

## 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 PHA'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 PHA has overpaid on behalf of families, or to owners, and describes the circumstances under which the PHA 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 recordkeeping. This part outlines the privacy rights of applicants and participants and record retention policies the PHA will follow.

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

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

Part IX: Violence against Women Act (VAWA): Notification, Documentation, Confidentiality. This part contains key terms used in VAWA and describes requirements related to notifying families and owners about their rights and responsibilities under VAWA; requesting documentation from victims of domestic violence, dating violence, sexual assault, and stalking; and maintaining the confidentiality of information obtained from victims.

## CHAPTER 16

## CHAPTER 16

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

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

In addition, as specified in Notice PIH 2022-18, PHAs may use administrative fee funding for both administrative and “other expenses” needed to employ strategies and undertake activities beyond regular administrative responsibilities to facilitate the successful leasing and use of housing choice vouchers by families, such as through the use of security deposit assistance and landlord recruitment and incentive payments, among other allowable expenses specified in the notice. PHAs are also permitted to use UNP for these expenses [Notice PIH 2022-18].

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

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

#### OHCD Policy

Expenditures from the UNP Account will be made in accordance with all applicable federal requirements. Expenditures will not exceed \$44,999 per occurrence without the prior approval of OHCD’s Housing Board.

## CHAPTER 16

## CHAPTER 16

### 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 PHA 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).

##### OHCD Policy

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

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.

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

#### 16-II.B. PAYMENT STANDARDS [24 CFR 982.503; HCV GB, Chapter 7, **and Notice PIH 2024-34**]

The payment standard sets the maximum subsidy payment a family can receive from the PHA 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 **gross** rents in the market area.

**In the HCV program, the FMR may be established at the ZIP code level, metropolitan market area level, or non-metropolitan county level. Within each FMR area, the applicable FMR is the HUD-published:**

- **Small Area FMR (SAFMR);**
  - **For any metropolitan area designated as an SAFMR area; or**

## CHAPTER 16

- Anywhere a PHA has notified HUD it will voluntarily use SAFMRs;
- Metropolitan FMR for any other metropolitan area; or
- FMR for any other non-metropolitan county.

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.

### **Small Area FMR PHAs (Mandatory and Opt-In) [Notice PIH 2018-01; Notice PIH 2023 32; Notice PIH 2024-34; and Implementing Small Area Fair Market Rents (SAFMR) Guidebook]**

SAFMRs are FMRs calculated at the ZIP Code level, rather than for an entire metropolitan or non-metropolitan county.

HUD identifies which metropolitan areas are required to use SAFMRs based on significant voucher concentration challenges and market conditions. PHAs administering the HCV program in those areas are required to use the SAFMRs when establishing payment standards (mandatory SAFMR PHAs). Mandatory SAFMR PHAs must use the SAFMR for any part of their jurisdiction located in the SAFMR area.

Upon notification to HUD, PHAs not located in mandatory SAFMR areas may opt-in and voluntarily adopt SAFMRs for one or more of the FMR areas in which the PHA administers vouchers (opt-in PHAs). A PHA that exercises this option in one metropolitan area or non-metropolitan county is not required to exercise this option in other metropolitan areas or non-metropolitan counties. A PHA that opts in to SAFMRs may subsequently opt out through revision of the administrative plan and notification to HUD.

Alternatively, PHAs may elect to use SAFMRs only as the basis for exception payment standards in some or all of those non-mandatory SAFMR areas that cover or are within their jurisdictions. These PHAs are not considered opt-in PHAs.

When applicable, SAFMRs apply to all tenant-based vouchers in the PHA's jurisdiction, including special vouchers such as the Veterans Affairs Supportive Housing (VASH) program, the Family Unification Program (FUP), and special housing types such as Single Room Occupancies (SROs) and homeownership vouchers. SAFMRs do not apply to manufactured home space rental.

## CHAPTER 16

### OHCD Policy

OHCD will use SAFMRs for all vouchers in the OHCD's jurisdiction to determine payment standards based upon zip codes.

### **The Basic Range [24 CFR 982.503(c) and Notice PIH 2024-34]**

OHCD may establish a payment standard within the “basic range” established by HUD—between 90 and 110 percent of the published FMR for each unit size—without HUD approval or prior notification to HUD. For each payment standard area, the PHA must establish a payment standard amount for each unit size which may be based on the same percentage of the published FMR (for example, all units at 100 percent of FMR), or the PHA may set different payment standards for different unit sizes (for example, 1-bedrooms at 90 percent and 2-bedrooms at 100 percent of the FMR).

### **Designated Payment Standard Areas [24 CFR 982.503(a)(3) and Notice PIH 2024-34]**

The PHA may establish designated payment standard areas within each FMR area where the PHA establishes different payment standards, provided each area is no smaller than a census tract block group. If the PHA designates payment standard areas, then it must include the criteria used to determine the designated areas and the payment standard amounts for those areas in the administrative plan.

### OHCD Policy

OHCD has not established any designated payment standard areas.

### **Exception Payment Standards [24 CFR 982.503(d), Notice PIH 2018-01, Notice PIH 2024-34, and FR Notice 9/27/21]**

There are several options available to increase payment standards above the basic range. These are known as *exception payment standards*, which are payment standards that exceed 110 percent of the published FMR. The following are types of exception payment standards:

- Payment standards based on SAFMRs in ZIP codes where the SAFMR is higher than the applicable metropolitan or non-metropolitan county FMR
- Payment standards greater than 110 percent up to 120 percent of the applicable FMR
- Payment standards over 120 percent of the applicable FMR
- Payment standards up to 120 percent of the FMR for Veterans Affairs Supportive Housing (HUD-VASH)
- Payment standards necessary as a reasonable accommodation

**Payment Standards based on SAFMRs in ZIP codes where the SAFMR is Higher than the FMR:** Upon notification to HUD, a PHA that is not located in a SAFMR area or that has not opted to voluntarily adopt SAFMRs may establish an exception payment standard for a ZIP code area that exceeds the basic range for the metropolitan area or county FMR of up to and including 110 percent of the SAFMR for that ZIP code area. **If an exception area crosses one or more**

## CHAPTER 16

FMR boundaries, then the maximum exception payment standard amount that a PHA may adopt for the area without HUD approval is 110 percent of the ZIP code area with the lowest SAFMR amount. A PHA that adopts an exception payment standard pursuant to this authority must apply it to the entire ZIP code area.

**Payment Standards Greater than 110 Percent Up to 120 Percent:** Upon notification to HUD, a PHA may establish exception payment standards between 110 percent and 120 percent of the applicable FMR if the PHA meets one of the following criteria:

- Success rate: Fewer than 75 percent of families to which the PHA has issued tenant-based vouchers during the most recent 12-month period for which there is success rate data available have become participants on the program; or
- Rent burden: More than 40 percent of families with tenant-based assistance pay more than 30 percent of their adjusted income as their family share.

The PHA may revert back to the basic range at any time without notification to HUD.

PHAs may combine exception payment standards based on the SAFMR and exception payment standards greater than 110 and up to 120 percent.

**Other Exception Payment Standards:** PHAs may request HUD approval to establish exception payment standards up to 120 percent of the FMR when the above criteria do not apply or in order to establish exception payment standards that exceed 120 percent of the FMR. Requests may be made for an entire FMR area or a designated part of the FMR area.

**Exception Payment Standards for VASH:** In addition, HUD allows PHAs to establish a HUD-Veterans Affairs Supportive Housing (HUD-VASH) exception payment standard. PHAs may go up to but no higher than 120 percent of the FMR or SAFMR specifically for VASH families. PHAs who want to establish a VASH exception payment standard over 120 percent must still request a waiver from HUD (See Section 19-III.E.).

Once exception payment standards are adopted, the PHA may use the exception payment standard for all units, or for only units of a particular size. The exception payment standard may be established for a designated part of the FMR area (called an “exception area”) or for the entire FMR area. Exception areas are typically county, city, town, ZIP code, or census tract areas. However, so long as the exception area is no smaller than census tract block group, the PHA may determine the area for the exception area.

### OHCD Policy

OHCD has not established exception payment standards

**Reasonable Accommodation [24 CFR 982.503(d)(5), 24 CFR 982.505(d), Notice PIH 2024 34, and Notice PIH 2010-26]**

Unit-by-unit exceptions to the PHA’s payment standards generally are not permitted. However, an exception may be made on a case-by-case basis 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.



## CHAPTER 16

If required as a reasonable accommodation, the PHA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 120 percent of the applicable FMR/SAFMR for the unit size (or in the case of VASH, up to 140 percent of the FMR/SAFMR). The PHA may request HUD approval for an exception to the payment standard for a particular family if the required amount exceeds 120 percent of the FMR/SAFMR.

### OHCD Policy

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

- There is a shortage of affordable units that would be appropriate for the family;
- The family share would otherwise exceed 40 percent of adjusted monthly income; and
- The rent for the unit is reasonable.

### **Payment Standard below the Basic Range [24 CFR 982.503(e) and Notice PIH 2024-34]**

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 consider rent burden on families assisted under the program.

### **Updating Payment Standards [24 CFR 982.503(c)(3) and Notice PIH 2023-24]**

HUD publishes FMRs in the Federal Register and also makes them available on the HUD website with an effective date of October 1. When HUD updates FMRs, the PHA must revise its payment standard amounts and schedule no later than three months following the effective date of the published FMR if revisions are necessary to stay within the basic range. 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(h)]. PHAs must include a copy of the payment standard schedule in the voucher briefing materials, and HUD strongly encourages PHAs to post their payment standard schedule on their website.

### OHCD Policy

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

**Funding Availability:** OHCD will review projected HAP expenditures to determine the impact projected subsidy adjustments will have on funding available for the program and the number of families served. OHCD 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

## CHAPTER 16

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, OHCD will consider increasing the payment standard. In evaluating rent burdens, OHCD will not include families renting a larger unit than their family unit size.

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

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

**Unit Availability:** OHCD may 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:** OHCD may 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.

Effective dates of changes to payment standard amounts will be determined at the time of update. The PHA will always ensure the payment standards will be within the basic range. The PHA will post its payment standards schedule on the PHA's website and include a copy in the voucher briefing materials.

### 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 PHA must maintain an area-wide utility allowance schedule.**

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 rate.

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.

## CHAPTER 16

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; **applicable surcharges** 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.

**The PHA must state its policy for utility allowance payments in the administrative plan and apply it consistently to all households. The PHA must provide a copy of the utility allowance schedule to HUD.**

Shared utilities are not permitted. The owner of an assisted unit may not bill HCV participants for master-metered utilities unless the building is equipped with sub-meters that allow the owner to invoice the tenants of a building or complex based on actual consumption and utility rates.

### **Energy Efficient Utility Allowance [24 CFR 982.517(b)(2)(ii)]**

In addition to the area-wide utility allowance standard, the PHA may maintain an area-wide, energy efficient utility allowance schedule to be used for units that are in a building that meets Leadership in Energy and Environmental Design (LEED) or Energy Star standards.

#### OHCD Policy

**OHCD will not maintain an energy efficient utility allowance schedule.**

### **Air Conditioning [24 CFR 982.517(b)(1)(iii)]**

**The PHA must provide a utility allowance for air-conditioning when the majority of housing units in the market **provide** central air-conditioning or are wired for tenant-installed air conditioners.**

#### OHCD Policy

OHCD 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 OHCD will apply this allowance to a family's rent and subsidy calculations.

The air-conditioning allowance shall be applied when the following three criteria are met:

- 1) The participant is responsible for payment of the air conditioning utility as indicated within the HUD 52641 and HUD;
- 2) Central air conditioning or a portable air conditioner must be present in the unit; and
- 3) The windows are designed not to open (e.g., high rise) or Reasonable Accommodation has been approved.

## CHAPTER 16

### **Reasonable Accommodation and Individual Relief**

Upon request from a family that includes a person with disabilities, the PHA must approve a utility allowance which is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation to make the program accessible and usable by the family member with a disability [24 CFR 982.517(e)]. See Chapter 2 for policies regarding the request and approval of reasonable accommodations.

Further, the PHA may grant requests for relief from charges in excess of the utility allowance on reasonable grounds, such as special needs of the elderly, ill, or residents with disabilities, or special factors not within control of the resident, as the PHA deems appropriate. The family must request the higher allowance and provide the PHA with an explanation of the need for the individual relief and information about the amount of additional allowance required [see HCV GB, p. 18-8].

PHAs should develop criteria for granting individual relief and to notify residents about the availability of individual relief, and also to notify participants about the availability of individual relief programs (sometimes referred to as “Medical Baseline discounts”) offered by the local utility company. Policies for granting exception utility allowances can be found in Section 6-III.D. of this plan.

### **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 [24 CFR 982.517(c)(1)].

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

## CHAPTER 16

### PART III: INFORMAL REVIEWS AND HEARINGS

#### 16-III.A. OVERVIEW

Both applicants and participants have the right to 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 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 but has not yet been admitted to the program. Informal Reviews are intended to provide a “minimum hearing requirement” [24 CFR 982.554]. *Federal Register* 60, no. 127 (3 July 1995): 34690].

##### **Decisions Subject to Informal Review [24 CFR 982.554(a) and (c)]**

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 PHA 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 PHA;
- General policy issues or class grievances;
- A determination of the family unit size under the PHA subsidy standards;
- A PHA determination not to approve an extension of a voucher term;
- A PHA determination not to grant approval of the tenancy;
- A PHA determination that the unit is not in compliance with the **housing quality standards**;
- A PHA determination that the unit **does not meet space standards**.

## CHAPTER 16

### OHCD Policy

OHCD will only offer an Informal Review to applicants for whom assistance is being denied. Denial of assistance includes denying listing on the OHCD waiting list; denying or withdrawing a voucher; refusing to enter into a HAP contract or approve a lease; refusing to process or provide assistance under portability procedures.

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

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, and how to obtain it.

### **Scheduling an Informal Review**

#### OHCD Policy

A request for an Informal Review must be made in writing and delivered to OHCD either in person, e-mail or by first class mail, by the close of the business, no later than 10-business days from the date of the Denial Notice.

OHCD must schedule and send written notice of the Informal Review within 10 business days of the family's request.

If the informal review will be conducted remotely, at the time the OHCD notifies the family of the informal review, the family will be informed:

- Regarding the processes to conduct a remote informal review;
- That, if needed, the PHA will provide technical assistance prior to and during the informal review; and
- That if the family or any individual witness has any technological, resource, or accessibility barriers preventing them from fully accessing the remote informal review, the family may inform OHCD and OHCD will assist the family in either resolving the issues or allow the family to participate in an in-person informal review, as appropriate

### **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 with an opportunity to present written or oral objections to the decision of the PHA.

### **Remote Informal Reviews [Notice PIH 2020-32]**

There is no requirement that informal reviews be conducted in-person and, as such, HUD allows PHAs to conduct all or a portion of their informal review remotely either over the phone, via video conferencing, or through other virtual platforms. If the PHA chooses to conduct remote informal reviews, applicants may still request an in-person informal review, as applicable.

## CHAPTER 16

### OHCD Policy

OHCD has the sole discretion to decide that informal reviews be conducted remotely.

In addition, OHCD will conduct an informal review remotely upon request of the applicant as a reasonable accommodation for a person with a disability, if an applicant does not have childcare or transportation that would enable them to attend the informal review, or if the applicant believes an in-person informal review would create an undue health risk. OHCD will consider other reasonable requests for a remote informal review on a case-by-case basis.

### **Ensuring Accessibility for Persons with Disabilities and LEP Individuals**

As with in-person informal reviews, the platform for conducting remote informal reviews must be accessible to persons with disabilities and the informal review must be conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audiodescription, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual. PHAs may never request or require that individuals with disabilities provide their own auxiliary aids or services, including for remote informal hearings.

PHAs are required to make reasonable accommodations in policies, practices, and procedures to ensure persons with disabilities have a full and equal opportunity to participate in and benefit from all aspects of the informal review process. See Chapter 2 for a more detailed discussion of reasonable accommodation requirements.

If no method of conducting a remote informal review is available that appropriately accommodates an individual's disability, the PHA may not hold against the individual their inability to participate in the remote informal review, and the PHA should consider whether postponing the remote informal review to a later date is appropriate or whether there is a suitable alternative.

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation, will depend on the specific circumstances and requirements.

As with in-person reviews, Limited English Proficiency (LEP) requirements also apply to remote informal reviews, including the use of interpretation services and document translation. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements, all of which apply in the context of remote informal reviews.

### **Conducting Remote Informal Reviews**

The PHA must ensure that the lack of technology or inability to use technology for remote informal reviews does not pose a disadvantage to families that may not be apparent to the PHA. The PHA should determine through a survey or other means if these barriers exist



## CHAPTER 16

prior to conducting the remote informal review and, if the family does not have the proper technology to fully participate, either postpone the informal review or provide an alternative means of access.

As with in-person informal reviews, the PHA must provide all materials presented, whether paper or electronic, to the family prior to the remote informal review. The family must also be provided with an accessible means by which to transmit their own evidence.

The PHA must ensure that the applicant has the right to hear and be heard. All PHA policies and process for remote informal reviews must be conducted in accordance with due process requirements and be in compliance with HUD regulations at 24 CFR 982.554 and guidance specified in Notice PIH 2020-32.

The PHA must ensure that the person has the right to hear and be heard.

### OHCD Policy

The PHA will conduct remote informal reviews via a video conferencing platform, when available. If, after attempting to resolve any barriers, applicants are unable to adequately access the video conferencing platform at any point, or upon applicant request, the informal review will be conducted by telephone conferencing call-in. If the family is unable to adequately access the telephone conference call-in at any point, the remote informal review will be postponed, and an in-person alternative will be provided promptly within a reasonable time.

At least five business days prior to **scheduled** remote review, the PHA will provide the family with login information and/or conferencing call-in information and an electronic and/or physical copy of all materials being presented via first class mail and/or email. The notice will advise the family of technological requirements for the hearing and request the family notify the PHA of any known barriers. The PHA will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person hearing.

If the informal review is to be conducted remotely, the PHA will require the family to provide any documents directly relevant to the informal review at least 24 hours before the scheduled review through the mail, via email, or text. The PHA will scan and email copies of these documents to the PHA representative the same day. Documents will be shared electronically whenever possible.

The PHA will follow up the email with a phone call and/or email to the applicant at least one business day prior to the remote informal review to ensure that the applicant received all information and is comfortable accessing the video conferencing or call-in platform.

The PHA will ensure that all electronic information stored or transmitted with respect to the informal review is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP.



## CHAPTER 16

### **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.

#### OHCD Policy

In rendering a decision, OHCD 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. OHCD 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, OHCD will uphold the decision to deny assistance.
- If the facts prove the grounds for denial, and the denial is discretionary, OHCD will consider the recommendation of the person conducting the Informal Review in making the final decision whether to deny assistance.

OHCD 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 their 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 participate in 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. A participant family is defined as an individual or family that has been admitted to the PHA's HCV program and is currently assisted in the program. The purpose of an 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 an or all of the following:**

## CHAPTER 16

- 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

### OHCD Policy

In decisions that are subject to an Informal Hearing, and pertain to a determination to terminate assistance, OHCD is not permitted to stop HAP (unless a Breach of the HAP Contract by the landlord has occurred) and/or UAP under an outstanding HAP contract until the time allowed for the family to request an Informal Hearing has elapsed, and any requested hearing has been completed. If a request for an Informal Hearing has been received by OHCD within the OHCD required timeframe, HAP and UAP will continue to be paid under the outstanding HAP contract until a Notice of Final Decision (NFD) is issued.

OHCD will not allow family initiated moves during the Informal Hearing process. At the discretion of OHCD, a family may be granted the ability to move during the Informal Hearing process if OHCD deems the move to be involuntary. An involuntary move includes, but is not limited to, the following circumstances:

1. Landlord caused abatements where the move process is triggered under Chapter 8;
2. VAWA is triggered under Chapter 16;
3. The landlord opts out of the HAP Contract at the Annual Re-Examination;
4. The foreclosure process is completed, and the move process is triggered under Chapter 13; or
5. The landlord has breached the HAP contract and has been removed from the program by HCV Compliance staff.

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

Circumstances for which the PHA must give a participant family an opportunity for an Informal Hearing are as follows:

- A determination of the participant 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 PHA utility allowance schedule;
- A determination of the participant family unit size under the PHA'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 PHA's subsidy standards, or the PHA determination to deny the family's request for exception from the standards

## CHAPTER 16

- 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 PHA policy and HUD rules

### OHCD Policy

The OHCD will also give participant families an opportunity for an informal hearing for:

Any denial of a request for a reasonable accommodation for a person with disabilities (see Chapter 2).

Families participating in the Family Self-Sufficiency (FSS) program, when the OHCD withholds the coordination of supportive services or terminates a family's participation in the FSS program because OHCD determines the FSS family has failed to comply without good cause with the requirements of the FSS Contract of Participation in accordance with the FSS Action Plan [24 CFR 984.303(i)].

Circumstances for which an Informal Hearing is not required are as follows:

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

### **Remote Informal Hearings [Notice PIH 2020-32]**

The PHA's essential responsibility is to ensure Informal Hearings meet the requirements of due process and comply with HUD regulations. Therefore, all PHA policies and processes for remote Informal Hearings will be conducted in accordance with due process requirements and will be in compliance with HUD regulations.

### OHCD Policy

OHCD has the sole discretion to require that Informal Hearings be conducted remotely **in case of local, state or national physical distancing orders, and in case of inclement weather or natural disaster**. In addition, OHCD will conduct an Informal Hearing remotely upon request as a reasonable accommodation for a person with a disability, if a participant does not have **childcare** or transportation that would enable them to attend the Informal Hearing, or if the participant believes an in-person hearing would create an

## CHAPTER 16

undue health risk. OHCD will consider other reasonable requests for a remote Informal Hearing on a case-by-case basis.

### **Ensuring Accessibility for Persons with Disabilities and LEP Individuals**

As with in-person informal hearings, the platform for conducting remote informal hearings must be accessible to persons with disabilities and the informal hearings must be conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual. PHAs may never request or require that individuals with disabilities provide their own auxiliary aids or services, including for remote informal hearings.

PHAs are required to make reasonable accommodations in policies, practices, and procedures to ensure persons with disabilities have a full and equal opportunity to participate in and benefit from all aspects of the informal hearing process. See Chapter 2 for a more detailed discussion of reasonable accommodation requirements.

If no method of conducting a remote informal hearings is available that appropriately accommodates an individual's disability, the PHA may not hold against the individual their inability to participate in the remote informal hearing, and the PHA should consider whether postponing the remote hearing to a later date is appropriate or whether there is a suitable alternative.

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation will depend on the specific circumstances and requirements.

As with in-person reviews, Limited English Proficiency (LEP) requirements also apply to remote informal hearings, including the use of interpretation services and document translation. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements, all of which apply in the context of remote informal hearings.

### **Conducting Informal Hearings Remotely**

The PHA must ensure that the lack of technology or inability to use technology for remote informal hearings does not pose a disadvantage to families that may not be apparent to the PHA. The PHA should determine if these barriers exist prior to conducting the remote informal hearing and, if the family does not have the proper technology to fully participate, either postpone the informal hearing or provide an alternative means of access.

As with in-person informal hearings, the PHA must provide all materials presented, whether paper or electronic, to the family prior to the remote informal hearing. The family must also be provided with an accessible means by **which** to transmit their own evidence.

## CHAPTER 16

The PHA's essential responsibility is to ensure informal hearings meet the requirements of due process and comply with HUD regulations. Therefore, all PHA policies and processes for remote informal hearings will be conducted in accordance with due process requirements and will be in compliance with HUD regulations at 24 CFR 982.555 and the guidance for conducting remote hearings specified in Notice PIH 2020-32.

### OHCD Policy

The OHCD will conduct remote informal hearings via a video conferencing platform, when available. If, after attempting to resolve any barriers, participants are unable to adequately access the video conferencing platform at any point, or upon request, the informal hearing will be conducted by telephone conferencing call-in. If the family is unable to adequately access the telephone conference call-in at any point, the remote informal hearing will be postponed, and an in-person alternative will be provided promptly within a reasonable time.

At least five business days prior to the **scheduled** remote hearing, OHCD will provide the family with login information and/or conferencing call-in information and an electronic copy of all materials being presented via first class mail and/or email. The notice will advise the family of technological requirements for the hearing and request the family notify OHCD of any known barriers. OHCD will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person hearing.

The OHCD will ensure that all electronic information stored or transmitted with respect to the informal hearing is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP.

### **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.

## CHAPTER 16

### OHCD Policy

In cases where OHCD makes a decision for which an Informal Hearing must be offered, the written notice to the family will include all of the following:

1. The proposed action or decision of OHCD.
2. A brief statement of the reasons for the decision, including the regulatory reference.
3. The date the proposed action will take place.
4. A statement that if the family's right to an explanation of the basis for the decision.
5. A statement that if the family does not agree with the decision the family may request an Informal Hearing of the decision.
6. A deadline for the family to request an Informal Hearing.
7. To whom the hearing request should be addressed.
8. A copy of OHCD hearing procedures.
9. That the family may request a remote Informal Hearing.

If the PHA requires that the hearing be conducted remotely, at the time the notice is sent to the family informing them of the right to request an Informal Hearing, the family will be notified that the Informal Hearing will be conducted remotely. The family will be informed of the processes involved in a remote Informal Hearing and that the PHA will provide technical assistance, if needed, before the 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.

### OHCD Policy

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

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

If the OHCD hearing will be conducted remotely, at the time the notice is sent to the family, the family will be notified:

Regarding the processes involved in a remote informal hearing;

That OHCD will provide technical assistance prior to and during the informal hearing, if needed; and

That if the family or any individual witness has any technological, resource, or accessibility barriers, the family may inform OHCD and OHCD will assist the family in either resolving the issue or allow the family to participate in an in-person hearing, as appropriate.

## CHAPTER 16

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, OHCD may request documentation of the “good cause” prior to rescheduling the hearing.

If the family does not appear within 20 minutes of the scheduled time and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact OHCD within 24 hours of the scheduled hearing date, excluding weekends and holidays. OHCD will reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities. If the family cannot show good cause for the failure to appear, or a rescheduling is not needed as a reasonable accommodation, the OHCD’s decision will stand.

### ***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.

For the purpose of Informal Hearings, *documents* include records and regulations.

#### OHCD Policy

The family and OHCD must provide to the other party copies of any proposed exhibits related to the hearing no later than one week prior to the scheduled hearing date. If the participant wishes any additional documents in OHCD possession, they must submit a FOIA request through the Freedom of Information Act (FOIA) Coordinator. **no later than 12:00 p.m. on the business day prior to the scheduled hearing date.**

If the hearing will be conducted remotely, OHCD will compile a hearing packet, consisting of all documents OHCD intends to produce at the Informal Hearing. OHCD will mail copies of the hearing packet to the family, the family’s representatives, if any, and the Hearing Officer at least 10 business days before the scheduled remote Informal Hearing. The original hearing packet will be in the possession of the OHCD representative and retained by OHCD.

Documents will be shared electronically whenever possible.

PHA hearing procedures may provide that the PHA must be given the opportunity to examine at the PHA office 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.

## CHAPTER 16

Documents will be shared electronically whenever possible.

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.

### OHCD Policy

For in-person hearings, OHCD will not require pre-hearing discovery by OHCD of family documents directly relevant to the hearing.

If the Informal Hearing is to be conducted remotely, OHCD will require the family to provide any documents directly relevant to the Informal Hearing at least 24 hours before the scheduled hearing. OHCD will scan and email copies of these documents to the Hearing Officer and the OHCD representative on the same day.

Documents will be shared electronically whenever possible.

### ***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.

### OHCD Policy

OHCD reserves the right to be represented by legal counsel.

### ***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.

### OHCD Policy

OHCD will assign one County staff to adjudicate OHCD Informal Hearings for closures and another for all other actions taken by OHCD.

### ***Attendance at an Informal Hearing***

### OHCD Policy

Hearings may be attended by the OHCD's assigned County Staff, the Petitioner, and the OHCD representative and may include the following additional persons:

- An OHCD representative(s) (including legal counsel) and any witnesses for the OHCD
- The participant and any witnesses for the participant
- The participant's counsel or other representative
- Any other person approved by the OHCD as a reasonable accommodation for a person with a disability



## CHAPTER 16

### ***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)].

#### OHCD 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. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

#### OHCD Policy

Any evidence to be considered by the Hearing Officer must be presented at the time of the hearing or 24 hours before the hearing if conducted remotely. There are four categories of evidence.

1. **Oral evidence:** the testimony of witnesses.
2. **Documentary evidence:** a writing, which is relevant to the case, for example, a letter written to OHCD. Writings include all forms of recorded communication or representation, including letters, words, pictures, and sounds, videotapes, symbols, or combinations thereof.
3. **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.
4. **Real evidence:** A tangible item relating directly to the case.

*Hearsay Evidence:* 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 Officers decision. [24 CFR 982.555(e)(6)]

If either the OHCD 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.

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

#### OHCD Policy

The Hearing Officer may ask the family or OHCD for additional information and/or might adjourn the hearing in order to reconvene later before reaching a decision. If the

## CHAPTER 16

family misses an appointment or deadline ordered by the Hearing Officer, the action of the OHCD will take effect and another hearing will not be granted.

### ***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.

#### OHCD Policy

In rendering a decision, the Hearing Officer will address the following matters:

- **OHCD Notice to the Family:** The Hearing Officer will determine if the reasons for OHCD's decision are factually stated in the Notice.
- **Discovery:** The Hearing Officer will determine if OHCD and the family were given the opportunity to examine any relevant documents in accordance with OHCD policy.
- **OHCD Evidence to Support the OHCD 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 OHCD's conclusion.
- **Validity of Grounds for Termination of Assistance (when applicable):** The Hearing Officer will conclude if the termination of assistance is for one of the grounds specified in the HUD regulations and OHCD policy. If the grounds for termination are not specified in the regulations or in compliance with OHCD policies, then the decision of OHCD will be overturned.

The Hearing Officer will issue a written "Notice of Hearing Decision" to the family and OHCD 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 OHCD 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 their 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

## CHAPTER 16

is offered in opposition to it; that is, evidence which as a whole show 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 recommendation of whether these facts uphold OHCD's decision.

**Order:** The hearing report will include a statement of whether the OHCD's decision is upheld or overturned. If it is overturned, the Hearing Officer will instruct the OHCD 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 OHCD to restore the participant's program status.

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

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

#### OHCD Policy

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

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

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

#### OHCD Policy

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

**In such a case, the OHCD Director will either e-mail electronically or mail by first class mail the "Notice of Hearing Decision" to all parties on the same day. A copy of the "Notice of Hearing Decision" will be maintained in OHCD's file.**

## CHAPTER 16

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

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

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

A decision against a family member, issued in accordance with the USCIS appeal process or the PHA 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 PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the Informal Hearing process.

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

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

#### **OHCD Policy**

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

## CHAPTER 16

The family must provide OHCD 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 PHA, of its decision. When the USCIS notifies the PHA of the decision, the PHA must notify the family of its right to request an Informal Hearing.

### OHCD Policy

OHCD 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 PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA 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 PHA 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.

### OHCD Policy

The family and OHCD must provide to the other party copies of any documents related to the hearing no later than **12:00 p.m. on the business day** prior to the hearing.

OHCD must be given an opportunity to examine before the hearing any family documents that are directly relevant to the hearing. Whenever a participant requests an Informal Hearing, the hearing appointment notice will automatically include a statement to the participant requesting a copy of all documents that the participant intends to present or utilize at the hearing. The participant or the participant's legal counsel must

## CHAPTER 16

make the documents available no later than 5 business days prior to the scheduled hearing date.

If the family is being represented by legal counsel, OHCD shall be advised of the name and contact information of said legal counsel no later than 5 business days prior to the hearing. Upon receipt of said contact information all communication related to the hearing shall be between OHCD and the family's legal counsel.

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

#### OHCD Policy

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

### ***Hearing Decision***

The PHA 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 an Informal Hearing. The decision must state the basis for the decision.

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

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA 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 PHA must retain for a minimum of 5 years the following documents that may have been submitted to the PHA by the family, or provided to the PHA as part of the **USCIS** appeal or the PHA Informal Hearing process:

## CHAPTER 16

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original **USCIS** hearing
- 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

## CHAPTER 16



## CHAPTER 16

### 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]. If the family breaches an agreement with the PHA to pay amounts owed to a PHA, or amounts paid to an owner by a PHA, the PHA, at its discretion, may offer a family the opportunity to enter an agreement to pay amounts owed to a PHA or amounts paid to an owner by a PHA. The PHA may prescribe the terms of the agreement [24 CFR 982.552(c)(1)(vii)]. This part describes the PHA's policies for recovery of monies owed to the PHA by families or owners.

##### OHCD Policy

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

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

When an owner or participant refuses to repay monies owed to OHCD, OHCD will refer the debt to the County Attorney for collections.

#### 16-IV.B. REPAYMET POLICY

##### **Owner Debts to the PHA**

Owners are in the rental housing business and should therefore be able to repay a debt more quickly than participant families. Based on this reasoning, the model plan states that owners are required to repay the full amount of any debt within 30 days.

##### OHCD Policy

OHCD is required to determine the amount of overpaid subsidy owed for all years that OHCD has documentation of overpayment. All overpaid rental subsidy must be repaid to OHCD.

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

If the owner fails to repay the debt within the required period and is entitled to future HAP payments, OHCD 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 OHCD may, in its sole discretion, offer to enter into a repayment agreement on terms prescribed by OHCD. If no

## CHAPTER 16

repayment agreement is offered and/or negotiated, continued collection efforts will be made including the referral of the debt for collection.

If the owner refuses to repay the debt, refuses to enter into a repayment agreement, if offered, or breaches a repayment agreement, OHCD may exercise its right to ban the owner from future participation in the program and refer the debt for collection.

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

- Collection agencies

- Small claims court

- Civil lawsuit

- State income tax set-off program

### **Family Debts to the PHA**

Families are required to reimburse the PHA if they were charged less rent than required because the family either underreported or failed to report income. PHAs are required to determine retroactive rent amounts as far back as the PHA has documentation of family unreported income [Notice PIH 2018-18].

#### OHCD Policy

OHCD is required to determine the amount of overpaid subsidy owed for all years that OHCD has documentation of family unreported/under-reported income. All overpaid rental and/or utility subsidy must be repaid to OHCD.

Any amount owed to OHCD by a HCV family must be repaid by the family. If the amount of overpayment is greater than \$3,600 the family must pay down the debt to \$3,600 in order to enter into a repayment agreement and continue participation in the Housing Choice Voucher Program. If the family is unable to repay the debt within 30 days, the PHA will offer to enter into a repayment agreement in accordance with the policies below.

### **Criminal Prosecution for Program Fraud/Abuse**

Local, state or federal criminal prosecution should be considered by the PHA in flagrant cases, if the abuse was committed over several years, the fraud and/or underpayments are substantial and the PHA documents that a family and/or owner willfully intended to misrepresent the truth [HUD OIG Integrity Bulletin, Summer 2015].

#### OHCD Policy

OHCD will consult with the HUD Field Office and regional OIG Special Agent in Charge (SAC) to determine whether it will refer the matter to the state or local district attorney to pursue criminal fraud charges.

## CHAPTER 16

### **Refusal to Enter into an Agreement**

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, OHCD must terminate assistance [Notice PIH 2018-18]  
OHCD Policy

When a family refuses to repay monies owed to OHCD, in addition to termination of program assistance, OHCD will utilize other available collection alternatives including, but not limited to the following:

- ✓ Collection agencies
- ✓ Small claims court
- ✓ Civil lawsuit
- ✓ State income tax set-off program

### **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.

#### OHCD Policy

OHCD staff will notify the participant of the amount and terms of the repayment agreement. OHCD staff will notify the participant of the ramifications of failure to comply with the terms of the repayment agreement. The participant is required to sign the Repayment Agreement within thirty days of notification to legally execute the Repayment Agreement and avoid program termination. If the participant does not sign the Repayment Agreement, OHCD will proceed with termination. If a review is requested and the Repayment Agreement is not signed, OHCD will proceed with termination and coordinate the review.

The participant will continue to receive rental assistance, as allowable under HUD regulations, as long as they adhere to the terms and conditions of the executed Repayment Agreement.

### **General Repayment Agreement Guidelines for Families**

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

##### OHCD Policy

Before entering a repayment agreement with a family, OHCD will generally require a down payment based upon **10 percent of the total amount owed**. If the family can provide satisfactory evidence to OHCD that a downpayment **of 10 percent** would impose an undue hardship, OHCD may require a lesser amount **or waive the requirement**.

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

Notice PIH 2018-18 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 percent or more of its monthly adjusted income in rent. Moreover, Notice PIH 2018-18 acknowledges that PHA's have the discretion to establish "thresholds and policies" for repayment agreements with families [24 CFR 982.552(c)(1)(vii)].

## CHAPTER 16

### OHCD Policy

OHCD has established the following thresholds for repayment of debts:

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

The length of the repayment agreement cannot exceed thirty-six (36) months unless the family provides evidence of a hardship.

A hardship is defined as:

- Family income has decreased due to a loss of income. Tenant must provide verification of the decrease of income.
- Death has occurred in the family. Family must describe how the death has created a financial hardship such as funeral-related expenses for a member of the household or the loss of the family member's income. The tenant must provide verification of the death and relationship.

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

- The amount owed by the family to OHCD;
- The reason for the debt, including whether the debt was the result of family action/inaction or circumstances beyond the family's control;
- The family's current and potential income and expenses;
- The family's current family share, as calculated under 24 CFR 982.515;
- The family's history of meeting its financial responsibilities. The minimum monthly payment amount is \$25.
- For small debts (less than \$50), the Repayment Agreement will be executed so that participants pay the entire amount in one lump sum. For example, if a participant owes \$45, a lump sum Repayment Agreement must be executed.

If a household is in a Repayment Agreement and requests a hardship extension, OHCD may reduce the number of payments and/or add payment months to the Agreement up to 60 months.

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

All repayment agreements must be in writing, dated and signed by both the family and the PHA [Notice PIH 2018-18].

## CHAPTER 16

### OHCD Policy

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

### ***Due Dates***

#### OHCD Policy

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

If the participant sends more than the monthly payment due, OHCD will count this money towards the principal.

### ***Late or Missed Payments***

#### OHCD Policy

If a full payment is not received by the end of the business day on the date due, OHCD will send the family a delinquency notice giving the family 10 business days to bring the account current. If the payment is not received by the due date of the first delinquency notice, it will be considered a breach of the agreement and OHCD will terminate assistance in accordance with the policies in Chapter 12.

If a family becomes delinquent more than 3 times during the repayment period, the repayment agreement will be considered in default, and OHCD will terminate assistance in accordance with the policies in Chapter 12 unless the family pays the entire debt in full within 30 calendar days.

Inactive Participant [No longer receiving HCV benefits]: If a participant is no longer receiving HCV benefits but was in a Repayment Agreement at the time of termination, OHCD will notify the family of the balance of the Repayment Agreement due. OHCD may offer the family the option to enter into a Promissory Note to pay the balance due in monthly installment. If the family chooses not to pay the balance in full or enter into a Promissory Note, OHCD will pursue judgement and collection.

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

#### OHCD Policy

OHCD generally will not enter into a repayment agreement with a family if there is already a repayment agreement in place with the family **or if OHCD in consultant with HUD and local law enforcement, determine to pursue criminal charges in connection with the conduct and amounts owed.**

If a new overpayment is established while in a repayment status, the new overpayment amount must be paid in full in order to continue receiving assistance. The original Repayment Agreement must continue to be paid.

Repayment agreements will be limited to two per family for the life of the voucher.

## CHAPTER 16

### **Repayment Agreements Terms**

All repayment agreements must be in writing, dated, signed by both the family and the PHA, include the total retroactive rent amount owed, any amount of lump sum payment made at time of execution, if applicable, and the monthly repayment amount. Notice PIH 2018-18 requires certain provisions, at a minimum be included in any repayment agreement involving amounts owed by a family because it underreported or failed to report income:

1. 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
2. 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
3. A statement that the terms of the repayment agreement may be renegotiated if the family's income decreases or increases
4. **A statement that late or missed payments constitute default of the repayment agreement and may result in termination of assistance**

### OHCD Policy

OHCD will limit renegotiation of the participant's Repayment Agreement to one renegotiation during the term of the Repayment Agreement. Repayment Agreements will be renegotiated in compliance with OHCD's Repayment Agreement policies as outlined in this Chapter.

Arrearages of less than 60 days must be paid in full before the Repayment Agreement will be renegotiated. A participant 61 days or more delinquent must immediately pay the greater of the total arrearage or 25% of the entire debt before OHCD staff person can renegotiate the Repayment Agreement.

## CHAPTER 16

### 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. **For small PHAs, HUD may conduct a remote confirmatory review.**

## CHAPTER 16

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].

### 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 rated under SEMAP indicators 1-7.

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



## CHAPTER 16

### **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 **housing quality standards**, 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.

## CHAPTER 16

### **Indicator 8: FMR limit and payment standards**

#### **Maximum Points: 5 points**

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

### **Indicator 9: Annual reexaminations**

#### **Maximum Points: 10**

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

### **Indicator 10: Correct tenant rent calculations**

#### **Maximum Points: 5**

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

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

#### **Maximum Points: 5**

- This indicator shows whether newly leased units pass 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 inspection prior to the effective date of the lease and HAP contract, according to data from PIC.

### **Indicator 12: Annual HQS inspections**

#### **Maximum Points: 10**

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

### **Indicator 13: Lease-up**

#### **Maximum Points: 20 points**

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

## CHAPTER 16

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

#### **Maximum Points: 10**

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

### **Success Rate of Voucher Holders**

#### **Maximum Points: 5**

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

### **Deconcentrating Bonus Indicator**

#### **Maximum Points: 5**

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

## CHAPTER 16

## CHAPTER 16

### 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; 24 CFR 908.101]

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.

The PHA must keep the last three years of the Form HUD-50058 and supporting documentation during the term of each assisted lease, and for a period of at least three years from the end of participation (EOP) date [24 CFR 908.101].

## CHAPTER 16

The PHA must maintain Enterprise Income Verification (EIV) system Income Reports in the tenant file for the duration of the tenancy but for a period not to exceed three years from the EOP date [Notice PIH 2018-18].

Notice PIH 2014-20 requires PHAs to keep records of all complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act or the equal access final rule.

### OHCD Policy

OHCD will keep for at least three years records of all complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act, the equal access final rule, or VAWA.

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

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

## 16-VI.C. RECORDS MANAGEMENT

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

### OHCD Policy

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

OHCD 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 and contracted agents will result in disciplinary action.

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

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-A, 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.

## CHAPTER 16

### **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*.

#### OHCD Policy

Prior to utilizing HUD's EIV system, OHCD will adopt and implement 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.

#### OHCD Policy

When documents are received containing a person's diagnosis or treatment for a disability, a replacement document will be prepared for the participant file removing this information. The original document will be destroyed.

## CHAPTER 16

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

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



## CHAPTER 16

### PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ELEVATED BLOOD LEAD LEVEL

#### 16-VII.A. OVERVIEW

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

#### 16-VII.B. REPORTING REQUIREMENT [24 CFR 35.1225(e); Notice PIH 2017-13]

The owner must report the name and address of a child identified as having an elevated blood lead level to the public health department within five business days of being so notified by any other medical health care professional. The owner must also notify the HUD field office and the HUD Office of Lead Hazard Control and Healthy Homes (OLHCHH) of the child's address within five business days. The PHA may collaborate with the owner on the notification process, such as by agreeing with the owner to provide the required notifications on the owner's behalf.

##### OHCD Policy

Upon notification by the owner, OHCD will provide the public health department written notice of the name and address of any child identified as having an elevated blood lead level within five business days.

Upon notification by the owner, OHCD will notify the HUD field office and the HUD Office of Lead Hazard Control and Healthy Homes (OLHCHH) of the child's address within five business days.

#### 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 elevated blood lead level.

If the PHA obtains names and addresses of elevated 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.

## CHAPTER 16

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.

### OHCD Policy

The public health department has stated they **do not** wish to receive a report of an updated list of the addresses of units receiving assistance under the HCV program, on a quarterly basis. Therefore, OHCD is not providing such a report.

## CHAPTER 16

### 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 982.354(e)(1) and 982.454]. If a PHA denies a family a portability move based on insufficient funding, the PHA is required to notify the local HUD office within 10 business days [24 CFR 982.354]. Insufficient funding may also impact the PHA's ability to issue vouchers to families on the waiting list. This part discusses the methodology the PHA will use to determine whether or not the PHA has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract. **The PHA must identify in the administrative plan, in the event of insufficient funding, considering any cost saving measures taken by the PHA, a description of the factors the PHA will consider when determining which HAP contracts to terminate first. See Chapter 12 for a description of these factors.**

#### 16-VIII.B. METHODOLOGY

##### OHCD Policy

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

## CHAPTER 16

## CHAPTER 16

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

#### 16-IX.A. OVERVIEW

The Violence Against Women Act (VAWA) provides special protections for victims of domestic violence, dating violence, sexual assault, stalking and human trafficking 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 apply in conjunction with VAWA.

- Although the VAWA 2022 statute does not specifically include human trafficking in the list of victims protected under VAWA, in 2022 HUD began including human trafficking as part of the list of victims protected under VAWA (as seen in Notices PIH 2022-06, PIH 2022-22, and PIH 2022-24). In the absence of a final rule implementing VAWA 2022 and to mirror HUD's recent usage, this policy includes human trafficking in addition to domestic violence, dating violence, sexual assault, and stalking anywhere such a list appears.

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 [24 CFR 5.2003, 42 USC 13925]

As used in VAWA:

- The term *affiliated individual* means, with respect to a person:
  - A spouse, parent, brother or sister, or child of that individual, or an individual to whom that individual stands in the position or place of a parent; or
  - Any other individual, tenant, or lawful occupant living in the household of the victim of domestic violence, dating violence, sexual assault, or stalking.

## CHAPTER 16

- 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 committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding, and in the case of victim services, includes the user or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who is:
  - The current or former spouse or intimate partner of the victim, or person similarly situated to a spouse or intimate partner of the victim
  - A person who is cohabitating or has cohabitated with the victim as a spouse or intimate partner
  - A person with whom the victim shares a child in common
  - A person who commits acts against an youth or adult victim who is protected from those acts under the domestic or family violence laws of the jurisdiction
- The term *economic abuse* means behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, and manipulation to:
  - Restrict a person's access to money, assets, credit, or financial information
  - Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage
  - Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or to whom one has a fiduciary duty
- The term *sexual assault* means:
  - Any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks the capacity to consent

## CHAPTER 16

- The term *stalking* means:
  - To engage in a course of conduct directed at a specific person that would cause a reasonable person to fear for **their** safety or the safety of others or suffer substantial emotional distress.
- The term *technological abuse* means an act or pattern of behavior that occurs within domestic violence, dating violence, sexual assault, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor another person, except as otherwise permitted by law, that occurs using any form of technology, including but not limited to:
  - Internet-enabled devices
  - Online spaces and platforms
  - Computers
  - Mobile devices
  - Cameras and imaging programs
  - Apps
  - Location tracking devices
  - Communication technologies
  - Any other emergency technologies

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

#### Notification to Public

The PHA adopts the following policy to help ensure that all actual and potential beneficiaries of its HCV program are aware of their rights under VAWA including their right to confidentiality. There are two sample notices, and three HUD-required forms used in connection with VAWA. These are found as Exhibits 16-1 through 16-5 at the end of the chapter.

#### OHCD Policy

- OHCD will post the following information regarding VAWA in its offices and on its web site. It will also make the information readily available to anyone who requests it.
- A copy of **Form HUD-5380**, Notice of Occupancy Rights under VAWA, to housing choice voucher program applicants and participants who are or have been victims of domestic violence, dating violence, sexual assault, or stalking (Exhibit 16-1)
- A copy of Form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation (Exhibit 16-2)

## CHAPTER 16

- A copy of the PHA's emergency transfer plan (Exhibit 16-3)
- A copy of **Form HUD-5383**, HUD's Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking (Exhibit 16-4)
- The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY) (included in Exhibits 16-1 and 16-2)
- Contact information for local victim advocacy groups or service providers

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

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

#### OHCD Policy

OHCD will provide all applicants with information about VAWA at the time they request an application for housing assistance as part of the written briefing packet, and at the time the family is admitted to the program. OHCD will also include information about VAWA in all notices of denial of assistance (see section **3-III.H**)

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

The VAWA information provided to applicants and participants will consist of the notice in Exhibit 16-1 and 16.2.

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

#### OHCD Policy

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

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



## CHAPTER 16

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

### **Notification to Owners and Managers**

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

#### OHCD Policy

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

The VAWA information provided to owners will consist of the notice 16-5 and a copy of **F**orm HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, **or** Stalking and Alternative Documentation.

### **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, sexual assault, stalking, or criminal activity related to any of these forms of abuse may—but is not required to—request that the individual making the claim document the abuse. Any request for documentation must be in writing, and the individual must be allowed at least 14 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-5382 Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), which must include the name of the perpetrator only if the name of the perpetrator is safe to provide and is known to the victim. The form may be filled out and submitted on behalf of the victim.
- (2) A federal, state, tribal, territorial, or local police report or court record, or an administrative record.
- (3) Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; a mental health professional; or a medical professional. The person signing the documentation must attest under penalty of perjury to the person's belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

## CHAPTER 16

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].

### OHCD Policy

Any request for documentation of domestic violence, dating violence, sexual assault, stalking or **human trafficking** will be in writing, 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.

OHCD may, in its discretion, extend the deadline for 10 business days. In determining whether to extend the deadline, OHCD will consider factors that may contribute to the victim’s inability to provide documentation in a timely manner, including cognitive limitations, disabilities, limited English proficiency, absence from the unit, administrative delays, the danger of further violence, and the victim’s need to address health and safety issues. Any extension by OHCD will be in writing.

Once the victim provides documentation, OHCD will acknowledge receipt of the documentation within 10 business days.

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

The PHA must honor any court orders issued to protect the victim or to address the distribution of property.

### OHCD Policy

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

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

## CHAPTER 16

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

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

#### OHCD Policy

If OHCD accepts an individual's statement or other corroborating evidence as determined by the victim of domestic violence, dating violence, sexual assault, or stalking, OHCD 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, sexual assault, stalking or **human trafficking**, 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.

#### OHCD Policy

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

## CHAPTER 16