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PROGRAM ADMINISTRATION

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

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 the FCRHA will follow.

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

Part VIII: Determination of Insufficient Funding. This part describes the FCRHA'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, and stalking; and maintaining the confidentiality of information obtained from victims.

PART I: ADMINISTRATIVE FEE RESERVE [24 CFR 982.155]

The PHA will maintain administrative fee reserves, or unrestricted net assets (UNA) 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 UNA 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).

If a PHA has not adequately administered its HCV program, HUD may prohibit use of funds in the UNA 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 UNA account without specific approval.

FCRHA Policy

Expenditures from the UNA account will be made in accordance with all applicable federal requirements. Expenditures will not exceed \$10,000 per occurrence without the prior approval of the FCRHA’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 the PHA to adapt the program to local conditions. This part discusses how the FCRHA 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).

FCRHA Policy

Copies of the payment standard and utility allowance schedules are available for review in the PHA’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.

The FCRHA 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 the PHA 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 the FCRHA 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.

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

FCRHA Policy

The FCRHA uses 100% of the FMR to determine the payment standard, but will authorize Department of Housing and Community Development (HCD) staff to consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

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

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

- **Changes in Rent to Owner:** HCD 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:** HCD 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:** HCD 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 January 1st of every year unless, based on the proposed FMRs, it appears that one or more of the FCRHA's current payment standard amounts will be outside the basic range when the final FMRs are published. In that case, the FCRHAs payment standards will be effective October 1st instead of January 1st.

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

Exception Payment Standards [982.503(c)]

The PHA must request HUD approval to establish payment standards that are higher than the basic range. At HUD's sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the FMR area. HUD may approve an exception payment standard amount (in accordance with program requirements) for all units, or for all units of a given size, leased by program families in the exception area. Any PHA with jurisdiction in the exception area may use the HUD-approved exception payment standard

amount. The total population of all HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.

Unit-by-Unit Exceptions [24 CFR 982.503(c)(2)(ii), 24 CFR 982.505(d), Notice PIH 2010-26]

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

When needed as a reasonable accommodation, the PHA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 110 percent of the applicable FMR for the unit size [HCV GB 7-9]. The PHA may request HUD approval for an exception to the payment standard for a particular family if the required amount falls between 110 and 120 percent of the FMR.

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

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

The PHA 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 PHA subsidy. The PHA 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, the PHA 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, the PHA 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 the PHA 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.

FCRHA Policy

The FCRHA 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 the FCRHA will apply this allowance to a family's rent and subsidy calculations.

Reasonable Accommodation

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

The PHA 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.

The PHA 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 the PHA that may adversely affect them. PHA decisions that may be appealed by applicants and participants are discussed in this section.

The process for applicant appeals of PHA 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 60, no. 127 (3 July 1995): 4690].

Decisions Subject to Informal Review

The PHA 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 the FCRHA 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

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

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

FCRHA Policy

The FCRHA will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying or withdrawing a voucher; refusing to enter into a HAP contract or approve a lease; refusing to process or provide assistance under portability procedures.

If an applicant is denied listing on the waiting list (i.e. the applicant does not meet program income requirements, owes money to another PHA, does not meet the FCRHA's preferences, has previously been terminated assistance under the program, etc.), the FCRHA will not offer an informal review, but may meet with applicant family to discuss their circumstances for not being placed on the waiting list.

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

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

FCRHA Policy

A request for an informal review must be made in writing and delivered to the FCRHA either in person, or by fax, email, or first class mail, by the close of the business day, no later than 10 business days from the date of the FCRHA's denial of assistance.

The FCRHA must schedule and send written notice of the informal review within 10 business 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 the PHA.

Informal Review Decision [24 CFR 982.554(b)]

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

FCRHA Policy

In rendering a decision, the FCRHA 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 regulations, then the decision to deny assistance will be overturned.
- The validity of the evidence. The FCRHA 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, the FCRHA will uphold the decision to deny assistance.
- If the denial is discretionary, the FCRHA will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

The FCRHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 10 business 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 and the family will be so notified.

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

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

The PHA 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 the FCRHA 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 the FCRHA utility allowance schedule
- A determination of the family unit size under the FCRHA's subsidy standards
- A determination that a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the FCRHA's subsidy standards, or the FCRHA determination to deny the family's request for exception from the standards
- A determination to terminate assistance for a participant family because of the family's actions or failure to act
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under FCRHA 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 the FCRHA
- General policy issues (e.g. our policy to have caseloads distributed to staff by zip code) or class grievances
- Establishment of the FCRHA schedule of utility allowances for families in the program
- An FCRHA determination not to approve an extension or suspension of a voucher term
- An FCRHA determination not to approve a unit or tenancy
- An FCRHA determination that a unit selected by the applicant is not in compliance with the HQS
- An FCRHA determination that the unit is not in accordance with HQS because of family size
- A determination by the FCRHA to exercise or not to exercise any right or remedy against an owner under a HAP contract

FCRHA Policy

The FCRHA 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 the PHA makes a decision that is subject to informal hearing procedures, the PHA 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, the PHA 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 the PHA’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.

FCRHA Policy

In cases where the FCRHA 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 the FCRHA.
- A brief statement of the reasons for the decision, including the regulatory reference.
- The date the proposed action will take place.
- A statement of the family's right to an explanation of the basis for the FCRHA's decision.
- A statement that if the family does not agree with the decision the family may request an informal hearing of the decision.
- A deadline for the family to request the informal hearing.
- To whom the hearing request should be addressed.
- A copy of the FCRHA's hearing procedures in a follow-up letter once the family has requested an informal hearing.

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

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

FCRHA Policy

A request for an informal hearing must be made in writing and delivered to the FCRHA either in person or by first class mail, email, or fax by the close of the business day, no later than 10 business days from the date of the FCRHA's decision or notice to terminate assistance.

Within 10 business days of the family's request, the FCRHA will send written notice to the family, either scheduling the hearing or notifying the family that an extension is granted to schedule the hearing.

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, the FCRHA 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 the FCRHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The FCRHA 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 the PHA are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If the PHA does not make the document available for examination on request of the family, the PHA may not rely on the document at the hearing.

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

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

FCRHA Policy

Generally the FCRHA will provide copies of the documents unless the preparation time and printing causes an excessive expense, at which time the FCRHA will charge the family the current cost of printing. The family must request discovery of FCRHA documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date.

The FCRHA must be given an opportunity to examine at the FCRHA offices before the hearing any family documents that are directly relevant to the hearing. Whenever a participant requests an informal hearing, the FCRHA will automatically mail a letter to the participant requesting a copy of all documents that the participant intends to present or utilize at the hearing. The participant must make the documents available no later than five business days 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 the PHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

FCRHA Policy

The FCRHA has designated the following to serve as hearing officers in order of priority:

1. FCRHA trained hearing officer
2. Human service agency staff familiar with the HCV program

Attendance at the Informal Hearing

FCRHA Policy

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

- A FCRHA representative(s) (including legal counsel) and any witnesses for the FCRHA
- The participant and any witnesses for the participant
- The participant's counsel or other representative
- Any other person approved by the FCRHA 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 the PHA's hearing procedures [24 CFR 982.555(4)(ii)].

FCRHA 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)]

The PHA 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.

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

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

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

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

FCRHA Policy

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

- **FCRHA Notice to the Family:** The hearing officer will determine if the reasons for the FCRHA's decision are factually stated in the Notice.
- **Discovery:** The hearing officer will determine if the FCRHA and the family were given the opportunity to examine any relevant documents in accordance with FCRHA policy.

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

The hearing officer will issue a written decision to the family and the FCRHA 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 FCRHA 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 FCRHA's decision.

- **Order:** The hearing report will include a statement of whether the FCRHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the FCRHA to change the decision in accordance with the hearing

officer's determination. In the case of termination of assistance, the hearing officer will instruct the FCRHA to restore the participant's program status.

Procedures for Rehearing or Further Hearing

FCRHA 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 the FCRHA will take effect and another hearing will not be granted.

FCRHA Notice of Final Decision [24 CFR 982.555(f)]

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

FCRHA Policy

The FCRHA will mail a "Notice of Final Decision" including the hearing officer's report, to the participant and their representative. This notice will be sent by first-class mail, postage pre-paid with an affidavit of mailing enclosed. The participant will be mailed the original "Notice of Final Decision" and a copy of the proof of mailing. A copy of the "Notice of Final Decision" along with the original proof of mailing will be maintained in the PHA'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 the FCRHA 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 the FCRHA 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)]

The notice of denial or termination of assistance for noncitizens must advise the family:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a participant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with the FCRHA 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 the FCRHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the FCRHA 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 the FCRHA with a copy of the written request for appeal and the proof of mailing.

FCRHA Policy

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

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

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form

specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

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

FCRHA Policy

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

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 the responsible entity provide a hearing. The request for a hearing must be made either within 30 days of receipt of the FCRHA 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

The PHA 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 the FCRHA 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.

FCRHA Policy

Generally the FCRHA will provide copies of the documents unless the preparation time and printing causes an excessive expense, at which time the FCRHA will charge the family the current cost of printing. The family must request discovery of FCRHA documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date.

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 the FCRHA, and to confront and cross-examine all witnesses on whose testimony or information the FCRHA relies.

Representation and Interpretive Services

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

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

Recording of the Hearing

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

FCRHA Policy

The FCRHA will not provide a transcript of an audio taped hearing.

Hearing Decision

The responsible entity 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. A decision against the family member does not preclude the family from seeking redress through judicial proceedings.

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

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

- The application for assistance
- The form completed by the family for income reexamination

- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form
- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision

PART IV: OWNER OR FAMILY DEBTS TO THE PHA

16-IV.A. OVERVIEW

PHAs are required to include in the administrative plan, policies concerning repayment by a family of amounts owed to the PHA [24 CFR 982.54]. This part describes the FCRHA’s policies for recovery of monies owed to the PHA by families or owners.

FCRHA Policy

When a monetary amount is owed to the FCRHA, the following occurs:

1. The FCRHA contacts the owner or family and attempts to either collect the amount in full or enter into a written repayment agreement;
2. If the FCRHA has more than one HAP contract with an owner and the owner does not repay overpayments from one contract, the FCRHA will deduct the overpayment from another HAP contract;
3. After the agreement is signed, the FCRHA will monitor the repayment schedule and notify the payer if payments are not made in a timely fashion;
4. If payments continue to be missed or late, or if staff has been unsuccessful in negotiating a repayment agreement, other legal remedies may be pursued; and
5. FCRHA staff will keep records of all tenants and landlords who owe money and submit this information to “Happy Software” to make other PHAs aware of those persons who owe money and those who are not eligible to receive future Housing Choice Voucher assistance and/or participate in the Program.

When an owner or participant refuses to repay monies owed to the PHA, the FCRHA 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 the PHA

FCRHA Policy

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

If the owner fails to repay the debt within the required time frame and is entitled to future HAP payments, the FCRHA 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 the FCRHA may, in its sole discretion, offer to enter into a repayment agreement on terms prescribed by the FCRHA.

If the owner refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the FCRHA will ban the owner from future participation in the program, make appropriate referrals to the HUD Regional Inspector General for Investigation, or pursue other modes of collection.

Family Debts to the PHA

FCRHA Policy

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

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the FCRHA will terminate assistance in accordance with the policies in Chapter 12 make appropriate referrals to the HUD Regional Inspector General for Investigation, or pursue other modes of collection.

Repayment Agreement [24 CFR 792.103]

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

General Repayment Agreement Guidelines for Families

Down Payment Requirement

FCRHA Policy

Before executing a repayment agreement with a family, the PHA will generally require a down payment of 20 percent of the total amount owed.

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)].

FCRHA Policy

All amounts must be repaid within 60 months regardless of the amount owed.

Execution of the Agreement

FCRHA Policy

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

Due Dates

FCRHA Policy

All payments are due by the close of business on the 15th day of the month. If the 15th does not fall on a business day, the due date is the close of business on the first business day after the 15th.

Late or Missed Payments

FCRHA Policy

If a payment is not received by the end of the business day on the date due, and prior approval for the missed payment has not been given by the FCRHA, the FCRHA will send the family a delinquency notice giving the family 10 business days to make the late payment. If the payment is not received by the due date of the delinquency notice, it will be considered a breach of the agreement and the FCRHA will terminate assistance in accordance with the policies in Chapter 12.

If a family receives three delinquency notices for unexcused late payments in a 12-month period, the repayment agreement will be considered in default, and the FCRHA will terminate assistance in accordance with the policies in Chapter 12.

No Offer of Repayment Agreement

FCRHA Policy

The FCRHA generally will not enter into a repayment agreement with a family if there is already a repayment agreement in place with the family if the amount owed by the family exceeds the federal or state threshold for criminal prosecution.

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 PHA 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 the PHA 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 PHA performance in key areas to ensure program integrity and accountability. SEMAP scores translate into a rating for each PHA as high performing, standard, or troubled. Scores on individual SEMAP indicators, as well as overall SEMAP ratings, can affect the PHA in several ways.

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

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

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

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

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

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

Upon receipt of the PHA’s SEMAP certification, HUD will rate the PHA’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. The PHA 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 the PHA's certification on the indicator due to the PHA's failure to adequately report family data, HUD will assign a zero rating for the indicator [24 CFR 985.3].

FCRHA Policy

For SEMAP indicators verified by a quality control sample, the FCRHA will determine the sample size by using the HUD formula found at 24 CFR 985.2. The following SEMAP indicators require a quality control sample for verification:

- Indicator 1. Selection from the waiting list
- Indicator 2. Reasonable rent
- Indicator 3. Determination of adjusted income
- Indicator 5. HQS quality control inspections (see 24 CFR 985.2 for additional quality control requirements)
- Indicator 6. HQS enforcement

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

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

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

SEMAP Indicators
<p>Indicator 1: Selection from the waiting list Maximum Score: 15</p> <ul style="list-style-type: none">• This indicator shows whether the PHA has written policies in its administrative plan for selecting applicants from the waiting list and whether the PHA follows these policies when selecting applicants for admission from the waiting list.• Points are based on the percent of families that are selected from the waiting list in accordance with the PHA's written policies, according to the PHA's quality control sample.
<p>Indicator 2: Rent reasonableness Maximum Score: 20</p> <ul style="list-style-type: none">• This indicator shows whether the PHA has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units• Points are based on the percent of units for which the PHA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to the PHA's quality control sample.

Indicator 3: Determination of adjusted income**Maximum Score: 20**

- This indicator measures whether the PHA verifies and correctly determines adjusted income for each assisted family, and where applicable, uses the appropriate utility allowances for the unit leased in determining the gross rent.
- Points are based on the percent of files that are calculated and verified correctly, according to the PHA's quality control sample.

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

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

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

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

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

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

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

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

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

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

<ul style="list-style-type: none"> • Points are based on whether the PHA has appropriately adopted a payment standard schedule(s), according to the PHA’s certification.
<p>Indicator 9: Annual reexaminations Maximum Points: 10</p> <ul style="list-style-type: none"> • This indicator shows whether the PHA completes a reexamination for each participating family at least every 12 months. • Points are based on the percent of reexaminations that are more than 2 months overdue, according to data from PIC.
<p>Indicator 10: Correct tenant rent calculations Maximum Points: 5</p> <ul style="list-style-type: none"> • This indicator shows whether the PHA correctly calculates the family’s share of the rent to owner. • Points are based on the percent of correct calculations of family share of the rent, according to data from PIC.
<p>Indicator 11: Pre-contract HQS inspections Maximum Points: 5</p> <ul style="list-style-type: none"> • 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.
<p>Indicator 12: Annual HQS inspections Maximum Points: 10</p> <ul style="list-style-type: none"> • This indicator shows whether the PHA inspects each unit under contract at least annually. • Points are based on the percent of annual HQS inspections of units under contract that are more than 2 months overdue, according to data from PIC.
<p>Indicator 13: Lease-up Maximum Points: 20 points</p> <ul style="list-style-type: none"> • This indicator shows whether the PHA enters HAP contracts for the number of units or funding reserved under ACC for at least one year. • Points are based on the percent of units leased during the last completed PHA fiscal year, or the percent of allocated budget authority that has been expended by the PHA, according to data from the PHA’s last year-end operating statement that is recorded in HUD’s accounting system.
<p>Indicator 14: Family self-sufficiency (FSS) enrollment and escrow account balances Maximum Points: 10</p> <ul style="list-style-type: none"> • Only applies to PHAs with mandatory FSS programs. • This indicator shows whether the PHA has enrolled families in the FSS program as required, and measures the percent of current FSS participants that have had increases in earned income which resulted in escrow account balances. • Points are based on the percent of mandatory FSS slots that are filled and the percent of families with escrow account balances, according to data from PIC.

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

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

Deconcentration Bonus Indicator**Maximum Points: 5**

- Submission of data for this indicator is mandatory for a PHA using one or more payment standard amount(s) that exceed(s) 100 percent of the published FMR set at the 50th percentile rent, starting with the second full PHA 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**

The PHA 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, the PHA 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, the PHA must keep:

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

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

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

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

16-VI.C. RECORDS MANAGEMENT

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

FCRHA Policy

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

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

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

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

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

Upfront Income Verification (UIV) Records

PHAs that access UIV data through HUD’s Enterprise Income Verification (EIV) System are required to adopt and follow specific security procedures to ensure that all EIV data is protected

in accordance with Federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in the HUD issued document, *Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data*.

FCRHA Policy

The FCRHA has adopted and implemented EIV security procedures required by HUD.

Criminal Records

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

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

The PHA must establish and implement a system of records management that ensures that any sex offender registration information received by the PHA 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 the PHA 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 PHA other than under 24 CFR 5.905.

Medical/Disability Records

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

Documentation of Domestic Violence, Dating Violence, or Stalking

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

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

16-VII.A. OVERVIEW

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

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

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

FCRHA Policy

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

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

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

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

At least quarterly, the PHA 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.

FCRHA Policy

On a quarterly basis (March 31, June 30, September 30, December 31) the FCRHA will receive a listing from the Fairfax County health department of all children less than 6 years old with an identified environmental intervention blood lead level, and compare it with the listing of all HCV families.

PART VIII: DETERMINATION OF INSUFFICIENT FUNDING

16-VIII.A. OVERVIEW

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

16-VIII.B. METHODOLOGY

FCRHA Policy

The FCRHA 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 the FCRHA'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, the FCRHA 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 the FCRHA cannot support the cost of the proposed subsidy commitment (voucher issuance or move) based on the funding analysis, the FCRHA will be considered to have insufficient funding.

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

16-IX.A. OVERVIEW

The Violence against Women Act of 2005 (VAWA) provides special protections for victims of domestic violence, dating violence, and stalking who are applying for or receiving assistance under the housing choice voucher (HCV) program. If your state or local laws provide greater protection for such victims, those laws take precedence over VAWA. In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and PHA policies in three areas: notification, documentation, and confidentiality. Specific VAWA requirements and PHA policies are located primarily in the following sections: 3-I.C, "Family Breakup and Remaining Member of Tenant Family"; 3-III.G, "Prohibition against Denial of Assistance to Victims of Domestic Violence, Dating Violence, and Stalking"; 10-I.A, "Allowable Moves"; 10-I.B, "Restrictions on Moves"; 12-II.E, "Terminations Related to Domestic Violence, Dating Violence, or Stalking"; and 12-II.F, "Termination Notice."

16-IX.B. DEFINITIONS

As used in VAWA:

- The term *bifurcate* means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.
- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship
 - The type of relationship
 - The frequency of interaction between the persons involved in the relationship
- The term *domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from the person's acts under the domestic or family violence laws of the jurisdiction.
- The term *immediate family member* means, with respect to a person:
 - A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in position or place of a parent; or
 - Any other person living in the household of that person and related to that person by blood or marriage.
- The term *stalking* means:
 - To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or
 - To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
 - In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.

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

Notification to Public

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

FCRHA Policy

Copies of the following information regarding VAWA are available for review in the FCRHA's offices during normal business hours.

- A summary of the rights and protections provided by VAWA to housing choice voucher program applicants and participants who are or have been victims of domestic violence, dating violence, or stalking (see sample notices in Exhibits 16-1 and 16-2)
- The definitions of *domestic violence*, *dating violence*, and *stalking* provided in VAWA (included in Exhibits 16-1 and 16-2)
- An explanation of the documentation that the FCRHA may require from an individual who claims the protections provided by VAWA (included in Exhibits 16-1 and 16-2)
- A statement of the FCRHA's obligation to keep confidential any information that it receives from a victim unless (a) the FCRHA has the victim's written permission to release the information, (b) it needs to use the information in an eviction proceeding, or (c) it is compelled by law to release the information (included in Exhibits 16-1 and 16-2)
- The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY)
- Contact information for local victim advocacy groups or service providers

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

PHAs are required to inform program participants of their rights under VAWA, including their right to confidentiality and the limits thereof. Since VAWA provides protections for applicants as well as participants, PHAs may elect to provide the same information to applicants.

FCRHA Policy

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

The FCRHA will provide all participants with information about VAWA at the time of admission (see section 5-I.B) and at annual reexamination. The FCRHA 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 at the eligibility interview and to participants at annual recertification will consist of the certification form in Exhibit 16-1.

If the FCRHA is taking an adverse action against the applicant (such as a denial letter) or the participant (such as a termination letter), the letter will include language that advises the household who can be contacted at the FCRHA if the applicant/participant believes that the action is related to his/her VAWA status. The applicant/participant will also be advised that if he/she wishes to claim protection under VAWA, he/she must notify the FCRHA within 10 business days of receipt of the letter.

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

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

FCRHA Policy

The FCRHA will provide owners and managers with information about their rights and obligations under VAWA when they begin their participation in the HCV program.

The VAWA information provided to owners will consist of the notice in Exhibit 16-2.

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

A PHA presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, 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 business days after receipt of the request to submit the documentation. The PHA may extend this time period at its discretion. [24 CFR 5.2007(a)]

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

- (1) A completed and signed HUD-approved certification form (HUD-50066, Certification of Domestic Violence, Dating Violence, or Stalking), which must include the name of the perpetrator
- (2) A federal, state, tribal, territorial, or local police report or court record
- (3) Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; or a medical professional. 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.

The PHA 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].

FCRHA Policy

Any request for documentation of domestic violence, dating violence, or stalking will specify a deadline of 14 business 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.

The PHA may, in its discretion, extend the deadline for 10 business days. Any extension granted by the PHA will be in writing.

Conflicting Documentation [24 CFR 5.2007(e)]

In cases where the PHA 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, the PHA may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3). The PHA must honor any court orders issued to protect the victim or to address the distribution of property.

FCRHA Policy

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

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

The PHA 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).

FCRHA Policy

If the FCRHA accepts an individual’s statement or other corroborating evidence of domestic violence, dating violence, or stalking, the FCRHA 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, a PHA must provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to

provide the documentation within 14 business days from the date of receipt, or such longer time as the PHA may allow, the PHA may deny relief for protection under VAWA.

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

All information provided to the PHA regarding domestic violence, dating violence, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence. This means that the PHA (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.

FCRHA Policy

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

EXHIBIT 16-1: YOUR VIOLENCE AGAINST WOMEN ACT (VAWA) RIGHTS

What are my VAWA rights?

If you are an *applicant* to the Public Housing or Housing Choice Voucher (HCV) programs:

- ❖ Your status as a victim of domestic violence, dating violence or stalking (see definitions of these terms on next page) is not a valid reason for denial of program assistance or admission.
- ❖ You still must meet all eligibility requirements even if you are a victim.

If you are a current Public Housing *tenant* or HCV *participant* and you are in danger of having your assistance or tenancy terminated and you and/or a family member have experienced domestic violence, dating violence or stalking, you may be safe from termination or eviction if:

- ❖ The cause of your lease violation is directly related to an incident or incidents of domestic violence, dating violence or stalking, and
- ❖ You can provide the Fairfax County Redevelopment and Housing Authority (FCRHA) certification of the abuse.

What will I need to provide for certification?

Certification will be accepted if it is one of the following three items and is provided within 14 business days of a written request from the FCRHA:

- ❖ A completed, signed U.S. Department of Housing and Urban Development (HUD) -approved certification form. The most recent form is HUD-50066 and can be obtained from the FCRHA or online at HUD's website – www.hud.gov. You must name the perpetrator on this form.
- ❖ Documentation from a professional that has helped you address the violence. Both you and the professional must sign the documentation under penalty of perjury.
- ❖ A police or court record, such as a protective order.

Will my report be kept confidential?

Landlords and the FCRHA are required by law to keep your report strictly confidential. The information cannot be entered into any shared database or released to a third party. The FCRHA will only release your report if you provide permission, it is required for use in an eviction proceeding, or it otherwise required by applicable law.

What will the FCRHA or my HCV landlord do once I file a report?

The FCRHA or the HCV landlord has the ability to take action against the offender. In the Public Housing program, where the FCRHA is the landlord, the FCRHA can bar the offender from the premises or split the lease and evict the offender while allowing other family members to remain. The FCRHA also has the ability to allow family members who are victims of abuse to move to another unit within the program. In the HCV program, the landlord may also be able to split the lease and evict the offender while allowing other family members to remain.

How do I file a report?

If you are an HCV participant you can notify your landlord and Housing Services Specialist.
If you are a Public Housing tenant, call your Housing Services Specialist.

My signature confirms that I have read and understand my rights as indicated above.

Signature (Head of Household)

Date

Signature (Adult Member)

Date

Signature (Adult Member)

Date

Signature (Adult Member)

Date

Definitions

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

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

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

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



This information is available to persons with disabilities in alternative formats upon request. Please call 703-246-5101 (TTY: 703-385-3578). Allow seven days for the preparation of the material.

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

This sample notice was adapted from a notice prepared by the National Housing Law Project. A federal law that went into effect in 2006 protects individuals who are victims of domestic violence, dating violence, and stalking. The name of the law is the Violence against Women Act, or “VAWA.” This notice explains your obligations under VAWA.

Protections for Victims

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

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

Permissible Evictions

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

Removing the Abuser from the Household

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

Certification of Domestic Violence, Dating Violence, or Stalking

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

- A completed, signed HUD-approved certification form. The most recent form is HUD-50066. This form is available at the housing authority or online at <http://www.hud.gov/offices/adm/hudclips/forms/hud5.cfm>.
- A statement from a victim service provider, attorney, or medical professional who has helped the victim address incidents of domestic violence, dating violence, or stalking. The professional must state that he or she believes that the incidents of abuse are real. Both the victim and the professional must sign the statement under penalty of perjury.
- A police or court record, such as a protective order.

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

Confidentiality

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

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

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

VAWA and Other Laws

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

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

Additional Information

- If you have any questions regarding VAWA, please contact _____.
- HUD Notice PIH 2006-42 contains detailed information regarding VAWA's certification requirements. The notice is available at <http://www.hud.gov/offices/adm/hudclips/notices/pih/06pihnotices.cfm>.
- For a discussion of VAWA's housing provisions, see the preamble to the final VAWA rule, which is available at <http://www.gpo.gov/fdsys/pkg/FR-2010-10-27/pdf/2010-26914.pdf>.

Definitions

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

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

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

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

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

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

**EMERGENCY TRANSFER PLAN FOR VICTIMS OF DOMESTIC VIOLENCE,
DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING
(HCV VERSION)**

Attachment: Certification form HUD-5382

**Fairfax County Redevelopment and Housing Authority
Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual
Assault, or Stalking**

Housing Choice Voucher and Project-Based Voucher Programs

Emergency Transfers

The Fairfax County Redevelopment and Housing Authority (FCRHA) is concerned about the safety of its Project-based Voucher (PBV) tenants and Housing Choice Voucher (HCV) participants (herein referred to as “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),¹ the FCRHA allows participants who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the participants’s current unit to another unit. The ability to request a transfer is available regardless of sex, gender identity, or sexual orientation.² The ability of the FCRHA 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, and for PBV participant, on whether the FCRHA has another dwelling unit that is available and is safe to offer the tenant for temporary or more permanent occupancy.

This plan identifies tenants 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 tenants 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 that the **HCV programs, including the PBV program**, are in compliance 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

¹Despite 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.

²Housing 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.

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transfer if the tenant 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.

Emergency Transfer Request Documentation

To request an emergency transfer, PBV participants shall notify the Property Manager or for HCV participants, your FCRHA Housing Services Specialist. Participants must submit a written request for a transfer. The FCRHA 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 the FCRHA'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 tenant's request for an emergency transfer.

Confidentiality

The FCRHA will keep confidential any information that the participant submits in requesting an emergency transfer, and information about the emergency transfer, unless the participant gives the FCRHA 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 location of the new dwelling unit of the participant, if one is provided, from the person or persons that committed an act 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 Tenants for more information about the FCRHA'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

The FCRHA cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. The FCRHA will, however, act as quickly as possible to issue a voucher for an HCV participant or offer a PBV participant who is a victim of domestic violence, dating violence, sexual assault, or stalking another unit, subject to availability and safety of a unit.

If a PBV participant reasonably believes a proposed transfer would not be safe, the participant may request a transfer to a different unit. If a unit is available, the transferred participant must

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agree to abide by the terms and conditions that govern occupancy in the unit to which the participant has been transferred. The FCRHA may be unable to transfer a participant to a particular unit if the participant has not or cannot establish eligibility for that unit.

If the FCRHA has no safe and available units for which a PBV participant who needs an emergency transfer is eligible, the FCRHA will assist the PBV participant in identifying other housing providers who may have safe and available units to which the tenant could move.

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, the FCRHA will assist your move to a safe unit quickly using your existing voucher assistance by issuing a move voucher. The FCRHA will make exceptions to program regulations restricting moves as required.

At your request, the FCRHA 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:

- 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 the FCRHA
- Tenant-based voucher, if the participant has lived in the PBV unit for at least one year and if a voucher is available
 - PBV participants who have lived in the unit for less than one year are not eligible for a HCV.

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

In the case when both the perpetrator and victim are in the household, the FCRHA will follow its policy in Chapter 12 of the FCRHA HCV Administrative Plan.

Safety and Security of Participants

Pending processing of the transfer and the actual transfer, if it is approved and occurs, the participant is urged to take all reasonable precautions to be safe.

Participants who are or have been victims of domestic violence are encouraged to contact the National Domestic Violence Hotline at 1-800-799-7233, or a local domestic violence shelter, 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 sexual assault may call the Rape, Abuse, and Incest National Network's National Sexual Assault Hotline at 1-800-656-HOPE, or visit the online hotline at: <https://ohl.rainn.org/online/>.

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>.

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At the participant's request, the FCRHA will assist in contacting the local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking that are attached to this plan.

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

Fairfax County Domestic Violence Action Center
Historic Courthouse
4000 Chain Bridge Road, Suite 2702
Fairfax, VS 22035
Phone (703) 246-4573; TTY 711

The Office for Women and Domestic Violence Services
Fairfax County Government Center
12000 Government Center Pkwy, suite 339
Fairfax, VA 22035
Phone (703) 324-5730; TTY 711

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**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.

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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: _____

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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) _____