to your housing provider, or you may submit one of the following types of third-party documentation:

- (1) A document signed by you and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, “professional”) from whom you have sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of “domestic violence,” “dating violence,” “sexual assault,” or “stalking” in HUD’s regulations at 24 CFR 5.2003.
- (2) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- (3) At the discretion of the housing provider, a statement or other evidence provided by the applicant or tenant.

Submission of Documentation: The time period to submit documentation is 14 business days from the date that you receive a written request from your housing provider asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. Your housing provider may, but is not required to, extend the time period to submit the documentation, if you request an extension of the time period. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections. Distribution or issuance of this form does not serve as a written request for certification.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

**TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE,
DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

1. Date the written request is received by victim: _____

2. Name of victim: _____

3. Your name (if different from victim's): _____

4. Name(s) of other family member(s) listed on the lease: _____

5. Residence of victim: _____

6. Name of the accused perpetrator (if known and can be safely disclosed): _____

7. Relationship of the accused perpetrator to the victim: _____

8. Date(s) and times(s) of incident(s) (if known): _____

10. Location of incident(s): _____

In your own words, briefly describe the incident(s): _____ _____ _____

information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature _____ Signed on (Date) _____

Public Reporting Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the housing provider to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

EXHIBIT 16-3: MBHA EMERGENCY TRANSFER PLAN FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING FORM HUD-5381

Housing Authority of Myrtle Beach

Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

Emergency Transfers

The Housing Authority of Myrtle Beach (MBHA) is concerned about the safety of its participants, and such concern extends to participants who are victims of domestic violence, dating violence, sexual assault, or stalking. In accordance with the Violence Against Women Act (VAWA),² MBHA allows participants who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the participant's current unit to another unit. The ability to request a unit transfer is available regardless of sex, gender identity, or sexual orientation.³ The ability of MBHA to honor such request for participants currently receiving assistance, however, may depend upon a preliminary determination that the participant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

This plan identifies participants who are eligible for an emergency transfer, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to participants on safety and security. This plan is based on a model emergency transfer plan published by the U.S. Department of Housing and Urban Development (HUD), the Federal agency that oversees the Housing Choice Voucher program complies with VAWA.

Eligibility for Emergency Transfers

A participant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 CFR part 5, subpart L is eligible for an emergency transfer, if: the participant reasonably believes that there is a threat of imminent harm from further violence if the participant remains within the same unit. If the participant is a victim of sexual assault, the participant may also be eligible to transfer if the sexual assault occurred on the premises within the 90-calendar-day period preceding a request for an emergency transfer. A participant requesting an emergency transfer must expressly request the transfer in accordance with the procedures described in this plan.

Participants who are not in good standing may still request an emergency transfer if they meet the eligibility requirements in this section.

² Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

³ Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

Emergency Transfer Request Documentation

To request an emergency transfer, the participant shall notify MBHA's management office and submit a written request for a unit transfer. MBHA will provide reasonable accommodations to this policy for individuals with disabilities. The participant's written request for an emergency transfer should include either:

1. A statement expressing that the participant reasonably believes that there is a threat of imminent harm from further violence if the participant were to remain in the same dwelling unit assisted under MBHA's program; OR
2. A statement that the participant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar-day period preceding the participant's request for an emergency transfer.

Confidentiality

MBHA will keep confidential any information that the participant submits in requesting an emergency transfer, and information about the emergency transfer, unless the participant gives MBHA written permission to release the information on a time limited basis, or disclosure of the information is required by law or required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program. This includes keeping confidential the new location of the dwelling unit of the participant, if one is provided, from the person(s) that committed an act(s) of domestic violence, dating violence, sexual assault, or stalking against the participant. See the Notice of Occupancy Rights under the Violence Against Women Act For All Participants for more information about MBHA's responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.

Emergency Transfer Timing and Availability

MBHA cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. MBHA will, however, act as quickly as possible to move a participant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit. The participant will choose the new unit according to HCV guidelines. MBHA will assist the participant in identifying other housing providers who may have an available units to which the participant could move. At the participant's request, MBHA will also assist participants in contacting the local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking that are attached to this plan.

Emergency Transfers: Housing Choice Voucher (HCV) Program

Tenant-based assistance: If you are a participant in the tenant-based HCV program and request an emergency transfer as described in this plan, MBHA will assist you to move to a safe unit quickly using your existing voucher assistance. MBHA will make exceptions to program regulations restricting moves as required.

At your request, MBHA will refer you to organizations that may be able to further assist you.

Project-based assistance: If you are assisted under the project-based voucher (PBV) program, you may request an emergency transfer under the following programs for which you are not required to apply:

- Tenant-based voucher, if available

- Project-based assistance in the same project (if a vacant unit is available and you determine that the vacant unit is safe)
- Project-based assistance in another development owned by MBHA

Emergency transfers under VAWA will take priority over waiting list admissions for these types of assistance.

You may also request an emergency transfer under the following programs for which you are required to apply:

- Halyard Bend - Rural Development

Emergency transfers will not take priority over waiting list admissions for these programs. At your request, the PHA will refer you to organizations that may be able to further assist you.

Rural Development Project-based assistance: If you are assisted under the Rural Development project-based program, you may request an emergency transfer under the following programs for which you are not required to apply:

- Project-based assistance in the same project (if a vacant unit is available and you determine that the vacant unit is safe)
- Project-based assistance in another development owned by MBHA
- Tenant-based voucher, if available

Safety and Security of Participants

The participant is urged to take all reasonable precautions to be safe.

Participants who are or have been victims of domestic violence, dating violence or sexual assault are encouraged to contact the National Domestic Violence Hotline at 1-800-799-7899, or the Family Justice Center at 1-844-208-0161 or 843-445-2583, for assistance in creating a safety plan. For persons with hearing impairments, that hotline can be accessed by calling 1-800-787-3224 (TTY).

Participants who have been victims of dating violence or sexual assault may call the Rape, Abuse & Incest National Network's National Sexual Assault Hotline at 800-656-HOPE, or visit the online hotline at <https://ohl.rainn.org/online/>. Or they can contact the local Rape Crises Center 843-448-7273

Participants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

Attachment: Local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking.

EXHIBIT 16-4: EMERGENCY TRANSFER REQUEST FOR CERTAIN VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING, FORM HUD-5383

**EMERGENCY TRANSFER
REQUEST FOR CERTAIN
VICTIMS OF DOMESTIC
VIOLENCE, DATING VIOLENCE,
SEXUAL ASSAULT, OR STALKING**

**U.S. Department of Housing
and Urban Development**

OMB Approval No. 2577-0286
Exp. 06/30/2017

Purpose of Form: If you are a victim of domestic violence, dating violence, sexual assault, or stalking, and you are seeking an emergency transfer, you may use this form to request an emergency transfer and certify that you meet the requirements of eligibility for an emergency transfer under the Violence Against Women Act (VAWA). Although the statutory name references women, VAWA rights and protections apply to all victims of domestic violence, dating violence, sexual assault or stalking. Using this form does not necessarily mean that you will receive an emergency transfer. See your housing provider's emergency transfer plan for more information about the availability of emergency transfers.

The requirements you must meet are:

(1) You are a victim of domestic violence, dating violence, sexual assault, or stalking.

If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation. In response, you may submit Form HUD-5382, or any one of the other types of documentation listed on that Form.

(2) You expressly request the emergency transfer. Submission of this form confirms that you have expressly requested a transfer. Your housing provider may choose to require that you submit this form, or may accept another written or oral request. Please see your housing provider's emergency transfer plan for more details.

(3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit. This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you submit this form or otherwise expressly request the transfer.

Submission of Documentation: If you have third-party documentation that demonstrates why you are eligible for an emergency transfer, you should submit that documentation to your housing provider if it is safe for you to do so. Examples of third party documentation include, but are not limited to: a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom you have sought assistance; a current restraining order; a recent court order or other court records; a law enforcement report or records; communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking, and concerning your request for an emergency transfer shall be kept confidential. Such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections or an emergency transfer to you. Such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

TO BE COMPLETED BY OR ON BEHALF OF THE PERSON REQUESTING A TRANSFER

1. Name of victim requesting an emergency transfer: _____

2. Your name (if different from victim's) _____

3. Name(s) of other family member(s) listed on the lease: _____

4. Name(s) of other family member(s) who would transfer with the victim: _____

5. Address of location from which the victim seeks to transfer: _____

6. Address or phone number for contacting the victim: _____

7. Name of the accused perpetrator (if known and can be safely disclosed): _____

8. Relationship of the accused perpetrator to the victim: _____

9. Date(s), Time(s) and location(s) of incident(s): _____

10. Is the person requesting the transfer a victim of a sexual assault that occurred in the past 90 days on the premises of the property from which the victim is seeking a transfer? If yes, skip question 11. If no, fill out question 11. _____

11. Describe why the victim believes they are threatened with imminent harm from further violence if they remain in their current unit.

12. If voluntarily provided, list any third-party documentation you are providing along with this notice: _____

This is to certify that the information provided on this form is true and correct to the best of my knowledge, and that the individual named above in Item 1 meets the requirement laid out on this form for an emergency transfer. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature _____ Signed on (Date) _____

EXHIBIT 16-5: OWNER NOTIFICATION OF RIGHTS AND OBLIGATIONS

Housing Authority of Myrtle Beach (MBHA)

NOTIFICATION OF YOUR RIGHTS AND OBLIGATIONS UNDER THE VIOLENCE AGAINST WOMEN ACT (VAWA)

VAWA provides protections for Section 8 Housing Choice Voucher (HCV) and PBV applicants, tenants, and participants from being denied assistance on the basis or as a direct result of being a victim of domestic violence, dating violence, sexual assault and stalking.

Purpose

Many of VAWA's protections to victims of domestic violence, dating violence, sexual assault and stalking involve action by the Myrtle Beach Housing Authority (MBHA), but some situations involve action by owners of assisted housing. The purpose of this notice (herein called "Notice") is to explain your rights and obligations under VAWA, as an owner of housing assisted through The Housing Authority of Myrtle Beach HCV, VASH and COC programs. Each component of this Notice also provides citations to HUD's applicable regulations.

Denial of Tenancy

Protections for applicants: Owners cannot deny tenancy based on the applicant having been or currently being a victim of domestic violence, dating violence, sexual assault, or stalking. However, the applicant must be otherwise eligible for tenancy. (See 24 Code of Federal Regulations (CFR) 982.452(b)(1).)

Eviction

Protections for HCV, VASH or COC participants: Incidents or threats of domestic violence, dating violence, sexual assault, or stalking will not be considered a serious or repeated lease violation by the victim, or good cause to terminate the tenancy of the victim (24 CFR 5.2005(c)). Protection also applies to criminal activity related directly to domestic violence, dating violence, sexual assault, or stalking, conducted by a member of a tenant's household or any guest or other person under the tenant's control, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking (24 CFR 5.2005(b)(2)).

Limitations of VAWA protections:

a. Nothing in the VAWA Final Rule limits the authority of an owner, when notified of a court order, to comply with a court order with respect to (24 CFR 5.2005(d)(1)):

- 1) The rights of access or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking; or
- 2) The distribution or possession of property among members of a household in a case.

b. Nothing in the VAWA Final Rule limits an owner from evicting a victim of domestic violence, dating violence, sexual assault, or stalking for a lease violation that is not premised on an act of domestic violence, dating violence, sexual assault, or stalking, as long as the owner does not subject the victim to more demanding standards than other tenants when deciding whether to evict. (See 24 CFR 5.2005(d)(2).)

c. Nothing in the VAWA Final Rule limits an owner from evicting a tenant (including the victim of domestic violence, dating violence, sexual assault, or stalking) if the owner can demonstrate an actual and imminent threat to other tenants or those employed at or providing services to the HCV property would be present if the tenant or lawful occupant is not evicted. (See 24 CFR 5.2005(d)(3).)

i. In this context, words, gestures, actions, or other indicators will be considered an “actual and imminent threat” if they meet the following standards: An actual and imminent threat consists of a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur. (See 24 CFR 5.2003.)

ii. Any eviction due to “actual and imminent threat” should be utilized by an owner only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents. (See 24 CFR 5.2005(d)(4).)

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

If an applicant or tenant requests VAWA protection based on status as a victim of domestic violence, dating violence, sexual assault, or stalking, the owner has the option to request that the victim document or provide written evidence to demonstrate that the violence occurred. However, nothing in HUD’s regulation requires a covered housing provider to request this documentation. (See 24 CFR 5.2007(b)(3).)

If the owner chooses to request this documentation, the owner must make such request in writing. The individual may satisfy this request by providing any one document type listed under 24 CFR 5.2007(b)(1):

a. Form HUD-55383 (Self-Certification Form); or

b. A document: 1) Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional or a mental health professional (collectively, “professional”) from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse:

2) Signed by the applicant or tenant; and

3) That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection and remedies under 24 CFR part 5, subpart L, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under 24 CFR 5.2003; or

c. A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or

d. At the discretion of a covered housing provider, a statement or other evidence provided by the applicant or tenant.

The owner must accept any of the above items (a – c). The owner has discretion to accept a statement or other evidence (d).

The owner is prohibited from requiring third-party documentation of the domestic violence, dating violence, sexual assault, or stalking, unless the submitted documentation contains conflicting information.

If the owner makes a written request for documentation, the owner may require submission of that documentation within 14 business days after the date that the individual received the written request for documentation. (24 CFR 5.2007(a)(2)). The owner may extend this time period at its discretion. During the 14 business day period and any granted extensions of that time, no adverse actions, such as evictions or terminations, can be taken against the individual requesting VAWA protection.

Once a victim provides documentation of domestic violence, dating violence, sexual assault, or stalking, the owner is encouraged to acknowledge receipt of the documentation in a timely manner.

If the applicant or tenant fails to provide documentation that meets the criteria in 24 CFR 5.2007 within 14 business days after receiving the written request for that documentation or within the designated extension period, nothing in VAWA Final Rule may be construed to limit the authority of the covered housing provider to:

- a. Deny admission by the applicant or tenant to the housing or program;
- b. Deny assistance under the covered housing program to the applicant or tenant;
- c. Terminate the participation of the tenant in the covered housing program; or
- d. Evict the tenant, or a lawful occupant that commits a violation of a lease.

An individual's failure to timely provide documentation of domestic violence, dating violence, sexual assault, or stalking does not result in a waiver of the individual's right to challenge the denial of assistance or termination, nor does it preclude the individual's ability to raise an incident of domestic violence, dating violence, sexual assault, or stalking at eviction or termination proceedings.

Moves

A victim of domestic violence, dating violence, sexual assault, or stalking may move in violation of their lease if the move is required to protect their safety. If a move results in the termination of the Housing Assistance Payment Contract, the lease is automatically terminated.

Lease Bifurcation

Owners may choose to bifurcate a lease, or remove a household member from a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to such member who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual. (See 24 CFR 5.2009(a).) If an owner chooses to bifurcate the lease, the owner must comply with the reasonable time to establish eligibility under the covered housing program or find alternative housing following lease bifurcation provision in 24 CFR 5.2009(b). VAWA protections, including bifurcation, do not apply to guests or unreported members of a household or anyone else residing in a household who is not a tenant.

Eviction, removal, termination of occupancy rights, or termination of assistance must be effected in accordance with the procedures prescribed by federal, state, or local law for termination of leases.

To avoid unnecessary delay in the bifurcation process, HUD recommends that owners seek court-ordered eviction of the perpetrator pursuant to applicable laws. This process results in the underlying lease becoming null and void once the owner regains possession of the unit. The owner would then execute a new lease with the victim.

Evictions Due to "Actual and Imminent Threat" or Violations Not Premised on Abuse

The VAWA Final Rule generally prohibits eviction on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for assistance, participation or occupancy. (See 24 CFR 5.2005.)

However, the VAWA Final Rule does not prohibit an owner from evicting a tenant for any violation not premised on an act of domestic violence, dating violence, sexual assault, or stalking that is in question against the tenant or an affiliated individual of the tenant. Nor does the VAWA Final Rule prohibit an owner from evicting a tenant if the owner can demonstrate an actual and imminent threat to other tenants

or those employed at or providing services to property of the owner would be present if that tenant or lawful occupant is not evicted or terminated from assistance. (See 5.2005(d)(2) and (3).)

In order to demonstrate an actual and imminent threat to other tenants or employees at the property, the covered housing provider must have objective evidence of words, gestures, actions, or other indicators that meet the standards in the following definition:

Actual and imminent threat refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk;
- The nature and severity of the potential harm;
- The likelihood that the potential harm will occur; and
- The length of time before the potential harm would occur.

(See 24 CFR 5.2003 and 5.2005(d)(2).)

Confidentiality

Any information submitted to a covered housing provider under 24 CFR 5.2007, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking, must be maintained in strict confidence by the covered housing provider. (See 24 CFR 5.2007(c).)

Employees of the owner (or those within their employ, e.g., contractors) must not have access to the information unless explicitly authorized by the owner for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law (e.g., the information is needed by an employee to provide the VAWA protections to the victim).

The owner must not enter this information into any shared database, or disclose this information to any other entity or individual, except to the extent that disclosure is:

- a. Requested or consented to in writing by the individual (victim) in a time-limited release;
- b. Required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program; or
- c. Otherwise required by applicable law.

When communicating with the victim, owners must take precautions to ensure compliance with these confidentiality requirements.

Service Providers

The Housing Authority of Myrtle Beach has extensive relationships with local service providers. Eastern Carolina Homeless Organization ECHO staff are available to provide referrals to shelters, counselors, and advocates. These resources are also provided in the MBHA Annual and 5-Year Plan, Administrative Plan, VAWA Notice of Occupancy Rights, and Emergency Transfer Plan. A list of local service providers is attached to this Notice.

Definitions

Actual and imminent threat refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.

Affiliated individual, with respect to an individual, means:

- (1) A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or
- (2) Any individual, tenant, or lawful occupant living in the household of that individual.

Bifurcate means to divide a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable HUD-covered program and State or local law, such that certain tenants or lawful occupants can be evicted or removed and the remaining tenants or lawful occupants can continue to reside in the unit under the same lease requirements or as may be revised depending upon the eligibility for continued occupancy of the remaining tenants and lawful occupants.

Dating violence means 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:
 - (i) The length of the relationship;
 - (ii) The type of relationship; and
 - (iii) The frequency of interaction between the persons involved in the relationship.

Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner 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 or intimate partner, 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 "spouse or intimate partner of the victim" includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

Sexual assault means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (1) Fear for the person's individual safety or the safety of others; or
- (2) Suffer substantial emotional distress.

VAWA means the Violence Against Women Act of 1994, as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e et seq.).

Attached:

Legal services and the domestic violence resources for the Metro area

Form HUD-5382 Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

The Housing Authority of Myrtle Beach VAWA Notice of Occupancy Rights

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.