

Chapter 16

PROGRAM ADMINISTRATION

INTRODUCTION

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

Part I: Setting Utility Allowances. This part describes how utility allowances are established and revised. Also discussed are the requirements to establish surcharges for excess consumption of GBHA-furnished utilities.

Part II: Establishing Flat Rents and Public Housing, Maximum Rents. This part describes the requirements and policies related to establishing and updating flat rent amounts and public housing maximum rents.

Part III: Repayment of Family Debts. This part contains policies for recovery of monies that have been underpaid by families, and describes the circumstances under which the GBHA will offer repayment agreements to families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

Part IV: Public Housing Assessment System (PHAS). This part describes the PHAS indicators, how PHAs are scored under PHAS, and how those scores affect the GBHA.

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

Part VI: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level. This part describes the GBHA's reporting responsibilities related to children with environmental intervention blood lead levels that are living in public housing.

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

PART I: SETTING UTILITY ALLOWANCES [24 CFR 965 Subpart E]

16-1.A. OVERVIEW

The GBHA must establish allowances for GBHA-furnished utilities for all check metered utilities and for resident-purchased utilities purchased directly by residents from a utility supplier [24 CFR 965.502(a)].

The GBHA must also establish surcharges for excess consumption of GBHA –furnished utilities [24 CFR 965.506].

The GBHA must maintain a record that documents the basis on which utility allowances and scheduled surcharges are established and revised, and the record must be made available for inspection by residents [24 CFR 965.502(b)].

16-1.B. UTILITY ALLOWANCES

The GBHA must establish separate allowances for each utility and for each category of dwelling units the GBHA determines to be reasonably comparable as to factors affecting utility usage [24 CFR 965.503].

The objective of the GBHA establishing utility allowances for each dwelling unit category and unit size is to approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment [24 CFR 965.505].

Utilities include gas, electricity, fuel for heating, water, sewerage, and solid waste disposal for a dwelling unit. In addition, if the GBHA does not furnish a range and refrigerator, the family must be granted a utility allowance for the range and refrigerator they provide [24 CFR 965.505].

Costs for telephone, cable/satellite TV, and internet services are not considered utilities [PH Occ GB, p.138].

Utility allowances amounts will vary by the rates in effect, size, and type of unit, climatic location and siting of the unit, type of construction, energy efficiency of the dwelling unit, and other factors related to the physical condition of the unit. Utility allowance amounts will also vary by residential demographic characteristics affecting home energy usage [PH Occ GB, p.138].

Chapter 14 of the *PH Occupancy Guidebook* provides detailed guidance to the GBHA about establishing utility allowances.

Air Conditioning

“If a PHA installs air conditioning, it shall provide, to the maximum extent economically feasible, systems that give residents the option of choosing to use air conditioning in their units. The design of systems that offer each resident the option to choose air conditioning shall include retail meters or check meters, and residents shall pay for the energy used in its operation. For systems that offer residents the option to choose air conditioning but cannot be check metered, residents are to be surcharged in accordance with 965.506. If an air conditioning system does not provide for resident option, residents are not to be charged, and these systems should be avoided whenever possible.” [24 CFR 965.505(e)]

GBHA Policy

The GBHA makes installation of air conditioners available to all Mason Manor residents for a pre-determined standard fee. The installation of air conditioners is not made available to Scattered Site residents.

Utility Allowance Revisions [24 CFR 965.507]

The GBHA must review at least annually the basis on which utility allowances have been established and must revise the allowances if necessary in order to adhere to the standards for establishing utility allowances that are contained in 24 CFR 965.505.

The GBHA may revise its allowances for resident-purchased utilities between annual reviews if there is a rate change, and is required to do so if such change, by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rate on which the allowance was based.

Adjustments to resident payments as a result of such changes must be retroactive to the first day of the month following the month in which the last rate change taken into account became effective.

GBHA Policy

Between annual reviews of utility allowances, the GBHA will only revise its utility allowances due to a rate change, when required to do so by regulation.

16-I.C. SURCHARGES FOR GBHA-FURNISHED UTILITIES [24 CFR 965.506]

For dwelling units subject to allowances for GBHA-furnished utilities where check meters have been installed, the GBHA must establish surcharges for utility consumption in excess of the allowances. Surcharges may be computed on a straight per unit of purchase basis or for stated blocks of excess consumption, and must be based on the GBHA's average utility rate. The basis for calculating the surcharges must be described in the GBHA's schedule of allowances. Changes in the amount of surcharges based directly on changes in the GBHA's average utility rate are not subject to the advance notice requirements discussed under 16-I.D.

For dwelling units served by GBHA-furnished utilities where check meters have not been installed, the GBHA must establish schedules of surcharges indicating additional dollar amounts residents will be required to pay by reason of estimated utility consumption attributable to resident-owned major appliances or to optional functions of GBHA-furnished equipment. The surcharge schedule must state the resident-owned equipment (or functions of GBHA-furnished equipment) for which surcharges will be made and the amounts of such charges. Surcharges must be based on the cost to the GBHA of the utility consumption estimated to be attributable to reasonable usage of such equipment.

GBHA Policy

The GBHA provides the following utilities for each project:

Mason Manor- electric, gas, water, sewer, trash collection
Scattered Sites- water, sewer, trash collection

16-I.D. NOTICE REQUIREMENTS [24 CFR 965.502]

The GBHA must give notice to all residents of proposed allowances and schedule surcharges, and revisions thereof. The notice must be given in the manner provided in the lease and must:

- Be provided at least 60 days before the proposed effective date of the allowances, scheduled surcharges, or revisions.
- Describe the basis for determination of the allowances, schedule surcharges, or revisions, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances and schedule of surcharges.
- Notify residents of the place where the GBHA's documentation on which allowances and surcharges are based is available for inspection.
- Provide all residents an opportunity to submit written comments during a period not less than 30 days before the proposed effective date of the allowances, schedule surcharges, or revisions.

16-I.E. REASONABLE ACCOMMODATION [24 CFR 965.508]

On request from a family that includes a disabled or elderly person, the GBHA must approve a utility allowance that is higher than that applicable amount for the dwelling unit if a higher utility allowance is needed as a reasonable accommodation to make the program accessible to an usable by the family [PH Occ GB, p.172].

Likewise, residents with disabilities may not be charged for the use of certain resident-supplied appliances if there is a verified need for special equipment because of the disability [PH Occ GB, p.172].

See Chapter 2 for policies regarding the request and approval of reasonable accommodations.

PART II: ESTABLISHING FLAT RENTS AND PUBLIC HOUSING MAXIMUM RENTS

16-II.A. OVERVIEW

Flat rents are designed to encourage self-sufficiency and to avoid creating incentives for continued residency by families who are attempting to become economically self-sufficient.

Public housing maximum rents are needed to prorate assistance for a mixed family. A mixed family is one whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status [24 CFR 5.504].

This part discusses how the GBHA establishes and updates flat rents and public housing maximum rents. Policies related to the use of flat rents, family choice of rent, flat rent hardships, and public housing maximum rents are discussed in Chapter 6.

16-II.B. FLAT RENTS [24 CFR 960.253(b) and Notice PIH 2014-12]

Establishing Flat Rents

Flat rents for public housing units are based on the market rent charged for comparable units in the private unassisted rental market. The flat rent should be equal to the estimated rent for which the GBHA could promptly lease the public housing unit after preparation for occupancy.

The GBHA must use HUD's rent reasonableness methodology to determine flat rents. In determining flat rents, the GBHA must consider the following:

- Location
- Quality
- Unit size
- Unit type
- Age of property
- Amenities at the property and in immediate neighborhood
- Housing services provided
- Maintenance provided by the GBHA
- Utilities provided by the GBHA

Notice PIH 2014-12 specifies that after the GBHA has determined flat rent amounts using HUD's rent reasonableness methodology, the GBHA must then compare this amount to 80 percent of the FMR and must set the flat rent at no less than 80 percent of the FMR, subject to utility adjustments.

The GBHA is now required to apply a utility allowance to flat rents. Flat rents set at 80 percent of the FMR must be reduced by the amount of the unity's utility allowance, if any.

Review of Flat Rents

The GBHA must ensure that flat rents continue to mirror market rent values [24 CFR 960.253(b) and Notice pIH 2014-12]. No later than 90 days after HUD publishes new annual FMRs, the GBHA must revise flat rents as necessary based on the rent reasonableness analysis and changes to the FMR. The GBHA must offer changes to the flat rent to all new admissions and to existing families at the next annual rent option.

If the FMR falls from year to year, the GBHA may, but is not required to, lower the flat rent to 80 percent of the current FMR.

GBHA Policy

If the FMR is lower than the previous year, the GBHA will reduce flat rents to 80 percent of the current FMR.

If the GBHA determines that reasonable rents would be less than 60 percent of the applicable FMR, the GBHA may choose to complete a rent reasonableness study once every three years, rather than annually [Notice PIH 2014-12].

GBHA Policy

If the GBHA determines that reasonable rents would be less than 60 percent of the applicable FMR, the GBHA will conduct a rent reasonableness study once every three years.

Posting of Flat Rents

GBHA Policy

The GBHA will publicly post the schedule of flat rents in a conspicuous manner in the applicable GBHA or project office.

Documentation of Flat Rents [24 CFR 960.253(b)(5)]

The GBHA must maintain records that document the method used to determine flat rents that show how flat rents were determined by the GBHA in accordance with this method.

16-II.C. PUBLIC HOUSING MAXIMUM RENTS

Establishing Public Housing Maximum Rents

The GBHA is prohibited from making financial assistance available to persons who are not citizens or nationals of the United States, and to those who do not have eligible immigration status [24 CFR 5.500]. Therefore, in order to assist mixed families, the GBHA must prorate assistance. Public housing maximum rents are needed in order to calculate the tenant rent for a mixed family.

The public housing maximum rent is based on value of the 95th percentile of the total tenant payment (TTP) for each tenant within the GBHA. The GBHA may calculate a maximum rent on either a GBHA- or project wide basis. A separate maximum rent can be provided for each separate project or projects may be combined into logical groups, if appropriate. HUD recommends that a single project basis be avoided for a project unless at least 50 dwelling units are involved.

The GBHA may use the “direct comparison” or the “unit distribution” method for establishing the public housing maximum rents for each unit size. Appendix H, of Guidebook 7465.G, Restrictions on Assistance to Noncitizens provides detailed guidance on how to establish public housing maximum rents using the methodologies identified above.

Review of Public Housing Maximum Rents

GBHA Policy

The GBHA will recalculate the public housing maximum rents on an annual basis.

Posting of Public Housing Maximum Rents

GBHA Policy

The GBHA will publicly post the schedule of public housing maximum rents in a conspicuous manner in the applicable GBHA or project office.

Documentation of Public Housing Maximum Rents

GBHA Policy

The GBHA will maintain records that document how the GBHA determined the 95th percentile of TTP, whether the maximum rent was determined GBHA-wide, project-wide, or with groupings of projects, and the methodology used to determine maximum rents for each unit size.

PART III: FAMILY DEBTS TO THE GBHA

16-III.A. OVERVIEW

This part describes the GBHA’s policies for recovery of monies that have been underpaid by families.

GBHA Policy

When an action or inaction of a resident family results in the underpayment of rent or other amounts, the GBHA holds the family liable to return any underpayments to the GBHA.

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

When a family refuses to repay monies owed to the GBHA, the GBHA will utilize other available collection alternatives including, but not limited to, the following:

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

16-III.B. REPAYMENT POLICY

Family Debts to the GBHA

GBHA Policy

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

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the GBHA will terminate the family's tenancy in accordance with the policies in Chapter 13. The GBHA will also pursue other modes of collection.

General Repayment Agreement Guidelines

Down Payment Requirement

GBHA Policy

Before executing a repayment agreement with a family, the GBHA will generally require a down payment of 10 percent of the total amount owed. If the family can provide evidence satisfactory to the GBHA that a down payment of 10 percent would impose an undue hardship, the GBHA may, in its sole discretion, require a lesser percentage or waive the requirement.

Payment Thresholds

GBHA Policy

If a family is paying less than 40 percent of its monthly adjusted income (MAI) in rent, the minimum monthly payment amount will be the greater of the following two (2) amounts:

The difference between 40 percent of the family's MAI and TTP at the time the agreement is executed; or

\$25

If a family can provide evidence satisfactory to the GBHA that a monthly payment amount of \$25 would impose an undue hardship, the GBHA may, in its sole discretion, require a lower monthly payment amount.

If the family's income increases or decreases during the term of a repayment agreement, either the GBHA or the family may request that the monthly payment amount be adjusted accordingly.

Execution of the Agreement

GBHA Policy

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

Due Dates

GBHA Policy

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

Late or Missed Payments

GBHA Policy

If a payment is not received by the end of the business day on the due date, and prior approval for the missed payment has not been given by the GBHA, the GBHA will send the family a delinquency notice giving the family 10 business days to make the late payment. If the payment is not received by the due date of the delinquency notice, it will be considered a breach of the agreement and the GBHA will terminate tenancy in accordance with the policies in Chapter 13.

If a family receives three delinquency notices for unexcused late payments in a 12-month period, the repayment agreement will be considered in default, and the GBHA will terminate tenancy in accordance with the policies in Chapter 13.

No Offer of Repayment Agreement

GBHA Policy

The GBHA 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 the amount owed by the family exceeds the federal or state threshold for criminal prosecution.

Repayment Agreements Involving Improper Payments

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

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

PART IV: PUBLIC HOUSING ASSESSMENT SYSTEM (PHAS)

16-IV.A. OVERVIEW

The purpose of the Public Housing Assessment System (PHAS) is to improve the delivery of services in public housing and enhance trust in the public housing system among PHAs, public housing residents, HUD and the general public by providing a management tool for effectively and fairly measuring the performance of a public housing agency in essential housing operations.

16-IV.B. PHAS INDICATORS [24 CFR 902 Subparts A, B, C, D, and E]

The table below lists each of the PHAS indicators, the points possible under each indicator, and a brief description of each indicator. The GBHA’s performance is based on a combination of all four indicators.

<p>Indicator 1: Physical condition of the GBHA’s properties Maximum Score: 30</p> <ul style="list-style-type: none"> • The objective of this indicator is to determine the level to which the GBHA is maintaining its public housing in accordance with the standard of decent, safe, sanitary, and in good repair. • To determine the physical condition of the GBHA’s properties, inspections are performed of the following five major areas of public housing: site, building exterior, building systems, dwelling units, and common areas. The inspections are performed by an independent inspector arranged by HUD, and include a statistically valid sample of the units in the GBHA’s public housing portfolio.
<p>Indicator 2: Financial condition of the GBHA Maximum Score: 30</p> <ul style="list-style-type: none"> • The objective of this indicator is to measure the financial condition of the GBHA for the purpose of evaluating whether it has sufficient financial resources and is capable of managing those financial resources effectively to support the provision of housing that is decent, safe, sanitary, and in good repair. • The GBHA financial condition is determined by measuring the GBHA’s entity-wide performance in each of the following components: current ratio, number of months expendable fund balance, tenant receivable outstanding, occupancy loss, expense management/utility consumption, and net income or loss divided by the expendable fund balance.
<p>Indicator 3: Management operations of the GBHA Maximum Score: 30</p> <ul style="list-style-type: none"> • The objective of this indicator is to measure certain key management operations and responsibilities of the GBHA for the purpose of assessing the GBHA’s management operations capabilities. • The GBHA’s management operations are assessed based on the following sub-indicators: vacant unit turnaround time, capital fund, work orders, GBHA annual inspection of units and systems, security, and economic self-sufficiency
<p>Indicator 4: Resident service and satisfaction Maximum Score: 10</p> <ul style="list-style-type: none"> • The objective of this indicator is to measure the level of resident satisfaction with living conditions at the GBHA. • The GBHA’s score for this indicator is based on the results of resident surveys and the level of implementation and follow-up or corrective actions the GBHA takes based on the results of the survey.

16-IV.C. PHAS SCORING [24 CFR 902, Subpart F]

HUD’s Real Estate Assessment Center (REAC) issues overall PHAS scores, which are based on the scores of the four PHAS indicators, and the components under each indicator. PHAS scores translate into a designation for each PHA as higher performing, standard, or troubled.

A higher performer is a PHA that achieves a score of at least 60 percent of the points available under each of the four indicators, and achieves an overall PHAS score of 90 or greater.

A standard performer is a PHA that has an overall PHAS score between 60 and 89, and does not achieve less than 60 percent of the total points available under one of the following Indicators: 1, 2, or 3.

A troubled performer is a PHA that achieves an overall PHAS score of less than 60, or achieves less than 60 percent of the total points available under more than one of the following indicators: 1, 2, or 3.

These designations can affect a PHA in several ways:

- High-performing PHAs are eligible for incentives including relief from specific HUD requirements and bonus points in funding competitions [24 CFR 902.71].
- PHAs that are standard performers may be required to submit an improvement plan to eliminate deficiencies in the PHA's performance [24 CFR 902.73(a)].
- PHAs with an overall rating of "troubled" are subject to additional HUD oversight, and are required to enter into a memorandum of agreement (MOA) with HUD to improve PHA performance [24 CFR 902.75].
- PHAs that fail to execute or meet MOA requirements may be referred to the Departmental Enforcement Center [24 CFR 902.77].

PHAs must post a notice of its final PHAS score and status in appropriate conspicuous and accessible locations in its offices within two weeks of receipt of its final score and status.

PART V: RECORD KEEPING

16-V.A. OVERVIEW

The GBHA 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 GBHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

16-V.B. RECORD RETENTION [24 CFR 908.101 and 24 CFR 982.158]

GBHA Policy

During the term of each public housing tenancy, and for at least four (4) years thereafter, the GBHA will keep all documents related to a family's eligibility, tenancy, and termination.

In addition, the GBHA will keep the following records for at least four (4) years:

An application from each ineligible family and notice that the applicant is not eligible

Lead-based paint records as required by 24 CFR 35, Subpart B

Documentation supporting the establishment of utility allowances and surcharges

Documentation supporting PHAS scores

Accounts and other records supporting GBHA budget and financial statements for the program
Other records as determined by the GBHA or as required by HUD

If a hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 14-II.A.

16-V.C. RECORDS MANAGEMENT

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

GBHA Policy

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

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

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

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

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

Upfront Income Verification (UIV) Records

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

GBHA Policy

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

Criminal Records

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

The GBHA must establish and implement a system of records management that ensures that any criminal record received by the GBHA 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 GBHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903]. The GBHA must establish and implement a system of records management that ensures that any sex offender registration information received by the GBHA 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 GBHA 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

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

Domestic Violence/Disability Records

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

PART VI: REPORTING REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL

16-IV.A. REPORTING REQUIREMENTS [24 CFR 35.1130(e)]

The GBHA has certain responsibilities relative to children with environmental intervention blood lead levels that are living in public housing.

The GBHA must report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within five (5) business days of being so notified by any other medical health care professional. The GBHA must also report each known case of a child with an environmental intervention blood lead level to the local HUD field office.

GBHA Policy

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

The GBHA will provide written notice of each known case of a child with an environmental intervention blood level to the local HUD field office within five (5) business days of receiving the information.

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

16-VII.A. OVERVIEW

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

In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and GBHA policies in three areas: notification, documentation, and confidentiality.

16-VIL.B. DEFINITIONS [24 CFR 5.2003]

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

16-VIL.C. NOTIFICATION

Notification to the Public

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

GBHA Policy

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

A summary of the rights and protections provided by VAWA to public housing applicants and residents who are or have been victims of domestic violence, dating violence, sexual assault, or stalking (see sample notice in Exhibit 16-1)

The definitions of *domestic violence*, *dating violence*, *sexual assault*, and *stalking* provided in VAWA (included in Exhibit 16-1)

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

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

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

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

Contact information for local victim advocacy groups or service providers

Notification to Applicants and Tenants [24 CFR. 5.2005(a)(1)]

The GBHA is required to inform public housing applicants and tenants 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.

GBHA Policy

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

The GBHA will provide all tenants with information about VAWA at the time of admission (see section 8-I.B) and at annual re-examination. The GBHA will also include such information in all lease termination notices (see section 13-IV.D).

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

The GBHA is not limited to providing VAWA information at the times specified in the above policy. If the GBHA decides to provide VAWA information to a tenant following an incident of domestic violence, Notice PIH 2006-42 cautions against sending the information by mail, since the abuser may be monitoring the mail. The notice recommends that in such cases the GBHA make alternative delivery arrangements that will not put the victim at risk.

GBHA Policy

Whenever the GBHA has reason to suspect that providing information about VAWA to a public housing tenant might place a victim of domestic violence at risk, it will attempt to deliver the information by hand directly to the victim.

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

If the GBHA is presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, sexual assault, or 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 GBHA may extend this time period at its discretion [24CFR 5.2007(a)]

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

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

The GBHA 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].

GBHA Policy

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

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

Conflicting Documentation [24 CFR 5.2007(e)]

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

GBHA Policy

If presented with conflicting certification documents (two or more forms HUD-50066) from members of the same household, the GBHA will attempt to determine which is the true victim by

requiring each of them to provide third-part documentation in accordance with 24 CFR 5.2007 (b)(2) or (3) and by following any HUD guidance on how such determinations should be made.

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

The GBHA 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 24CFR 5.2007(b).

GBHA Policy

If the GBHA accepts an individual’s statement or other corroborating evidence of domestic violence, dating violence, sexual assault, or stalking, the GBHA 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, the GBHA 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 GBHA may allow, the GBHA may deny relief for protection under VAWA.

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

All information provided to the GBHA regarding domestic violence, dating violence, sexual assault, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence. This means that the GBHA (1) may not enter the information into any share database, (2) may not allow employees or others to access the information unless they are explicitly authorized to do so and have an 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.

GBHA Policy

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

EXHIBIT 16-1: SAMPLE NOTICE TO PUBLIC HOUSING APPLICANTS AND RESIDENTS REGARDING THE VIOLENCE AGAINST WOMEN ACT (VAWA)

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

A federal law that went into effect in 2013 protects individuals who are victims of domestic violence, dating violence, sexual assault, or stalking. The name of the law is the Violence against Women Act, or “VAWA.” This notice explains your rights under VAWA.

Protections for Victims

If you are eligible for public housing, the housing authority cannot refuse to admit you to the public housing program solely because you are a victim of domestic violence, dating violence, sexual assault, or stalking.

If you are a victim of domestic violence, dating violence, sexual assault, or stalking, the housing authority cannot evict you based on acts or threats of violence committed against you. Also, criminal acts directly related to the domestic violence, dating violence, sexual assault, or stalking, that are caused by a member of your household or a guest, can't be the reason for evicting you if you were the victim of the abuse.

Reasons You Can Be Evicted

The housing authority can still evict you if they can show that there is an actual and imminent (immediate) threat to other tenants or housing authority staff if you are not evicted. Also, the housing authority can evict you for serious or repeated lease violations that are not related to the domestic violence, dating violence, sexual assault, or stalking against you. The housing authority cannot hold you to a more demanding set of rules than are applied to tenants who are not victims.

Removing the Abuser from the Household

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

Proving that You Are a Victim of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

The housing authority can ask you to prove or "certify" that you are a victim of domestic violence, dating violence, sexual assault, or stalking. In cases of termination or eviction, the housing authority must give you at least 14 business days (i.e. Saturdays, Sundays, and holidays do not count) to provide this proof. The housing authority is free to extend the deadline. There are three ways you can prove that you are a victim:

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

If you fail to provide one of these documents within the required time, the housing authority may evict you.

Confidentiality

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

- You give written permission to the housing authority to release the information

- The housing authority needs to use the information in an eviction proceeding, such as to evict your abuser
- A law requires the housing authority to release the information

If releasing the information would put your safety at risk, you should inform the housing authority.

VAWA and Other Laws

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

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

For Additional Information

If you have any questions regarding VAWA, please contact the Housing Authority at (920) 448-3400.

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

Definitions

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

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

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

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

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

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

VAWA defines stalking as (A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person OR (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person AND (B) in the course of, or as a result of, such following,

pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (i) that person, (ii) a member of the immediate family of that person, or (iii) the spouse or intimate partner of that person.