



## Berkeley Housing Authority

1947 Center St. 5<sup>th</sup> Floor, Berkeley, CA 94704  
Telephone: (510) 981 5470 Fax: (510) 981 5480

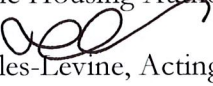
*Office of the Executive Director*

Item 7B

NEW BUSINESS

April 14, 2022

To: Honorable Chairperson and  
Members of the Housing Authority Commission

From:  Rachel Gonzales-Levine, Acting Executive Director

Subject: Public Hearing and Adoption of 2022-23 Annual Plan

### RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt a Resolution approving the 2022-23 Annual Plan, and authorizing the Acting Executive Director to certify and submit the 2022-23 Annual Plan to the U.S. Department of Housing and Urban Development (HUD).

### BACKGROUND

Every public housing authority is required to submit an Annual Plan to HUD by mid-April of each year (or 75 days prior to the beginning of the next fiscal year). Our Plan document, electronically submitted to HUD using its template, is designed to provide a general overview of BHA's programmatic operations. The Plan includes the HUD Annual Plan form; required certifications including adherence to Civil Rights laws and consistency with the local Consolidated Plan; as well as updates to our Administrative Plan, which describes BHA's policies as they pertain to operating the S8 programs. In accordance with 24 Code of Federal Regulation, Part 903 Public Housing Agency Plans, BHA conformed to Annual Plan requirements as follows:

1. Public Notice. Notice of the initiation of the Annual Plan process, and the ability to comment on the proposed Administrative Plan changes was published in the East Bay Times on February 11, 2022, and in El Mensajero (Spanish language newspaper) on February 13, 2022. The 45-day public comment period commenced February 16, 2022, and ended April 1, 2022.
2. Dissemination of Information. Website posting of the proposed changes in various chapters of the Annual Plan occurred February 16, 2022. The public was advised that they could receive a hard copy upon request; no request for copies was received. A copy was available for review at the front office.
3. Resident Advisory Board (RAB). Staff reached out to all of our program participants inviting them to serve on the RAB. Eight participants responded and were invited to participate. BHA convened a meeting on March 24; 6 of the 8 RAB members participated.

4. Opportunity for Comment. The website link to electronic copies of the Administrative Plan was emailed to legal and disability rights advocates: Bay Area Legal Aid, East Bay Community Law Center, National Housing Law Project, Disability Rights California; and non-profit housing developers: Satellite Affordable Housing Associates (SAHA), Resources for Community Development (RCD), Northern California Land Trust (NCLT).

The Plan presented this evening reflects comments from RAB participants, Bay Area Legal Aid, and East Bay Community Law Center staff, as well as SAHA.

5. Public Hearing. This evening's hearing is open for additional comments on the proposed Plan. Staff will analyze further comments and make changes as deemed appropriate prior to submitting the finalized Plan to HUD.

#### STATUS

The Administrative Plan is relied upon by staff in administering our housing programs. We strive to have simple, straight forward language, and thus avoid conflicting interpretations. Changes proposed in the Plan are the result of: (a) regulatory updates; (b) challenging issues/situations experienced over the course of the prior year; and (c) comments provided to us by advocacy organizations and service providers. The attached chart lists the proposed changes, with comments from legal advocates as well as from the RAB, legal advocates (Bay Area Legal Aid and East Bay Community Law Center), SAHA, BHA staff, and BHA's response to those comments.

The Admin. Plan Chapters presented this evening include BHA's proposed changes as well as accepted comments/suggestions/edits provided by legal advocates, the RAB, SAHA, and BHA staff.

#### FISCAL IMPACTS OF RECOMMENDATION

No direct impact at this time, however, Plan adoption and submission is a HUD requirement.

#### CONTACT PERSON

Rachel Gonzales-Levine, Acting Executive Director, 981-5485

#### Attachments:

1. Resolution
2. Chart outlining RAB, legal advocates, SAHA, and BHA staff comments received with BHA responses
3. HUD Form 50075
4. Administrative Plan Chapters 4, 5, 8, 10, 16,19



BERKELEY HOUSING AUTHORITY  
RESOLUTION NO. 22-\_\_\_

ADOPTING THE BERKELEY HOUSING AUTHORITY’S 2022-2023 ANNUAL PLAN AND AUTHORIZING THE ACTING EXECUTIVE DIRECTOR TO SUBMIT TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

WHEREAS housing authorities are required to submit an Annual Plan to the U.S. Department of Housing and Urban Development ("HUD"); and

WHEREAS, housing authorities are required by HUD regulations to establish a Resident Advisory Board to provide input on the draft Plan to the Housing Authority; and

WHEREAS, BHA is a Section 8-only Authority; and

WHEREAS, the changes to the Administrative Plan containing discretionary policies utilized in the administration of the Section 8 Voucher Programs including the Project-based Section 8 and Moderate Rehabilitation Programs, were made available for public review and comment beginning February 16, 2022 for the required 45-day period; and

WHEREAS, the Resident Advisory Board assisted in the review of and commented on the proposed Administrative Plan changes; and

WHEREAS, various legal, disability rights advocacy organizations, and low income housing developers were provided links to view proposed Administrative Plan changes for review and comment; and

WHEREAS, BHA received comments from Bay Area Legal Aid and East Bay Community Law Center, and SAHA; and

WHEREAS, a public hearing has been conducted on April 14, 2022.

NOW THEREFORE, BE IT RESOLVED, that the Board of Commissioners of the Berkeley Housing Authority:

1. Adopts the Berkeley Housing Authority’s Annual Plan for Fiscal Year 2022-2023, and hereby authorizes the Executive Director to submit the Plan to the U.S. Department of Housing and Urban Development; and
2. Adopts a revised Administrative Plan for the Section 8 Housing Choice Voucher Program Programs including the Project-based Section 8 and Moderate Rehab. Programs.

The foregoing Resolution was adopted by the Board of the Berkeley Housing Authority on April 14, 2022 by the following vote:

Ayes:

Noes:

Absent:

Attest: \_\_\_\_\_  
Rachel Gonzales-Levine, Secretary

Chapter	Proposed Change(s)	Page No.	Comments: RAB = Resident Advisory Board; Legal = Bay Area Legal Aid and East Bay Community Law Center; SAHA = Satellite Affordable Housing Associates; BHA Staff.
4 Applications, Waitlist, and Tenant Selection	Online waiting list opening and process	4-2	<p><b>RAB, Legal, SAHA:</b> There should be a paper submission option, for those unable to submit online or via phone.  <b>BHA Response:</b> <i>Agreed; added language for paper submission process.</i></p> <p><b>RAB:</b> Clarify language regarding the fact that the waiting list is actually a two-step process. And do not use “random lottery” but instead “random draw.”  <b>BHA Response:</b> <i>Agreed; added clarifying language. Removed “lottery” and replaced with “draw.”</i></p> <p><b>Legal:</b> Clarify language regarding Project Move up and which year of 5, the program is in currently.  <b>BHA Response:</b> <i>Agreed; added clarifying language.</i></p> <p><b>RAB:</b> Clarify language regarding the preliminary random draw and lengthen to 15 days for BHA notification rather than 10.  <b>BHA Response:</b> <i>Agreed; added clarifying language.</i></p> <p><b>RAB:</b> Add more language describing the preliminary random draw.  <b>BHA Response:</b> <i>Agreed; added clarifying language.</i></p> <p><b>RAB:</b> Under “Closing the Waitlist” add clarifying language that the waitlist closes when there are approximately enough names to last 60 months (rather than 24 months).  <b>BHA Response:</b> <i>Agreed; added clarifying language.</i></p>
		4-2	
		4-2	
		4-3	
		4-4	
		4-4, 5	
		4-6	

Chapter	Proposed Change(s)	Page No.	Comments: RAB = Resident Advisory Board; Legal = Bay Area Legal Aid and East Bay Community Law Center; SAHA = Satellite Affordable Housing Associates; BHA Staff.
<p>4 Applications, Waitlist, and Tenant Selection</p>	<p>Online waiting list opening and process</p>	<p>4-2</p>	<p><b>RAB, Legal, SAHA:</b> There should be a paper submission option, for those unable to submit online or via phone.  <b>BHA Response:</b> <i>Agreed; added language for paper submission process.</i></p>
		<p>4-2</p>	<p><b>RAB:</b> Clarify language regarding the fact that the waiting list is actually a two-step process. And do not use “random lottery” but instead “random draw.”  <b>BHA Response:</b> <i>Agreed; added clarifying language. Removed “lottery” and replaced with “draw.”</i></p>
		<p>4-3</p>	<p><b>Legal:</b> Clarify language regarding Project Move up and which year of 5, the program is in currently.  <b>BHA Response:</b> <i>Agreed; added clarifying language.</i></p>
		<p>4-4</p>	<p><b>RAB:</b> Clarify language regarding the preliminary random draw and lengthen to 15 days for BHA notification rather than 10.  <b>BHA Response:</b> <i>Agreed; added clarifying language.</i></p>
		<p>4-4, 5</p>	<p><b>RAB:</b> Add more language describing the preliminary random draw.  <b>BHA Response:</b> <i>Agreed; added clarifying language.</i></p>
		<p>4-6</p>	<p><b>RAB:</b> Under “Closing the Waitlist” add clarifying language that the waitlist closes when there are approximately enough names to last 60 months (rather than 24 months).  <b>BHA Response:</b> <i>Agreed; added clarifying language.</i></p>

Chapter	Proposed Change(s)	Page No.	Comments: RAB = Resident Advisory Board; Legal = Bay Area Legal Aid and East Bay Community Law Center; SAHA = Satellite Affordable Housing Associates; BHA Staff.
		4-7	<p><b>RAB &amp; Legal:</b> Suggestions of additional organizations for outreach for announcing wait list opening, and supporting applicants in application process.  <b>BHA Response:</b> <i>Agreed; added names of all orgs and agencies suggested.</i></p> <p><b>RAB:</b> Suggestions of additional newspaper for posting legal notice.  <b>BHA Response:</b> <i>Agreed; added name of additional newspaper.</i></p> <p><b>Legal:</b> the Mainstream Vouchers limited waitlist opening should be more widely publicized, including newspapers, television and radio press releases as well as social media postings.  <b>BHA Response:</b> <i>Declined; HUD Mainstream Voucher program guidance does not require such extensive outreach/publicity. Also, BHA has a limited number of Mainstream Vouchers allocated (91), with over 80% currently leased, and referrals come from partnering agencies such as the County Coordinated Entry System and from BHA's HCV waiting list.</i></p>
		4-7	<p><b>RAB:</b> Under "Reporting changes" add clarifying language that updates to the applicant contact info can be made online and staff support is available if needed.  <b>BHA Response:</b> <i>Agreed; added clarifying language.</i></p>
		4-8	<p><b>RAB:</b> Under "Reporting changes" can someone who has just updated contact info online be exempt from completing annual update forms sent by BHA?</p>
		4-9	<p><b>RAB:</b> Under "Reporting changes" add clarifying language that updates to the applicant contact info can be made online and staff support is available if needed.  <b>BHA Response:</b> <i>Agreed; added clarifying language.</i></p>

Chapter	Proposed Change(s)	Page No.	Comments: RAB = Resident Advisory Board; Legal = Bay Area Legal Aid and East Bay Community Law Center; SAHA = Satellite Affordable Housing Associates; BHA Staff.
		4-10, 11	<p><b>BHA Response:</b> No, required forms will be for all those sent forms; staff always provides applicants benefit of the doubt when contacted by applicants, even many years beyond prior form due dates</p> <p><b>RAB:</b> What happens when someone drops off the wait list and is allowed to be reinstated – do they go back to their original position or do they get placed at the bottom of the list?  <b>BHA Response:</b> they are placed back in their original position.</p>
		4-13	<p><b>BHA Staff:</b> split elderly and/or disabled household from family household preference points to two separate categories and make each category 10 points each.  <b>BHA Response:</b> Agreed.</p>
		4-15, 16	<p><b>RAB:</b> Clarify that there is no applicant “Interview” but rather an application/eligibility process. Double check the usage of “Briefings, Orientations, Interviews” – be consistent.  <b>BHA Response:</b> Agreed; clarified and removed “interview” language and included more details on eligibility screening.</p>
		4-16	<p><b>Legal:</b> For those unable to make Briefings in person, there should be alternative options.  <b>BHA Response:</b> Agreed; added alternative, such as in person Briefings where Zoom/phone not an option.</p> <p><b>RAB:</b> Clarify that the Head of Household, and/or Spouse, and/or Co-head should attend the Briefing  <b>BHA Response:</b> Agreed; clarified.</p>



Chapter	Proposed Change(s)	Page No.	Comments: RAB = Resident Advisory Board; Legal = Bay Area Legal Aid and East Bay Community Law Center; SAHA = Satellite Affordable Housing Associates; BHA Staff.
5 Briefings and Voucher Issuance		5-2	<p><b>RAB:</b> Clarify if the head of household and spouse/partner/co-head needs to participate in the Briefing or if another adult can participate.</p> <p><b>BHA Response:</b> <i>Language clarified, and now matches language in Chapter 4.</i></p> <p><b>RAB:</b> Use “Zoom” instead of “videolink.”</p> <p><b>BHA Response:</b> <i>Agreed, language changed.</i></p> <p><b>RAB:</b> Would like to organize around providing exceptions to the subsidy standards, for example when there is a 3-person subsidized household which only qualifies for a 2-Bedroom unit, living in a 3-BR unit.</p> <p><b>BHA Response:</b> <i>Under normal circumstances this household remains in the 3 Bedroom unit (the household is considered “overhoused”) until their next annual reexam, at which time they will be required to pay the difference between the 3 Bedroom Payment Standard and the 2 Bedroom Payment Standard, or move to a right sized unit. BHA has implemented an exception to the Overhoused rule, on a case by case basis (other than a Reasonable Accommodation for a disabled household or a VAWA victim), where BHA covers the overage, and after one year, the family is asked to search for a right sized unit, and documents why the units are insufficient for their needs.</i></p>
		5-9	<p><b>RAB and Legal:</b> There may be extenuating circumstances in which non-disabled households might need the benefit of having more than one year to search for a unit, for example “other good cause” beyond the family’s control or the Covid pandemic.</p> <p><b>BHA:</b> <i>Agreed, language added.</i></p>
		5-12	

Chapter	Proposed Change(s)	Page No.	Comments: RAB = Resident Advisory Board; Legal = Bay Area Legal Aid and East Bay Community Law Center; SAHA = Satellite Affordable Housing Associates; BHA Staff.
8 Housing Quality Standards and Rent Reasonableness		8-16	<p><b>Legal:</b> Include state protections for BHA program participants whose units are in abatement due to two fails, including that although BHA recommends clients continue to pay their rent portion during an abatement period, this provision is not intended to deprive of rights and protections.  <b>BHA Response:</b> <i>Agreed, suggested language added.</i></p> <p><b>BHA Staff:</b> for self-certification of repairs by landlords, allow them for 24-hour fails in addition to 28-day fails  <b>BHA Response:</b> <i>Agreed, language changed.</i></p> <p><b>Legal:</b> Include the shortage of units in the introduction  <b>BHA Response:</b> <i>Agreed, suggested language added.</i></p> <p><b>Legal:</b> Include in list of extenuating circumstances for exceptions of permitted moves in less than 12 months, “landlord conduct making continued occupancy dangerous.”  <b>BHA Response:</b> <i>Agreed, suggested language added.</i></p> <p><b>Legal:</b> Include that BHA will determine the legality of a landlord’s refusal to sign a termination of lease.  <b>BHA Response:</b> <i>Alternative language added that BHA will refer clients in this situation to legal advocacy organizations for free legal support to make this determination.</i></p> <p><b>Legal:</b> Include that BHA will determine the legality and circumstances of a landlord’s court judgement submitted to BHA.  <b>BHA Response:</b> <i>Alternative language added that BHA will refer clients in this situation to legal advocacy organizations for free legal support to make this determination.</i></p>
10 Moving with Continued Assistance and Portability	Adding language preventing moves outside of Berkeley, when a landlord has provided court judgement documentation that monies are owed by the assisted household to the landlord	10-1  10-3  10-4	

Chapter	Proposed Change(s)	Page No.	Comments: RAB = Resident Advisory Board; Legal = Bay Area Legal Aid and East Bay Community Law Center; SAHA = Satellite Affordable Housing Associates; BHA Staff.
		10-12  10-13	<p><b>Legal:</b> Include in the Portability Rule that BHA will except tenants who are living in dangerous living conditions created by the landlord. <i>BHA Response: Agreed; suggested language added.</i></p> <p><b>Legal:</b> Include in the Portability Rule that BHA will ask program participants to explain any income discrepancies that appear on their HUD Form 50058. <i>BHA Response: Agreed; suggested language added.</i></p> <p><b>Legal:</b> Include extreme shortage of available housing as a factor when households porting into Berkeley are seeking extensions to their port in vouchers. <i>BHA Response: Agreed; suggested language added.</i></p>
<b>16 Program Administration</b>		16-4  16-10	<p><b>RAB:</b> HUD distinguishes, in this chapter, that different areas in various jurisdictions may require higher payment standards; the RAB should organize around flexibilities for households needing larger units. <i>BHA Response: N/A.</i></p> <p><b>Legal:</b> Include VAWA protections when introducing Informal Hearing Procedures. <i>BHA Response: Agreed; suggested language added.</i></p>
<b>19 Emergency Housing Vouchers Temporary</b>		<b>TSP-6</b>	<p><b>RAB:</b> Use “BHA” instead of “PHA” throughout. Use “Every One Home” instead of “COC” <i>BHA Response: Agreed, changes made.</i></p>

Chapter	Proposed Change(s)	Page No.	Comments: RAB = Resident Advisory Board; Legal = Bay Area Legal Aid and East Bay Community Law Center; SAHA = Satellite Affordable Housing Associates; BHA Staff.
Policy Supplement			<p>Legal: Suggest including both a homeless preference and VAWA preference.</p> <p><b>BHA Response:</b> Declined; BHA has special purpose vouchers for homeless individuals and households; Mainstream voucher holders are moved to the top of the tenant-based (HCV) waitlist; additionally, BHA has an extensive VAWA program, providing VAWA program participants their full rights and protections.</p>

<b>Streamlined Annual PHA Plan (HCV Only PHAs)</b>	U.S. Department of Housing and Urban Development Office of Public and Indian Housing	OMB No. 2577-0226 Expires 03/31/2024
--	---	---

**Purpose.** The 5-Year and Annual PHA Plans provide a ready source for interested parties to locate basic PHA policies, rules, and requirements concerning the PHA's operations, programs, and services, including changes to these policies, and informs HUD, families served by the PHA, and members of the public of the PHA's mission, goals and objectives for serving the needs of low- income, very low- income, and extremely low- income families

**Applicability.** The Form HUD-50075-HCV is to be completed annually by **HCV-Only PHAs**. PHAs that meet the definition of a Standard PHA, Troubled PHA, High Performer PHA, Small PHA, or Qualified PHA do not need to submit this form. Where applicable, separate Annual PHA Plan forms are available for each of these types of PHAs.

**Definitions.**

- (1) **High-Performer PHA** – A PHA that owns or manages more than 550 combined public housing units and housing choice vouchers, and was designated as a high performer on both the most recent Public Housing Assessment System (PHAS) and Section Eight Management Assessment Program (SEMAP) assessments if administering both programs, or PHAS if only administering public housing.
- (2) **Small PHA** - A PHA that is not designated as PHAS or SEMAP troubled, that owns or manages less than 250 public housing units and any number of vouchers where the total combined units exceed 550.
- (3) **Housing Choice Voucher (HCV) Only PHA** - A PHA that administers more than 550 HCVs, was not designated as troubled in its most recent SEMAP assessment and does not own or manage public housing.
- (4) **Standard PHA** - A PHA that owns or manages 250 or more public housing units and any number of vouchers where the total combined units exceed 550, and that was designated as a standard performer in the most recent PHAS and SEMAP assessments.
- (5) **Troubled PHA** - A PHA that achieves an overall PHAS or SEMAP score of less than 60 percent.
- (6) **Qualified PHA** - A PHA with 550 or fewer public housing dwelling units and/or housing choice vouchers combined and is not PHAS or SEMAP troubled.

<b>A.</b>	<b>PHA Information.</b>										
A.1	<p>PHA Name: <u>Berkeley Housing Authority</u> PHA Code: <u>CA058</u>  PHA Plan for Fiscal Year Beginning: (MM/YYYY): <u>07/01/2022</u>  PHA Inventory (Based on Annual Contributions Contract (ACC) units at time of FY beginning, above)  Number of Housing Choice Vouchers (HCVs) <u>2117</u>  PHA Plan Submission Type: <input checked="" type="checkbox"/> Annual Submission <input type="checkbox"/> Revised Annual Submission</p> <p><b>Availability of Information.</b> In addition to the items listed in this form, PHAs must have the elements listed below readily available to the public. A PHA must identify the specific location(s) where the proposed PHA Plan, PHA Plan Elements, and all information relevant to the public hearing and proposed PHA Plan are available for inspection by the public. Additionally, the PHA must provide information on how the public may reasonably obtain additional information of the PHA policies contained in the standard Annual Plan but excluded from their streamlined submissions. At a minimum, PHAs must post PHA Plans, including updates, at the main office or central office of the PHA. PHAs are strongly encouraged to post complete PHA Plans on their official website.</p> <p>Specific locations where the public may obtain copies of the Annual PHA Plan are:</p> <ol style="list-style-type: none"> <li>1. BHA's website, <a href="http://www.cityofberkeley.info/bha">www.cityofberkeley.info/bha</a></li> <li>2. Calling 510-981-5470 for a copy to be mailed</li> <li>3. Emailing <a href="mailto:bha@cityofberkeley.info">bha@cityofberkeley.info</a> for a copy to be emailed.</li> </ol> <p><input type="checkbox"/> PHA Consortia: (Check box if submitting a joint Plan and complete table below)</p> <table border="1" data-bbox="180 1465 1458 1591"> <thead> <tr> <th>Participating PHAs</th> <th>PHA Code</th> <th>Program(s) in the Consortia</th> <th>Program(s) not in the Consortia</th> <th>No. of Units in Each Program</th> </tr> </thead> <tbody> <tr> <td>Lead HA:</td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Participating PHAs	PHA Code	Program(s) in the Consortia	Program(s) not in the Consortia	No. of Units in Each Program	Lead HA:				
Participating PHAs	PHA Code	Program(s) in the Consortia	Program(s) not in the Consortia	No. of Units in Each Program							
Lead HA:											
<b>B.</b>	<b>Plan Elements.</b>										



<p><b>B.1</b></p>	<p><b>Revision of Existing PHA Plan Elements.</b></p> <p>a) Have the following PHA Plan elements been revised by the PHA since its last Annual Plan submission?</p> <p>Y N</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Statement of Housing Needs and Strategy for Addressing Housing Needs.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Deconcentration and Other Policies that Govern Eligibility, Selection, and Admissions.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Financial Resources.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Rent Determination.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Operation and Management.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Informal Review and Hearing Procedures.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Homeownership Programs.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Self Sufficiency Programs and Treatment of Income Changes Resulting from Welfare Program Requirements.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Substantial Deviation.</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Significant Amendment/Modification.</p> <p>(b) If the PHA answered yes for any element, describe the revisions for each element(s):</p>
<p><b>B.2</b></p>	<p><b>New Activities. – Not Applicable</b></p>
<p><b>B.3</b></p>	<p><b>Progress Report.</b></p> <p>Provide a description of the PHA’s progress in meeting its Mission and Goals described in its 5-Year PHA Plan.</p> <p><u>Goals and Objectives for Next 5 Years:</u></p> <ul style="list-style-type: none"> <li> <p><b>Continue issuing new Tenant-based vouchers &amp; Project-based voucher allocations.</b>  <i>BHA held 16 Briefings in 2021 and 6 Briefings thus far in 2022, for a total of 86 Vouchers issued to Tenant-based applicants, and VASH as well as Mainstream Voucher holders. The BHA Board did not issue Project-based vouchers in 2021.</i></p> </li> <li> <p><b>Continue to apply for future NOFAs that allocate issuance of new voucher opportunities.</b>  <i>BHA applied for and was selected to participate in the MTW Expansion program, under the Landlord Incentive cohort. We look forward to reaching the point of implementation.</i></p> </li> <li> <p><b>Collaborate with City of Berkeley to determine possible financial support of a sustained housing authority in Berkeley.</b>  <i>Staff and several Board members have met with member of the City Council and Mayor’s Office to collaborate on various issues including the MTW Program; Homeless programs updates (Mainstream; EHV’s; VASH); forgiveness of a \$300,000 Housing Trust Fund Loan from 2013 that was utilized for the LIPH disposition process; support of an additional \$100,000 in funding for a pilot program providing landlords incentives for unit turnover costs and leasing up with BHA; and update on Affordable Housing Berkeley Inc. (AHB), a newly established non-profit entity that will produce affordable housing development units in Berkeley, utilizing the proceeds from the disposition of the LIPH units in 2014.</i></p> <p><i>It is hoped that with the MTW fiscal flexibilities, combined with income/ developer fees from AHB deals/ developments, that BHA will be come a self-sustained housing authority.</i></p> </li> <li> <p><b>Investigate and pursue opportunities for affordable housing development and other revenue-generating activities in order to ensure long term fiscal sustainability; determine feasibility of a low income housing development project with use of disposition proceeds.</b>  <i>The BHA Board has established a non-profit development entity called Affordable Housing Berkeley, Inc. (AHB). AHB will develop low income housing in Berkeley, by utilizing the proceeds from the sale and disposition of the formerly owned LIPH units. Secondly AHB will, through partnerships and development agreements, financially support BHA’s operations. AHB is undergoing a strategic planning process to identify a primary development plan of action. The Administrative Plan was updated to include AHB as a possible recipient of Project-based vouchers, including specifying the HUD requirements of obtaining independent reviews/ determinations for submitted applications for PBVs, appraisals, contract rents, and inspections.</i></p> </li> <li> <p><b>Seek low-cost rental space for BHA office, when lease expires Dec. 31, 2020.</b>  <i>Since Dec. 2020, BHA has rented office space at a City of Berkeley-owned building, 1947 Center Street, 5<sup>th</sup> Floor, at a significant cost savings to the office rent budget.</i></p> </li> </ul>
<p><b>B.4</b></p>	<p><b>Capital Improvements. – Not Applicable</b></p>

<p><b>B.5</b></p>	<p><b>Most Recent Fiscal Year Audit.</b></p> <p>(a) Were there any findings in the most recent FY Audit?</p> <p>Y N N/A  <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p> <p>(b) If yes, please describe:</p>		
<p><b>C. Other Document and/or Certification Requirements.</b></p>			
<p><b>C.1</b></p>	<p><b>Resident Advisory Board (RAB) Comments.</b></p> <p>(a) Did the RAB(s) have comments to the PHA Plan?</p> <p>Y N  <input checked="" type="checkbox"/> <input type="checkbox"/></p> <p>(b) If yes, comments must be submitted by the PHA as an attachment to the PHA Plan. PHAs must also include a narrative describing their analysis of the RAB recommendations and the decisions made on these recommendations. (See Attached)</p>		
<p><b>C.2</b></p>	<p><b>Certification by State or Local Officials.</b></p> <p><a href="#">Form HUD 50077-SL</a>, <i>Certification by State or Local Officials of PHA Plans Consistency with the Consolidated Plan</i>, must be submitted by the PHA as an electronic attachment to the PHA Plan.</p>		
<p><b>C.3</b></p>	<p><b>Civil Rights Certification/ Certification Listing Policies and Programs that the PHA has Revised since Submission of its Last Annual Plan.</b></p> <p>Form HUD-50077-ST-HCV-HP, <i>PHA Certifications of Compliance with PHA Plan, Civil Rights, and Related Laws and Regulations Including PHA Plan Elements that Have Changed</i>, must be submitted by the PHA as an electronic attachment to the PHA Plan.</p>		
<p><b>C.4</b></p>	<p><b>Challenged Elements.</b> If any element of the PHA Plan is challenged, a PHA must include such information as an attachment with a description of any challenges to Plan elements, the source of the challenge, and the PHA's response to the public.</p> <p>(a) Did the public challenge any elements of the Plan?</p> <p>Y N  <input type="checkbox"/> <input checked="" type="checkbox"/></p> <p>If yes, include Challenged Elements.</p>		
<p><b>D. Affirmatively Furthering Fair Housing (AFFH).</b></p>			
<p><b>D.1</b></p>	<p><b>Affirmatively Furthering Fair Housing (AFFH).</b></p> <p>Provide a statement of the PHA's strategies and actions to achieve fair housing goals outlined in an accepted Assessment of Fair Housing (AFH) consistent with 24 CFR § 5.154(d)(5). Use the chart provided below. (PHAs should add as many goals as necessary to overcome fair housing issues and contributing factors.) Until such time as the PHA is required to submit an AFH, the PHA is not obligated to complete this chart. The PHA will fulfill, nevertheless, the requirements at 24 CFR § 903.7(o) enacted prior to August 17, 2015. See Instructions for further detail on completing this item.</p> <table border="1" data-bbox="191 1440 1461 1961"> <tr> <td data-bbox="191 1440 1461 1482"> <p><b>Fair Housing Goal:</b></p> </td> </tr> <tr> <td data-bbox="191 1482 1461 1961"> <p><u><i>Describe fair housing strategies and actions to achieve the goal</i></u></p> <p>Educate program participants, applicants, and landlords about the City of Berkeley Source of Income Ordinance, and the Ronald Dellums Fair Chance Housing Public Health and Safety Ordinance, as well as State Law SB 329. Provide fair housing/legal advocacy referrals to program participants through the distribution of flyers, website postings, contact information.</p> </td> </tr> </table>	<p><b>Fair Housing Goal:</b></p>	<p><u><i>Describe fair housing strategies and actions to achieve the goal</i></u></p> <p>Educate program participants, applicants, and landlords about the City of Berkeley Source of Income Ordinance, and the Ronald Dellums Fair Chance Housing Public Health and Safety Ordinance, as well as State Law SB 329. Provide fair housing/legal advocacy referrals to program participants through the distribution of flyers, website postings, contact information.</p>
<p><b>Fair Housing Goal:</b></p>			
<p><u><i>Describe fair housing strategies and actions to achieve the goal</i></u></p> <p>Educate program participants, applicants, and landlords about the City of Berkeley Source of Income Ordinance, and the Ronald Dellums Fair Chance Housing Public Health and Safety Ordinance, as well as State Law SB 329. Provide fair housing/legal advocacy referrals to program participants through the distribution of flyers, website postings, contact information.</p>			

**Fair Housing Goal:**

**Describe fair housing strategies and actions to achieve the goal**

Utilize MTW flexibilities to encourage landlord participation to widen the number of units available to voucher holders. Participate in commissioned rent surveys should HUD's FMRs cause payment standards to be noncompetitive in the market.

**Fair Housing Goal:**

**Describe fair housing strategies and actions to achieve the goal**

Collaborate with local fair housing advocacy organizations to obtain staff training on a variety of Fair Housing laws, and protections.

**Instructions for Preparation of Form HUD-50075-HCV  
Annual PHA Plan for HCV-Only PHAs**

**A. PHA Information.** All PHAs must complete this section. (24 CFR §903.4)

**A.1** Include the full **PHA Name**, **PHA Code**, **PHA Type**, **PHA Fiscal Year Beginning** (MM/YYYY), **Number of Housing Choice Vouchers (HCVs)**, **PHA Plan Submission Type**, and the **Availability of Information**, specific location(s) of all information relevant to the public hearing and proposed PHA Plan.

**PHA Consortia:** Check box if submitting a Joint PHA Plan and complete the table. ([24 CFR §943.128\(a\)](#))

**B. Plan Elements.** All PHAs must complete this section. ([24 CFR §903.11\(c\)\(3\)](#))

**B.1 Revision of Existing PHA Plan Elements.** PHAs must:

Identify specifically which plan elements listed below that have been revised by the PHA. To specify which elements have been revised, mark the "yes" box. If an element has not been revised, mark "no."

**Statement of Housing Needs and Strategy for Addressing Housing Needs.** Provide a statement addressing the housing needs of low-income, very low-income and extremely low-income families and a brief description of the PHA's strategy for addressing the housing needs of families who reside in the jurisdiction served by the PHA and other families who are on the Section 8 tenant-based assistance waiting lists. The statement must identify the housing needs of (i) families with incomes below 30 percent of area median income (extremely low-income); (ii) elderly families (iii) households with individuals with disabilities, and households of various races and ethnic groups residing in the jurisdiction or on the public housing and Section 8 tenant-based assistance waiting lists. The statement of housing needs shall be based on information provided by the applicable Consolidated Plan, information provided by HUD, and generally available data. The identification of housing needs must address issues of affordability, supply, quality, accessibility, size of units, and location. Once the PHA has submitted an Assessment of Fair Housing (AFH), which includes an assessment of disproportionate housing needs in accordance with 24 CFR 5.154(d)(2)(iv), information on households with individuals with disabilities and households of various races and ethnic groups residing in the jurisdiction or on the waiting lists no longer needs to be included in the Statement of Housing Needs and Strategy for Addressing Housing Needs. (24 CFR § 903.7(a)).



The identification of housing needs must address issues of affordability, supply, quality, accessibility, size of units, and location. (24 CFR §903.7(a)(2)(i)) Provide a description of the ways in which the PHA intends, to the maximum extent practicable, to address those housing needs in the upcoming year and the PHA's reasons for choosing its strategy. (24 CFR §903.7(a)(2)(ii))

**Deconcentration and Other Policies that Govern Eligibility, Selection, and Admissions.** A statement of the PHA's policies that govern resident or tenant eligibility, selection and admission including admission preferences for HCV. (24 CFR §903.7(b))

**Financial Resources.** A statement of financial resources, including a listing by general categories, of the PHA's anticipated resources, such as PHA HCV funding and other anticipated Federal resources available to the PHA, as well as tenant rents and other income available to support tenant-based assistance. The statement also should include the non-Federal sources of funds supporting each Federal program, and state the planned use for the resources. (24 CFR §903.7(c))

**Rent Determination.** A statement of the policies of the PHA governing rental contributions of families receiving tenant-based assistance, discretionary minimum tenant rents, and payment standard policies. (24 CFR §903.7(d))

**Operation and Management.** A statement that includes a description of PHA management organization, and a listing of the programs administered by the PHA. (24 CFR §903.7(e))

**Informal Review and Hearing Procedures.** A description of the informal hearing and review procedures that the PHA makes available to its applicants. (24 CFR §903.7(f))

**Homeownership Programs.** A statement describing any homeownership programs (including project number and unit count) administered by the agency under section 8y of the 1937 Act, or for which the PHA has applied or will apply for approval. (24 CFR §903.7(k))

**Self Sufficiency Programs and Treatment of Income Changes Resulting from Welfare Program Requirements.** A description of any PHA programs relating to services and amenities coordinated, promoted, or provided by the PHA for assisted families, including those resulting from the PHA's partnership with other entities, for the enhancement of the economic and social self-sufficiency of assisted families, including programs provided or offered as a result of the PHA's partnerships with other entities, and activities subject to Section 3 of the Housing and Community Development Act of 1968 (24 CFR Part 135) and under requirements for the Family Self-Sufficiency Program and others. Include the program's size (including required and actual size of the FSS program) and means of allocating assistance to households. (24 CFR §903.7(l)(i)) Describe how the PHA will comply with the requirements of section 12(c) and (d) of the 1937 Act that relate to treatment of income changes resulting from welfare program requirements. (24 CFR §903.7(l)(iii)).

**Substantial Deviation.** PHA must provide its criteria for determining a "substantial deviation" to its 5-Year Plan. (24 CFR §903.7(r)(2)(i))

**Significant Amendment/Modification.** PHA must provide its criteria for determining a "Significant Amendment or Modification" to its 5-Year and Annual Plan.

If any boxes are marked "yes", describe the revision(s) to those element(s) in the space provided.

**B.2 New Activities.** This section refers to new capital activities which is not applicable for HCV-Only PHAs.

**B.3 Progress Report.** For all Annual Plans following submission of the first Annual Plan, a PHA must include a brief statement of the PHA's progress in meeting the mission and goals described in the 5-Year PHA Plan. (24 CFR §903.11(c)(3), 24 CFR §903.7(r)(1))

**B.4 Capital Improvements.** This section refers to PHAs that receive funding from the Capital Fund Program (CFP) which is not applicable for HCV-Only PHAs

**B.5 Most Recent Fiscal Year Audit.** If the results of the most recent fiscal year audit for the PHA included any findings, mark "yes" and describe those findings in the space provided. (24 CFR §903.7(p))

**C. Other Document and/or Certification Requirements.**

**C.1 Resident Advisory Board (RAB) comments.** If the RAB had comments on the annual plan, mark "yes," submit the comments as an attachment to the Plan and describe the analysis of the comments and the PHA's decision made on these recommendations. (24 CFR §903.13(c), 24 CFR §903.19)

**C.2 Certification by State of Local Officials.** Form HUD-50077-SL, *Certification by State or Local Officials of PHA Plans Consistency with the Consolidated Plan*, must be submitted by the PHA as an electronic attachment to the PHA Plan. (24 CFR §903.15). Note: A PHA may request to change its fiscal year to better coordinate its planning with planning done under the Consolidated Plan process by State or local officials as applicable.

**C.3 Civil Rights Certification/ Certification Listing Policies and Programs that the PHA has Revised since Submission of its Last Annual Plan.** Provide a certification that the following plan elements have been revised, provided to the RAB for comment before implementation, approved by the PHA board, and made available for review and inspection by the public. This requirement is satisfied by completing and submitting form HUD-50077 ST-HCV-HP, *PHA Certifications of Compliance with PHA Plan, Civil Rights, and Related Laws and Regulations Including PHA Plan Elements that Have Changed*. Form HUD-50077-ST-HCV-HP, *PHA Certifications of Compliance with PHA Plan, Civil Rights, and Related Laws and Regulations Including PHA Plan Elements that Have Changed* must be submitted by the PHA as an electronic attachment to the PHA Plan. This includes all certifications relating to Civil Rights and related regulations. A PHA will be considered in compliance with the certification requirement to affirmatively further fair housing if the PHA fulfills the requirements of §§ 903.7(o)(1) and 903.15(d) and: (i) examines its programs or proposed programs; (ii) identifies any fair housing issues and contributing factors within those programs, in accordance with 24 CFR 5.154; or 24 CFR 5.160(a)(3) as applicable (iii) specifies actions and strategies designed to address contributing factors, related fair housing issues, and goals in the applicable Assessment of Fair Housing consistent with 24 CFR 5.154 in a reasonable manner in view of the resources available; (iv) works with jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement; (v) operates programs in a manner consistent with any applicable consolidated plan under 24 CFR part 91, and with any order or agreement, to comply with the authorities specified in paragraph (o)(1) of this section; (vi) complies with any contribution or consultation requirement with respect to any applicable AFH, in accordance with 24 CFR 5.150 through 5.180; (vii) maintains records

reflecting these analyses, actions, and the results of these actions; and (viii) takes steps acceptable to HUD to remedy known fair housing or civil rights violations. impediments to fair housing choice within those programs; addresses those impediments in a reasonable fashion in view of the resources available; works with the local jurisdiction to implement any of the jurisdiction's initiatives to affirmatively further fair housing; and assures that the annual plan is consistent with any applicable Consolidated Plan for its jurisdiction. (24 CFR §903.7(o)).

**C.4 Challenged Elements.** If any element of the Annual PHA Plan or 5-Year PHA Plan is challenged, a PHA must include such information as an attachment to the Annual PHA Plan or 5-Year PHA Plan with a description of any challenges to Plan elements, the source of the challenge, and the PHA's response to the public.

#### **D. Affirmatively Furthering Fair Housing (AFFH).**

**D.1 Affirmatively Furthering Fair Housing.** The PHA will use the answer blocks in item D.1 to provide a statement of its strategies and actions to implement each fair housing goal outlined in its accepted Assessment of Fair Housing (AFH) consistent with 24 CFR § 5.154(d)(5) that states, in relevant part: "To implement goals and priorities in an AFH, strategies and actions shall be included in program participants' ... PHA Plans (including any plans incorporated therein) .... Strategies and actions must affirmatively further fair housing ...." Use the chart provided to specify each fair housing goal from the PHA's AFH for which the PHA is the responsible program participant – whether the AFH was prepared solely by the PHA, jointly with one or more other PHAs, or in collaboration with a state or local jurisdiction – and specify the fair housing strategies and actions to be implemented by the PHA during the period covered by this PHA Plan. If there are more than three fair housing goals, add answer blocks as necessary.

Until such time as the PHA is required to submit an AFH, the PHA will not have to complete section D., nevertheless, the PHA will address its obligation to affirmatively further fair housing in part by fulfilling the requirements at 24 CFR 903.7(o)(3) enacted prior to August 17, 2015, which means that it examines its own programs or proposed programs; identifies any impediments to fair housing choice within those programs; addresses those impediments in a reasonable fashion in view of the resources available; works with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement; and maintain records reflecting these analyses and actions. Furthermore, under Section 5A(d)(15) of the U.S. Housing Act of 1937, as amended, a PHA must submit a civil rights certification with its Annual PHA Plan, which is described at 24 CFR 903.7(o)(1) except for qualified PHAs who submit the Form HUD-50077-CR as a standalone document.

---

This information collection is authorized by Section 511 of the Quality Housing and Work Responsibility Act, which added a new section 5A to the U.S. Housing Act of 1937, as amended, which introduced the Annual PHA Plan. The Annual PHA Plan provides a ready source for interested parties to locate basic PHA policies, rules, and requirements concerning the PHA's operations, programs, and services, and informs HUD, families served by the PHA, and members of the public for serving the needs of low- income, very low- income, and extremely low- income families.

Public reporting burden for this information collection is estimated to average 6.02 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not collect this information, and respondents are not required to complete this form, unless it displays a currently valid OMB Control Number.

**Privacy Act Notice.** The United States Department of Housing and Urban Development is authorized to solicit the information requested in this form by virtue of Title 12, U.S. Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality



## Chapter 4

### APPLICATIONS, WAITING LIST AND TENANT SELECTION

#### INTRODUCTION

When a family wishes to receive Section 8 HCV assistance, the family must submit an application that provides BHA with the information needed to determine the family's eligibility. HUD requires BHA to place all families that apply for assistance in an applicant **lottery pool** **random draw** or on a waiting list. When HCV assistance becomes available, BHA must select families from the waiting list in accordance with HUD requirements and BHA policies as stated in the Administrative Plan and the Annual Plan.

BHA is required to adopt a clear approach to accepting applications, placing families on the waiting list, selecting families from the waiting list and must follow this approach consistently. The actual order in which families are selected from the waiting list can be affected if a family has certain characteristics designated by HUD or BHA to receive preferential treatment. Funding earmarked exclusively for families with particular characteristics may also alter the order in which families are served.

HUD regulations require that all families have an equal opportunity to apply for and receive housing assistance, and that BHA affirmatively further fair housing goals in the administration of the program [24 CFR 982.53, HCV GB p. 4-1]. Adherence to the selection policies described in this chapter ensures that BHA will be in compliance with all relevant fair housing requirements, as described in Chapter 2.

This chapter describes HUD and BHA policies for taking applications, managing the waiting list and selecting families for HCV assistance. The policies outlined in this chapter are organized into three sections, as follows:

Part I: The Application Process. This part provides an overview of the application process, and discusses how applicants can obtain and submit applications. It also specifies how BHA will handle the applications it receives.

Part II: Managing the Waiting List. This part presents the policies that govern how BHA's waiting list is structured, when it is opened and closed, and how the public is notified of the opportunity to apply for assistance. It also discusses the process BHA will use to keep the waiting list current.

Part III: Selection for HCV Assistance. This part describes the policies that guide BHA in selecting families for HCV assistance as such assistance becomes available. It also specifies how in-person interviews will be used to ensure that BHA has the information needed to make a final eligibility determination.



## PART I: THE APPLICATION PROCESS

### 4-I.A. OVERVIEW

This part describes the policies that guide BHA's efforts to distribute and accept applications, and to make preliminary determinations of applicant family eligibility that affect placement of the family on the waiting list. This part also describes BHA's obligation to ensure the accessibility of the application process to elderly persons, people with disabilities, and people with limited English proficiency (LEP).

### 4-I.B. APPLYING FOR ASSISTANCE [HCV GB, pp. 4-11 – 4-16, Notice PIH 2009-36]

Any family that wishes to receive HCV assistance must apply for admission to the program. HUD permits BHA to determine the format and content of HCV applications, as well how such applications will be made available to interested families and how applications will be accepted by BHA. However, BHA must include Form HUD-90026, Supplement to Application for Federally Assisted Housing, as part of the PHA's application.

#### BHA Policy

BHA may use a one- or two- step application process. In a one-step process, the family must provide all of the information necessary to establish family eligibility, household composition, and level of assistance at application. A one-step process may be used for categories of applicants for which the waiting list is always open.

BHA will, typically, use a two-step application process. ~~Under the two-step application process, BHA, initially will require families to provide only the information needed by BHA to make an initial assessment of the family's eligibility for assistance and its self-certified preference category eligibility. Depending on its self-certified preference category eligibility, a family initially determined to be eligible will be placed on the waiting list or in an applicant lottery pool.~~ Because of limited S8 HCV assistance, not all families in the applicant **random draw** lottery pool will be selected for placement on the waiting list. BHA will draw 1,500 to 2,000 applicants from the applicant **lottery random draw** pool for placement on the waiting list. The family will be required to provide all of the information necessary to establish family eligibility and level of assistance when the family is selected from the waiting list, **moving from the waiting list into eligibility determination.**

BHA will ~~announce the method by which applications may be obtained which may include:~~ **open the waitlist via a link on the** BHA website: [www.cityofberkeley.info/bha](http://www.cityofberkeley.info/bha).

- a. ~~Downloading a copy from~~
- b. ~~Via Internet at another designated address;~~

**Though the online application is the preferred method of submission, paper applications will be made available for those without access to a phone or computer. The paper applications will be available at the various sites around the City of Berkeley that will assist applicants in applying either on line, or on paper. Paper applications will also be made available at the lobby of 1947 Center Street, only during weekdays during the timeframe of the waitlist opening. Paper applications submitted must be postmarked by the last date of the online application opening, or dropped off at the appropriate drop boxes at 1947 Center Street on/before the last date of the online application opening.**



Paper applications not postmarked on last date of opening, and not received within 10 business days of the last date of opening, will not be considered for the random draw.

Annually, BHA will receive Project Move-up referrals from the SRO Moderate Rehabilitation Program and Berkeley's Shelter Plus Care program. A maximum of 10 referrals will be placed on the waiting list for Project Move up vouchers (see Chapter 18). Note: this is a 5 year program, starting in 2017, and only operational subject to funding availability. **Note: as of the writing of the 2022-23 Admin Plan, Project Move up is technically in its 4<sup>th</sup> year of operation, because of the budgetary shortfall in 2018, as well as the pandemic, both being periods in which BHA halted leasing up Project Move up participants;**

### **Project Move-Up**

Subject to HUD funding, Project Move-up is a program to facilitate the progression of individuals/families from homelessness – to housing via the Mod Rehab Program – to permanently affordable housing, via a Section 8 Tenant Based Voucher. The intent is to admit 5 individuals from BHA's Single Room Occupancy Program (UA Homes and Erna P. Harris) and 5 individuals from the City of Berkeley's Shelter + Care program each calendar year for up to 5 years. These households must:

- a. Demonstrate lease compliance over the prior 12 month period
- b. Everyone 18 or older must have stable monthly income from sources including but not limited to employment, self-employment, unemployment, retirement, CalWorks or Social Security/SSI, sufficient to pay BHA's minimum rent of \$50 per month plus any utility allowance;
- c. Utilize the assistance to rent a unit in Berkeley for 24 months before becoming eligible for portability

Candidates for this program must submit an **intake** application to the Section 8 Voucher program **waiting list**, and have a written referral from the property manager and/or case manager. Selection criteria for Project Move-up referrals to BHA are determined by Shelter Plus Care staff and Moderate Rehab property management, identifying a fair and systematic determination process, with priority given to those ready to live independently.

**Completed applications must be returned to BHA in the manner prescribed for the particular opening. Applications must be complete in order to be accepted by BHA for processing. If an application is incomplete or illegible, BHA will attempt to notify the family of the additional information required. If the applicant household does not qualify for Section 8 due to being over income, or in the case of a Project-based unit due to ineligibility of specific unit requirements (i.e. HOPWA status, emancipated youth, over 62, wrong sized household size for unit, etc.) applicant households will not be placed on the waiting list.**

## **4-I.C. ACCESSIBILITY OF THE APPLICATION PROCESS**

### **Elderly and Disabled Populations [24 CFR 8 and HCV GB, pp. 4-11 – 4-13]**



BHA must take a variety of steps to ensure that the application process is accessible to those people who might have difficulty complying with the normal, standard BHA application process. This could include people with disabilities, certain elderly individuals, as well as persons with limited English proficiency (LEP). BHA must provide reasonable accommodation to the needs of individuals with disabilities. The application-taking facility and the application process must be fully accessible, or BHA must provide an alternate approach that provides full access to the application process. Chapter 2 provides a full discussion of BHA's policies related to providing reasonable accommodations for people with disabilities.

### **Limited English Proficiency**

PHAs are required to take reasonable steps to ensure meaningful access to their programs and activities by persons with limited English proficiency [24 CFR 1]. Chapter 2 provides a full discussion on the PHA's policies related to ensuring access to people with limited English proficiency (LEP).

### **4-I.D. PLACEMENT ON THE WAITING LIST**

The software company, Emphasys, hosts the online waiting list portal, and database that BHA uses to track the waiting list. After the random draw of all applications entered into the online waitlist site, either by applicants themselves, or by BHA staff for paper applications received, the names selected randomly will comprise the waiting list. The names will be ordered according to preference points selected by applicants which were selected randomly, with most preference points rising to the top of the waiting list.

When BHA is ready to issue vouchers, BHA will send paperwork, and a list of requested documents to determine eligibility for a voucher. BHA must review each complete pre-application received and make a preliminary assessment of the family's eligibility. BHA must accept applications from families for whom the list is open unless there is good cause for not accepting the application (such as denial of assistance) for the grounds stated in the regulations [24 CFR 982.206(b)(2)]. Where the family is determined to be ineligible, BHA must notify the family in writing [24 CFR 982.201(f)]. Where the family is not determined to be ineligible, the family will be given an appointment for a Briefing (orientation) and voucher issuance. placed on a waiting list of applicants.

No applicant has a right or entitlement to be listed on the waiting list, or to any particular position on the waiting list [24 CFR 982.202(c)].

### **Ineligible for Placement on the Waiting List**

#### BHA Policy

If BHA can determine from the information provided that a family is ineligible at the time for the program for which it applied, the family will not be placed on the waiting list. Where a family is determined to be ineligible, BHA will send written notification of the ineligibility determination within 10 business days of receiving a complete application. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal review and explain the process for doing so (see Chapter 16).

### **Eligible for Placement on the Waiting List**

#### BHA Policy



Within **10 15** business days of **the random draw**, BHA will send written notification of **the preliminary eligibility determination receiving a complete application** placement on the **applicant lottery pool, if any, or on the** waiting list. **Placement on the waiting list** does not indicate that the family is, in fact, eligible for assistance. A final determination of eligibility will be made when the family is selected from the waiting list, **and submits the required paperwork and documentation needed to confirm eligibility for a voucher.**

Applicants will be placed on the waiting list according to any preference(s) for which they qualify, and, as applicable, either a randomly assigned applicant **lottery** pool tiebreaker number, or the date and time their application is received by BHA.

## **PART II: MANAGING THE WAITING LIST**

### **4-II.A. OVERVIEW**

BHA must have policies regarding various aspects of organizing and managing the waiting list of applicant families. This includes opening the list to new applicants, closing the list to new applicants, notifying the public of waiting list openings and closings, updating waiting list information, purging the list of families that are no longer interested in or eligible for assistance, as well as conducting outreach to ensure a sufficient number of applicants.

In addition, HUD imposes requirements on how a PHA may structure its waiting list and how families must be treated if they apply for assistance from a PHA that administers more than one assisted housing program.

### **4-II.B. ORGANIZATION OF THE WAITING LIST [24 CFR 982.204 and 205]**

BHA's HCV waiting list must be organized in such a manner to allow BHA to accurately identify and select families for assistance in the proper order, according to the admissions policies described in this plan.

The waiting list must contain the following information for each applicant listed:

- Applicant name;
- Family unit size;
- Date and time of application;
- Qualification for any local preference;
- Racial or ethnic designation of the head of household.

HUD requires BHA to maintain a single waiting list for the HCV program unless it serves more than one county or municipality. Such PHAs are permitted, but not required, to maintain a separate waiting list for each county or municipality served.

#### BHA Policy

BHA will maintain a single waiting list for the HCV program.

In cases where two waiting lists overlap, applications on the pre-existing waiting list will be processed before applications from the new waiting list admission.

HUD directs that a family that applies for assistance from the HCV program must be offered the opportunity to be placed on the waiting list for any public housing, project-based voucher or moderate rehabilitation program BHA operates if 1) the other programs' waiting lists are open, and 2) the family is qualified for the other programs.



HUD permits, but does not require, that PHA's maintain a single merged waiting list for their public housing, Section 8, and other subsidized housing programs.

A family's decision to apply for, receive, or refuse other housing assistance must not affect the family's placement on the HCV waiting list, or any preferences for which the family may qualify.

#### BHA Policy

BHA will not merge the HCV waiting list with the waiting list for any other program the BHA operates. BHA will maintain separate waiting list for the Section 8 HCV tenant based program, the Section 8 Project Based program. However, under special circumstances, BHA will allow applicants on a Project-based waitlist to be offered to move to the Tenant-based waitlist, and vice-versa. Such circumstances include identifying applicants on either waitlist who are eligible for a special population voucher or program, or prior to moving to close a list.

BHA may either allow referrals from owners/developers of Project-based Voucher units, or use the HCV waiting list to fill project based units (a) after all eligible applicants on the PBV waiting list have been contacted regarding vacancies, and (b) a determination is made that the PBV waiting list pool is insufficient to fill any current vacancy.

The Single Room Occupancy, Moderate Rehabilitation program "Interest Lists" are managed by The Coordinated Entry System (CES) operated by Bay Area Community Services (BACS and referred to Home Stretch, the Alameda County Health Care Services agency's program).

### **4-II.C. OPENING AND CLOSING THE WAITING LIST [24 CFR 982.206]**

#### **Closing the Waiting List**

BHA is permitted to close the waiting list if it has an adequate pool of families to use its available HCV assistance. Alternatively, BHA may elect to continue to accept applications only from certain categories of families that meet particular preferences or funding criteria.

#### BHA Policy

Except as set forth in the following paragraphs, BHA will close the waiting list when the estimated waiting period for housing assistance for applicants on the list reaches **24 60** months for the most current applicants; **this is an approximated length of time for processing 1,500 applicants.**

Where BHA has particular preferences or funding criteria that require a specific category of family (i.e. HOPWA), BHA may elect to continue to accept applications from these applicants while closing the waiting list to others.

#### **Reopening the Waiting List**

If the waiting list has been closed, it cannot be reopened until BHA publishes a notice in local newspapers of general circulation, minority media, and other suitable media outlets. The notice must comply with HUD fair housing requirements and must specify who may apply, and where and when applications will be received.

#### BHA Policy

BHA will announce the reopening of the waiting list at least 5 business days prior to the date applications will first be accepted. If the list is only being reopened for certain categories of families, this information will be contained in the notice.

BHA will give public notice by publishing the relevant information in suitable media outlets including, but not limited to:

- 1) On the BHA website, [www.cityofberkeley.info/BHA](http://www.cityofberkeley.info/BHA)
- 2) Through public notices and advertisement in **Berkeley** ~~side~~, **Daily Planet or the Daily Californian**, and/or the legal or public notice section of the **East Bay Times, Oakland Post, Oakland Tribune** and La Opinion.
- 3) Through written notice to:
  - i. The City of Berkeley Rent Stabilization **Program** Office, **and other City of Berkeley Offices**
  - ii. The Eviction Defense Center
  - iii. **Bay Area Legal Aid**
  - iv. **East Bay Community Law Center**
  - v. **Legal Assistance for Seniors**
  - vi. **Homeless Action Center**
  - vii. Berkeley Unified School District
  - viii. Homeless Shelters operating in the City of Berkeley
  - ix. **Berkeley's Coordinated Entry System** ~~One-Stop Homelessness Services Center~~
  - x. Berkeley Food and Housing Project
  - xi. **Bay Area Community Services**
  - xii. **Abode Housing**
  - xiii. The Faith Community
  - xiv. Community service providers, including those serving clients with limited English Proficiency, such as East Bay Asian Local Development Corporation, Centro Legal De La Raza, Asian Health Services, and Unity Council
  - xv. Ed Roberts Campus,
  - xvi. Center for Independent Living
  - xvii. Disability Rights California
  - xviii. Disability Rights
  - xix. Local AIDS organizations
  - xx. Organizations working with emancipated youth from foster care
  - xxi. Alameda County Department of Social Services
  - xxii. Non-profit housing **developers organizations** with **S8** Project Based assistance in the City of Berkeley, including Satellite Affordable Housing Associates,



Resources for Community Development, Northern California Land Trust, Bay Area Community Land Trust

- xxiii. Children's Hospital (Oakland)
  - xxiv. Bay Area Public Housing Authorities
  - xxv. Berkeley Property Owners Association ~~Berkeley Rental Coalition~~
  - xxvi. Berkeley Chapter of the NAACP
  - xxvii. Healthy Black Families
  - xxviii. Inner City Services
  - xxix. Berkeley Mutual Aid
  - xxx. Hello Housing
  - xxxi. Berkeley Tenants Union
  - xxxii. Gray Panthers
  - xxxiii. Berkeley Community Safety Coalition
  - xxxiv. Care Not Cops
- 4) Written notice posted at U.A. Homes and Erna P. Harris, Single Room Occupancy Moderate Rehabilitation Program developments
  - 5) On a recorded voice mail box; and
  - 6) On the doors of the ~~At~~ BHA Office.

BHA will attempt to coordinate with a representative selection of social service agencies that serve disabled, elderly and Limited English Proficiency populations in order to ensure equal access for these populations. Through these agencies, lottery applicants for the random draw entrants will be able to access translation services.

In the case of the Mainstream Voucher Program, BHA may have a limited timeframe opening for a limited number of Mainstream Vouchers, with limited public noticing only through a local newspaper such as the East Bay Times. The limited public notice, in the case of Mainstream Vouchers, will state that BHA will receive referrals to the Tenant-based waitlist solely from the Coordinated Entry System (CES), *only for those who are eligible for a Mainstream Voucher:* households, including single person households, with at least one disabled person between the ages of 18 – 61, who are: transitioning out of institutional and other segregated settings; at serious risk of institutionalization; homeless; or at risk of becoming homeless; previously experienced homelessness, and currently a client in a permanent supportive housing or rapid re-housing project.

#### **4-II.D. FAMILY OUTREACH [HCV GB, pp. 4-2 to 4-4]**

BHA must conduct outreach as necessary to ensure that BHA has a sufficient number of applicants on the waiting list to use the HCV resources it has been allotted.

Because HUD requires BHA to serve a specified percentage of extremely low income families (see Chapter 4, Part III), BHA may need to conduct special outreach to ensure that an adequate number of such families apply for assistance [HCV GB, p. 4-20 to 4-21].

BHA outreach efforts must comply with fair housing requirements. This includes:

- Analyzing the housing market area and the populations currently being served to identify underserved populations
- Ensuring that outreach efforts are targeted to media outlets that reach eligible populations that are underrepresented in the program
- Avoiding outreach efforts that prefer or exclude people who are members of a protected class.

BHA outreach efforts must be designed to inform qualified families about the availability of assistance under the program. These efforts may include, as needed, any of the following activities:

- Submitting press releases to local newspapers, including minority newspapers
- Developing informational materials and flyers to distribute to other agencies
- Providing application forms to other public and private agencies that serve the low income population
- Developing partnerships with other organizations that serve similar populations, including agencies that provide services for persons with disabilities.

#### BHA Policy

BHA will monitor the characteristics of the population being served and the characteristics of the population as a whole in BHA's jurisdiction, including utilizing data from the U.S. Census Bureau, American Community Survey Table. Targeted outreach efforts will be undertaken if data suggests that certain populations are being underserved.

### **4-II.E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES**

#### BHA Policy

While the family is in the application **lottery random draw** pool or on the waiting list, the family must immediately inform BHA of changes in contact information, including current residence, mailing address, email address and phone number. The changes must be submitted **via the online applicant portal. Staff support will be provided if needed. in writing**

BHA will consider a request to transfer the application to the spouse (partner) after reviewing the basis for the request. BHA will also consider transfer the application to another member of the household, provided the individual was listed as a household member at the time application was made. If the applicant is deceased, or otherwise no longer able to serve as applicant, and the only other household members were minors, BHA will transfer to application to the individual assuming responsibility for the minors.

### **4-II.F. UPDATING THE WAITING LIST [24 CFR 982.204]**

HUD requires BHA to establish policies to use when removing applicant names from the waiting list.

#### **Purging the Waiting List**



The decision to withdraw an applicant family that includes a person with disabilities from the waiting list is subject to reasonable accommodation. If the applicant did not respond to a BHA request for information or updates because of the family member's disability, BHA must reinstate the applicant family to their former position on the waiting list [24 CFR 982.204(c)(2)] if requested by the family.

#### BHA Policy

The waiting list will be updated at least annually to reflect changes that have been reported, qualification for preferences, and to ensure that all applicants and applicant information is current and timely.

To update the waiting list, BHA will send an update request via US mail to each family on the waiting list to determine whether the family continues to be interested in, and to qualify for, the program. This update request will be sent to the last address that BHA has on record for the family. The update request will provide a deadline by which the family must respond and will state that failure to respond will result in the applicant's name being removed from the waiting list.

The family's response on the original form provided must be in writing and may be delivered in person, or by mail. Responses should be postmarked or received by BHA not later than 30 business days from the date of BHA letter.

If the family fails to respond within 30 business days BHA will send a second notice to an alternate address and/or email address, if any. If the family provided alternate contacts, such as additional addresses/email addresses, BHA will send notice to the applicant via every available contact provided. If the notice is returned by the post office with no forwarding address, the applicant will be removed from the waiting list without further notice. If there is no alternate and/or email address, or alternate contact, the family will be removed from the waiting list without further notice.

If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated. The family will have 30 business days to respond from the date the letter was re-sent. If at that time, the family fails to respond within 120 business days, the family will be removed from the waiting list without further notice.

If a family is removed from the waiting list for failure to respond, the Executive Director, or his/her designee may reinstate the family if s/he determines the lack of response was due to BHA error, or to circumstances beyond the family's control. **There may also be disability-related or VAWA-related circumstances providing for re-instatement to the waiting list. If the applicant is re-instated, they will resume their original placement on the waiting list.**

### **Removal from the Waiting List**

#### BHA Policy

If at any time an applicant family is on the waiting list, and BHA determines that the family is not eligible for assistance or is currently receiving **S8** Tenant Based rental assistance from another Public Housing Authority, or is in the Project-based Program, or is deceased (see Chapter 3), the family will be removed from the waiting list.

If a family is removed from the waiting list because BHA has determined the family is not eligible for assistance, or is already receiving rental assistance, a notice will be sent to the family's address of record as well as to any alternate address (including an email address) provided on the initial application. The notice will state the reasons the family was removed from the waiting list and will inform the family how to request an informal review regarding BHA's decision (see Chapter 16) [24 CFR 982.201(f)].

### **PART III: SELECTION FOR HCV ASSISTANCE**

#### **4-III.A. OVERVIEW**

As vouchers become available, families on the waiting list must be selected for assistance in accordance with the policies described in this part.

The order in which families receive assistance from the waiting list depends on the selection method chosen by BHA and is impacted in part by any selection preferences that the family qualifies for. The source of HCV funding also may affect the order in which families are selected from the waiting list.

BHA must maintain a clear record of all information required to verify that the family is selected from the waiting list according to BHA's selection policies [24 CFR 982.204(b) and 982.207(e)].

#### **4-III.B. SELECTION AND HCV FUNDING SOURCES**

##### **Special Admissions [24 CFR 982.203]**

HUD may award funding for specifically-named families living in specified types of units (e.g., a family that is displaced by demolition of public housing; a non-purchasing family residing in a HOPE 1 or 2 projects). In these cases, BHA may admit families that are not on the waiting list, or without considering the family's position on the waiting list. BHA must maintain records showing that such families were admitted with special program funding.

##### BHA Policy

Subject to Board approval, BHA will administer vouchers on behalf of families eligible for special admission.

##### Project Move-Up

With HUD approval, BHA has established a program to facilitate the progression of individuals/families from homelessness – to temporary supportive housing – to permanently affordable housing, via a Section 8 Housing Choice Voucher. The intent is to admit 5 individuals from BHA's Single Room Occupancy Program (UA Homes and Erna P. Harris) and an additional 5 households from the Shelter Plus Care Program each calendar year for 5 years. These households must:

- d. Demonstrate lease compliance over the prior 12 month period
- e. Have stable monthly income from employment, self-employment, retirement, CalWorks, Unemployment, or Social Security/SSI sufficient in total for family to pay BHA's minimum rent of \$50 per month plus any utility allowance
- f. Attempt to utilize the assistance to rent a unit in Berkeley for 24 months before becoming eligible for portability



Candidates for this program must have a written referral from the property manager and/or case manager and selection criteria for Project Move-up referrals to BHA are determined by Shelter Plus Care staff and Moderate Rehab property management, identifying a fair and systematic determination process, with priority given to those ready to live independently.

### **Targeted Funding [24 CFR 982.204(e)]**

HUD may award BHA funding for a specified category of families on the waiting list. BHA must use this funding only to assist the families within the specified category. Within this category of families, the order in which such families are assisted is determined according to the policies provided in Section 4-III.C.

#### BHA Policy

For any specified category of families for which HUD may award funding to BHA, applicants will be selected in the following order:

1. Any manner set forth by HUD in funding award
  2. If not set forth by HUD funding award, in the order of first come, first served.
- HUD designated assistance or awarded funding to BHA in response to an application from BHA:

The waiting list is always open to an otherwise eligible homeless applicant referred to BHA for assistance by the research project/administration, up to the maximum number of vouchers approved for the project.

To the extent BHA is awarded funding (vouchers) under a HUD Notice of Funding Availability (NOFA) or other means, for any specific or broader-based category, BHA will:

Review the current **S8 Housing Choice Voucher** Waiting list for a pending application and grant assistance in accordance with its position on the waiting list; or Reopen the waiting list to accept an eligible household, not presently on the waiting list; **or, if directed by HUD, add a special purpose voucher applicant to the top of the waiting list, according to HUD program requirements.**

### **Regular HCV Funding**

Regular HCV funding may be used to assist any eligible family on the waiting list. Families are selected from the waiting list according to the policies provided in Section 4-III.C.

### **4-III.C. SELECTION METHOD**

BHA must describe the method for selecting applicant families from the waiting list, including the system of admission preferences that BHA will use [24 CFR 982.202(d)].

### **Local Preferences [24 CFR 982.207; HCV p. 4-16]**

PHAs are permitted to establish local preferences, and to give priority to serving families that meet those criteria. HUD specifically authorizes and places restrictions on certain types of local preferences. HUD also permits the PHA to establish other local preferences, at its discretion. Any local preferences established must be consistent with the PHA plan and the consolidated

plan, and must be based on local housing needs and priorities that can be documented by generally accepted data sources.

#### BHA Policy

- ~~Households, including single person households, with at least one disabled person between the ages of 18—61, who are: transitioning out of institutional and other segregated settings; at serious risk of institutionalization; homeless; or at risk of becoming homeless; previously experienced homelessness, and currently a client in a permanent supportive housing or rapid re-housing project who are referrals from the Coordinated Entry System or disabled advocacy organizations such as Center for Independent Living or East Bay Innovations~~
- Mainstream Voucher Qualified households **or Project Move-up Referrals** (105 points). **Note: these referrals are provided to BHA by homeless services staff (Mainstream) or Mod Rehab/Shelter Plus Care staff (Project Move up), and preference points are for adding these referrals to the Tenant-based Waitlist via these referral mechanisms. As such, they are not utilized for Preference Categories in any online waitlist opening.**
- **Resident families** Households/families that at the time of selection from the waiting list, reside in the City of Berkeley, or **formerly resided in Berkeley**, or include a member who works, or has been hired to work in the jurisdiction. Use of this preference will not have the purpose or effect of delaying or otherwise denying admission to the program based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant family. (100 points)
- Veteran Preference (as required by State law). Granted to households with one or more active member(s) of the military, or a veteran discharged or released under conditions other than dishonorable, or a surviving spouse (as defined by the Department of Veteran Affairs) (50 points)
- ~~Households with a Project Move Up referral (50 points)~~
- ~~Family Unification/Emancipated Youth with a Family Unification Plan from the governing jurisdiction (20 points)~~
- Elderly (62 or older), **and/or** disabled, based on head of household (10 points)
- Family status (any 2- or more person household) (10 points)
- Date and time of application (tie breaker).

#### **Section 8, Single Room Occupancy, Moderate Rehabilitation Program (Mod Rehab)**

The Single Room Occupancy, Moderate Rehabilitation program “Interest Lists” are managed by The Coordinated Entry System (CES), operated by Bay Area Community Services (BACS) and referred to Home Stretch, the Alameda County Health Care Services agency’s program. (See Chapter 18 for details.)



## **Income Targeting Requirement [24 CFR 982.201(b)(2)]**

HUD requires that extremely low-income (ELI) families make up at least 75% of the families admitted to the HCV program during BHA's fiscal year. ELI families are those with annual incomes at or below 30% of the area median income. To ensure this requirement is met, BHA may skip non-ELI families on the waiting list in order to select an ELI family. This means that 75% of BHA's admissions must be at or below 30% of AMI; therefore 25% of BHA's admissions may be at 31 – 50% AMI.

Low income families admitted to the program that are “continuously assisted” under the 1937 Housing Act [24 CFR 982.4(b)], as well as low-income or moderate-income families admitted to the program that are displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing, are not counted for income targeting purposes [24 CFR 982.201(b)(2)(v)].

### BHA Policy

BHA will monitor progress in meeting the ELI requirement throughout the fiscal year. Extremely low-income families (up to 30% AMI) will be selected ahead of other eligible low-income (50% AMI) families on an as-needed basis to ensure the income targeting requirement is met. At least 75% of admissions will be at or below 30% AMI; no more than 25% will be between 31-50% AMI.

## **Order of Selection**

The PHA system of preferences may select families either according to the date and time of application, or by a random selection process [24 CFR 982.207(c)]. When selecting families from the waiting list PHAs are required to use targeted funding to assist only those families who meet the specified criteria, and PHAs are not permitted to skip down the waiting list to a family that it can afford to subsidize when there are not sufficient funds to subsidize the family at the top of the waiting list [24 CFR 982.204(d) and (e)].

### BHA Policy

Families will be selected from the waiting list based on the targeted funding or selection preference(s) for which they qualify, and in accordance with BHA's hierarchy of preferences, if applicable. Ties among applicants in the same preference category are resolved:

1. First, in favor of **resident or returning resident category; veterans or servicepersons as set forth in the Glossary; and**
2. Then, as applicable, by either:
  - a. Lowest “tiebreaker” number; or
  - b. The date and time their complete application is received by BHA.

Documentation will be maintained by BHA as to whether families on the list qualify for targeted funding. If a higher placed family on the waiting list is not qualified for targeted funding, there will be a notation maintained so that BHA does not have to ask higher placed families each time targeted selections are made.

## **4-III.D. NOTIFICATION OF SELECTION**

When a family has been selected from the waiting list, BHA must notify the family.

### BHA Policy



BHA will notify the family by first class mail when it is selected from the waiting list. The notice will inform the family of the following:

1. **Date, time, and location of the scheduled Deadline for application and documentation submission** interview, including any procedures for rescheduling the interview or instructions for returning the required information/documentation by mail
2. Who is required to **provide documentation** attend the interview
3. Documents that must be provided **by the deadline, confirming at the interview to document** the legal identity of household members, **including and** information about what constitutes acceptable documentation
4. Other documents and information that should be **submitted with the application packet. brought to the interview**

If a family does not respond or letter is returned with no forwarding address, BHA will mail to alternate address (including email address), and any alternate contact identified by the applicant, if any. If a notification letter is returned to BHA with no forwarding address, and no alternate address (including email) or alternate contact, the family will be removed from the waiting list. A notice of denial (see Chapter 3) will be sent to the family's address of record, as well as to any known alternate address (including email).

If the family fails to respond within **15 20** business days, BHA will send a second notice to an alternate address (including email) or alternate contact, if any. If no alternate address, the family will be removed from the waiting list without further notice. If the notice is returned by the post office with no forwarding address, the applicant will be removed from the waiting list without further notice.

If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated. The family will have **15 20** business days to respond from the date the letter was re-sent. If at that time, the family fails to respond within **15 20** business days, the family will be removed from the waiting list without further notice.

#### **4-III.E. THE APPLICATION/ELIGIBILITY PROCESS INTERVIEW**

HUD recommends that BHA obtain the information and documentation needed to make an eligibility determination through a private interview [HCV GB, pg. 4-16]. Being contacted for information or invited to attend an interview does not constitute admission to the program. Reasonable accommodation must be made for persons with disabilities who are unable to attend an interview due to their disability.

##### BHA Policy

Families selected from the waiting list are required to cooperate with BHA in providing the information and documentation required to determine eligibility for assistance. **The communication about application forms, documents, and any other questions the applicant household has, is generally done via phone, and email, and/or Zoom, rather than in person interviews. On a case by case basis, staff will conduct in person Briefings and answer questions where individuals do not have access to or ability to use reliable phone, internet, email and other electronic means. are not occurring currently.**

If BHA determines that the family is eligible to receive assistance, BHA will invite the family to attend a Briefing in accordance with the policies in Chapter 5.



**Once confirmed eligible**, the head of household and the spouse/co-head will be strongly encouraged to attend any scheduled **Briefing (orientation) interview** together. However, either the head of household or the spouse/co-head may attend any such **Briefings interview** on behalf of the family. Verification of information pertaining to adult members of the household will not begin until signed release forms are returned to BHA.

The eligibility determination can only proceed if the head of household or spouse/co-head provides appropriate documentation of legal identity. (Chapter 7 provides a discussion of proper documentation of legal identity). If the family representative does not provide the required documentation, the process may be **put on hold until rescheduled when** the proper documents have been obtained.

The family must provide the information necessary to establish the family's eligibility and determine the appropriate level of assistance, as well as completing required forms, providing required signatures, and submitting required documentation. If any materials are missing, BHA will provide the family with a written list of items that must be submitted.

Any required documents or information that the family is unable to provide **at the interview** must be provided within **10 15** business days of the request (Chapter 7 provides details about longer submission deadlines for particular items, including documentation of Social Security numbers and eligible noncitizen status). If the family is unable to obtain the information or materials within the required time frame, the family may request an extension. If the required documents and information are not provided within the required time frame (plus any extensions), the family will be sent a notice of denial (See Chapter 3).

An advocate, interpreter, or other assistant may assist the family with the application and the interview process.

BHA will send another notification letter with a new **interview** appointment time or alternate method for supplying the required information/documentation. Applicants who fail to comply without BHA approval will be denied assistance based on the family's failure to supply information needed to determine eligibility. A notice of denial will be issued in accordance with policies contained in Chapter 3.

**Interviews Briefings** will be conducted in English. For limited English proficient (LEP) applicants, BHA will provide translation services in accordance with BHA's LEP plan.

If the family is unable to attend **any the scheduled Briefings (orientations) interview**, the family should contact BHA in advance of the **interview Briefing** to schedule a new appointment. In all circumstances, if a family does not attend a scheduled **Briefing after repeated attempts, it will be removed from the waitlist. (orientations) interview,**

#### **4-III.F. COMPLETING THE APPLICATION PROCESS**

BHA must verify all information provided by the family (see Chapter 7). Based on verified information, BHA must make a final determination of eligibility (see Chapter 3) and must confirm that the family qualified for any special admission, targeted admission, or selection preference that affected the order in which the family was selected from the waiting list.

##### BHA Policy

If BHA determines that the family is ineligible for admission to the program for which it applied, BHA will send written notification of the ineligibility determination within 10 15 business days of the determination. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal review (Chapter 16).

If a family fails to qualify for any criteria that affected the order in which it was selected from the waiting list (e.g. targeted funding, extremely low-income), the family will be returned to its original position on the waiting list. BHA will notify the family in writing that it has been returned to the waiting list, and will specify the reasons for it.

DRAFT

## **Chapter 5**

### **BRIEFINGS AND VOUCHER ISSUANCE**

#### **INTRODUCTION**

This chapter explains the briefing and voucher issuance process. When a family is determined to be eligible for the Housing Choice Voucher (HCV) program, BHA must ensure that the family fully understands the way the program operates and the family's obligations under the program. This is accomplished through both an oral briefing and provision of a briefing packet containing written documentation of information the family needs to know. Once the family is fully informed of the program's requirements, BHA issues the family a voucher. The voucher includes the unit size the family qualifies for based on BHA's subsidy standards, as well as the dates of issuance and expiration of the voucher. The voucher is the document that permits the family to begin its search for a unit, and limits the amount of time the family has to successfully locate an acceptable unit.

This chapter describes HUD regulations and BHA policies related to these topics in two parts:

Part I: Briefings and Family Obligations. This part details the program's requirements for briefing families orally, and for providing written materials describing the program and its requirements. It includes a particular focus on the family's obligations under the program.

Part II: Subsidy Standards and Voucher Issuance. This part discusses BHA's standards for determining how many bedrooms a family of a given composition qualifies for, which in turn affects the amount of subsidy the family can receive. It also discusses the policies that dictate how vouchers are issued, and how long families have to locate a unit.

#### **PART I: BRIEFINGS AND FAMILY OBLIGATIONS**

##### **5-I.A. OVERVIEW**

HUD regulations require BHA to conduct mandatory briefings for applicant families. The briefing provides a broad description of owner and family responsibilities, explains BHA's procedures, and includes instructions on how to lease a unit. This part describes how oral briefings will be conducted, specifies what written information will be provided to families, and lists the family's obligations under the program.

##### **5-I.B. BRIEFING [24 CFR 982.301]**

BHA must give the family an oral briefing and provide the family with a briefing packet containing written information about the program. Families may be briefed individually or in groups. At the briefing, BHA must ensure effective communication in accordance with Section 504 requirements (Section 504 of the Rehabilitation Act of 1973), and ensure that the briefing site is accessible to individuals with disabilities. For a more thorough discussion of accessibility requirements, refer to Chapter 2.

##### BHA Policy

BHA will require attendance at a briefing by all households coming from the BHA waiting list; porting in from another jurisdiction, or transferring from one unit to another within the jurisdiction; briefings will be conducted in group meetings.



The head of household and spouse/co-head/partner are required to attend the briefing. Under special circumstances, where one spouse or co-head or partner is unable to attend the Briefing, only one will be required to attend, and will be asked to share the details of the Briefing with the other spouse/co-head/partner. If the head of household is unable to attend, BHA may approve another adult family member to attend the briefing.

Families that attend group briefings and still need individual assistance will be referred to an appropriate BHA staff person.

BHA may require participants to attend a refresher briefing periodically, possibly every three years, for program updates, or as part of an intervention plan to preserve rental assistance.

Briefings will be conducted in English. For limited English proficient (LEP) applicants, BHA will provide translation services in accordance with BHA's LEP plan (See Chapter 2).

During the Covid-19 pandemic, and at other times as needed, Briefings will be conducted online via Zoom. Advocates who are assisting new voucher holders with the lease up process, and who can be instrumental in providing internet access, especially for homeless populations, are also invited to Briefings, whether in person or online via Zoom. Advocates may be officially designated or someone identified by a new voucher holder as an advocate. Briefing participants may join via Zoom video, videolink or via telephone (toll free number provided in invitations), or both. Accommodations are provided for those who cannot attend via Zoom online/by phone, including the option for an in person briefing or via 311 Relay Service for those who are deaf/hard of hearing.

## Notification and Attendance

### BHA Policy

Waiting list Families. Families will be notified of their eligibility for assistance at the time they are invited to attend a briefing. The notice will identify who is required to attend the briefing, as well as the date and time of the scheduled briefing.

If the notice is returned by the post office with no forwarding address, the applicant will be denied and their name will not be placed back on the waiting list. If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated.

Applicants who fail to attend a scheduled briefing will automatically be scheduled for another briefing. BHA will notify the family of the date and time of the second scheduled briefing. Applicants who fail to attend two scheduled briefings, without BHA approval, will be denied assistance (see Chapter 3).

Port-in and transfers. Families will be advised in writing of the date and time of the briefing.

## Oral Briefing [24 CFR 982.301(a)]

Each briefing must provide information on the following subjects:

- How the Housing Choice Voucher program works;
- Family and owner responsibilities;

- Where the family can lease a unit, including renting a unit inside or outside BHA's jurisdiction;
- For families eligible under portability, an explanation of portability, including screening requirements, subsidy standards, payment standards and other elements of the portability process. BHA cannot discourage eligible families from moving under portability;
- For families living in high-poverty census tracts, an explanation of the advantages of moving to areas outside of high-poverty concentrations; and
- For families receiving welfare-to-work vouchers, a description of any local obligations of a welfare-to-work family and an explanation that failure to meet the obligations is grounds for denial of admission or termination of assistance.

### **Briefing Packet [24 CFR 982.301(b)]**

Documents and information provided in the briefing packet must include the following:

- The term of the voucher, and BHA's policies on any extensions or suspensions of the term. If BHA allows extensions, the packet must explain how the family can request an extension.
- A description of the method used to calculate the housing assistance payment for a family, including how BHA determines the payment standard for a family, how BHA determines total tenant payment for a family, and information on the payment standard and utility allowance schedule.
- An explanation of how BHA determines the maximum allowable rent for an assisted unit.
- Where the family may lease a unit and an explanation of how portability works. For a family that qualifies to lease a unit outside BHA jurisdiction under portability procedures, the information must include an explanation of how portability works.
- An explanation of the advantages of moving to areas outside of high-poverty concentrations.
- The HUD-required tenancy addendum, which must be included in the lease.
- The form the family must use to request approval of tenancy, and a description of the procedure for requesting approval for a tenancy.
- A statement of BHA policy on providing information about families to prospective owners.
- BHA subsidy standards including when and how exceptions are made.
- The HUD brochure on how to select a unit.
- The HUD pamphlet on lead-based paint entitled *Protect Your Family from Lead in Your Home*.
- Information on federal, state and local equal opportunity laws and a copy of the housing discrimination complaint form.
- A list of landlords or other parties willing to lease to assisted families or help families find units, especially outside areas of poverty or minority concentration.
- Notice that if the family includes a person with disabilities, the family may request a list of available accessible units known to BHA.

- The family obligations under the program, including any obligations of a welfare-to-work family.
- The grounds on which BHA may terminate assistance for a participant family because of family action or failure to act.
- BHA informal hearing procedures including when BHA is required to offer a participant family the opportunity for an informal hearing, and how to request the hearing.
- Rights, responsibilities and protections under the Violence Against Women Act (VAWA)
- HUD’s “Debts Owned to Public Housing Agencies” reporting system

If the PHA is located in a metropolitan FMR area, the following additional information must be included in the briefing packet in order to receive full points under SEMAP Indicator 7, Expanding Housing Opportunities [24 CFR 985.3(g)].

- Maps showing areas with housing opportunities outside areas of poverty or minority concentration, both within its jurisdiction and its neighboring jurisdiction.
- Information about the characteristics of these areas including job opportunities, schools, transportation and other services.
- An explanation of how portability works, including a list of portability contact persons for neighboring PHAs including names, addresses, and telephone numbers.

### **Additional Items to be Included in the Briefing Packet**

In addition to items required by the regulations, PHAs may wish to include supplemental materials to help explain the program to both participants and owners [HCV GB p. 8-7].

#### BHA Policy

BHA will provide the following additional materials in the briefing packet:

Information on how to fill out and file a housing discrimination complaint form.

The publication *Things You Should Know (HUD-1140-OIG)* that explains the types of actions a family must avoid and the penalties for program abuse.

“What You Should Know about EIV”, a guide to the Enterprise Income Verification (EIV) system published by HUD.

### **5-I.C. FAMILY OBLIGATIONS**

Obligations of the family are described in the housing choice voucher (HCV) regulations and on the voucher itself. These obligations include responsibilities the family is required to fulfill, as well as prohibited actions. BHA must inform families of these obligations during the oral briefing, and the same information must be included in the briefing packet. When the family’s unit is approved and the HAP contract is executed, the family must meet those obligations in order to continue participating in the program. Violation of any family obligation may result in termination of assistance, as described in Chapter 12.



## **Time Frames for Reporting Changes Required By Family Obligations**

### BHA Policy

Unless otherwise noted below, when family obligations require the family to respond to a request or notify BHA of a change, notifying BHA of the request or change within 14 calendar days of occurrence is considered prompt notice.

When a family is required to provide notice to BHA, the notice must be in writing.

### **Family Obligations [24 CFR 982.551]**

Following is a listing of a participant family's obligations under the HCV program:

- The family must supply any information that BHA or HUD determines to be necessary, including submission of required evidence of citizenship or eligible immigration status.
- The family must supply any information requested by BHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- The family must disclose and verify social security numbers and sign and submit consent forms for obtaining information.
- Any information supplied by the family must be true and complete.
- The family is responsible for any Housing Quality Standards (HQS) breach by the family caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond normal wear and tear caused by any member of the household or guest.

### BHA Policy

Damages beyond normal wear and tear will be considered to be damages which could be assessed against the security deposit or grounds for termination of rental assistance.

- The family must allow BHA to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this plan.
- The family must not commit any serious or repeated violation of the lease.

### BHA Policy

BHA will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, a court-ordered eviction, or an owner's notice to evict.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity.

- The family must notify BHA and the owner before moving out of the unit or terminating the lease.

### BHA Policy

The family must comply with lease requirements regarding written notice to the owner. The family must provide written notice to BHA at the same time the owner is notified.

- The family must give BHA a copy of any owner eviction notice within 5 calendar days.
- The family must use the assisted unit for residence by the family, including any approved live-in aide. The unit must be the family's only residence.

#### BHA Policy

A family may not allow other(s) to utilize the address of their Section 8 assisted unit, if they are not a part of the assisted family/household (including any approved live-in aide) without prior written approval from BHA.

- The composition of the assisted family residing in the unit must be approved by BHA. The family must promptly notify BHA in writing of the birth, adoption, or court-awarded custody of a child. The family must request BHA approval to add any other family member as an occupant of the unit.
- The family cannot move to any other unit without prior written consent by BHA and owner.

#### BHA Policy

The request to add a family member to the Voucher must be submitted in writing and approved in writing by BHA. BHA will determine eligibility of the new member in accordance with the policies in Chapters 3 and 11. The family must also provide evidence from the owner allowing the person to be added to the lease prior to the person moving into the unit.

- The family must promptly notify BHA in writing if any family member no longer lives in the unit.
- If BHA has given approval, a foster child or a live-in aide may reside in the unit. BHA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when BHA consent may be given or denied. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see Chapter 3 (Sections I.K and I.M), and Chapter 11 (Section II.B).
- The family must not sublease the unit, assign the lease, or transfer the unit.

#### BHA Policy

Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit or renting space/rooms in the unit who is not listed as a family member.

- The family must supply any information requested by BHA to verify that the family is living in the unit or information related to family absence from the unit.
- The family must promptly notify BHA when the family is absent from the unit.

#### BHA Policy

Notice is required under this provision only when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30

calendar days. Written notice must be provided to BHA at the start of the extended absence or as soon thereafter that it is clear that the absence will exceed 30-days.

- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).
- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and BHA policies related to drug-related and violent criminal activity.
- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for a discussion of HUD and BHA policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless BHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

## **PART II: SUBSIDY STANDARDS AND VOUCHER ISSUANCE**

### **5-II.A. OVERVIEW**

BHA must establish subsidy standards that determine the number of bedrooms needed for families of different sizes and compositions. This part presents the policies that will be used to determine the family unit size (also known as the voucher size) a particular family should receive, and the policies that govern making exceptions to those standards. BHA also must establish policies related to the issuance of the voucher, to the voucher term, and to any extensions or suspensions of that term.

### **5-II.B. DETERMINING FAMILY UNIT (VOUCHER) SIZE [24 CFR 982.402]**

For each family, BHA determines the appropriate number of bedrooms under BHA subsidy standards and enters the family unit size on the voucher that is issued to the family. The family unit size does not dictate the size of unit the family must actually lease, nor does it determine who within a household will share a bedroom/sleeping room.

The following requirements apply when BHA determines family unit size:

- The subsidy standards must provide for the smallest number of bedrooms needed to house a family without overcrowding.
- The subsidy standards must be consistent with space requirements under the housing quality standards.
- The subsidy standards must be applied consistently for all families of like size and composition.
- A child who is temporarily away from the home because of placement in foster care is considered a member of the family in determining the family unit size.
- A family that consists of a pregnant woman (with no other persons) must be treated as a two-person family.
- Any live-in aide (approved by BHA to reside in the unit to care for a family member who is disabled) must be counted in determining the family unit size;
- Unless a live-in-aide resides with a family, the family unit size for any family consisting of a single person must be either a zero- or one-bedroom unit, as determined under BHA subsidy standards.

### BHA Policy

BHA will assign voucher bedroom size as follows:

- |    |   |                                  |
|----|---|----------------------------------|
| 1. | Non-elderly, non-disabled single person Head of Household | 0 bedroom (Studio) or 1 bedroom* |
|----|---|----------------------------------|

*\*in some instances, in the Project-based Section 8 Program, a 1-BR for this category is allowable; in some instances in the Project-based Section 8 Program, up to 2 people may reside in a studio. In the Tenant-based Program, when there is a lack of Studio units on the available unit listing, vouchers will be issued for Studio/1 bedroom units.*

- |    |                                    |            |
|----|------------------------------------|------------|
| 2. | Single person over 62 or disabled: | 1 bedroom* |
|----|------------------------------------|------------|

*\*in some instances, in the Project-based Section 8 Program, a studio for this category is allowable.*

- |    |  |           |
|----|--|-----------|
| 3. | Head of household (and spouse, partner if any) | 1 bedroom |
|----|--|-----------|

*\*in some instances in the Project-based Section 8 Program, up to 2 people may reside in a studio.*

- |    |  |            |
|----|--|------------|
| 4. | Head of household (and spouse, partner if any) plus 1 or 2 other members | 2 bedrooms |
|----|--|------------|

- |    |  |            |
|----|--|------------|
| 5. | Head of household (and spouse, partner if any) plus 3 or 4 other household members | 3 bedrooms |
|----|--|------------|

- |    |  |            |
|----|--|------------|
| 6. | Head of household (and spouse, partner if any) plus 3 or 4 other household members (minimum of 5 in total) | 4 bedrooms |
|----|--|------------|



7. Head of household (and spouse, partner if any) plus 5 bedrooms  
6, 7 or 8 other household members

24-hour Live-in Aides, including up to one immediate family member, will be allocated a separate bedroom, and/or may use the living room as a sleeping room.

BHA will recognize a minor that is a ward of the State, and temporarily out of the home, as a household member for a maximum of three years, provided the family is complying with terms in the reunification plan.

Unless otherwise specified on the personal declaration, BHA will assume that the head of household and any “other” adult, of any gender, are in a committed relationship, and will assign one bedroom, except in the case where the “other” adult is a child or parent of the head of household.

### **5-II.C. EXCEPTIONS TO SUBSIDY STANDARDS**

In determining family unit size for a particular family, BHA may grant an exception to its established subsidy standards if BHA determines that the exception is justified by the age, gender, health, handicap, or relationship of family members or other personal circumstances.

[24 CFR 982.402(b)(8)]. Reasons may include, but are not limited to:

- A need for an additional bedroom for bulky medical equipment
- A need for a separate bedroom for reasons related to a family member’s disability, medical or health condition.

For a single person who is not elderly, disabled, or a remaining family member, an exception cannot override the regulatory limit of a zero or one bedroom [24 CFR 982.402(b)(8)].

#### BHA Policy

Non-elderly, non-disabled single person Head of household qualifies for a 0 bedroom (Studio) subsidy. In some instances, a 1-BR for this category is allowable.

Single person over 62 or disabled qualifies for a 1 bedroom subsidy. In some instances, in the Project-based Section 8 Program, a studio for this category is allowable.

A single remaining family member who is not elderly and not disabled may be granted a 0 (studio) or a 1 bedroom voucher.

BHA will consider granting an exception as a reasonable accommodation for a person with disabilities.

The family must request any exception to the subsidy standards in writing. The request must explain the need or justification for a larger family unit size, and must include the disability-related request for accommodation. The family’s continued need for an additional bedroom due to medical equipment must be re-verified in accordance with BHA policy, and confirmed annually.

BHA will notify the family of its determination within 14 business days of receiving the family’s request, and will utilize documentation received by an identified (by the family) care provider. A care provider for example, may be a health care professional within medicine, midwifery-obstetrics, nursing, pharmacy, or allied health professions. If a

participant family's request is denied, the notice will inform the family of their right to request an informal hearing.

#### **5-III.D. VOUCHER ISSUANCE [24 CFR 982.302]**

When a family is selected from the waiting list (or as a special admission as described in Chapter 4), or when a participant family wants to move to another unit, BHA issues a Housing Choice Voucher, form HUD-52646. This chapter deals only with voucher issuance for applicants. For voucher issuance associated with moves of program participants, please refer to Chapter 10.

The voucher is the family's authorization to search for housing. It specifies the unit size for which the family qualifies, and includes both the date of voucher issuance and date of expiration. It contains a brief description of how the program works and explains the family obligations under the program. The voucher is evidence that BHA has determined the family to be eligible for the program, and that BHA expects to have money available to subsidize the family if the family finds an approvable unit. However, BHA does not have any liability to any party by the issuance of the voucher, and the voucher does not give the family any right to participate in BHA's housing choice voucher program [Voucher, form HUD-52646]

A voucher can be issued to an applicant family only after BHA has determined that the family is eligible for the program based on information received within the 60 days prior to issuance [24 CFR 982.201(e)] and after the family has attended an oral briefing [HCV 8-1].

##### BHA Policy

Vouchers will be issued to eligible applicants immediately following the mandatory briefing. For transfer vouchers, BHA will annotate the Voucher with the earliest date the household may enter a new assisted lease. A transfer voucher is one issued to a family that is transferring from one unit to another, within the jurisdiction (City of Berkeley).

BHA should have sufficient funds to house an applicant before issuing a voucher. If funds are insufficient to house the family at the top of the waiting list, BHA must wait until it has adequate funds before it calls another family from the list [HCV GB p. 8-10].

##### BHA Policy

Prior to issuing any vouchers, BHA will determine whether it has sufficient funding in accordance with the policies in Part VIII of Chapter 16.

If BHA determines that there is insufficient funding after a voucher has been issued, BHA may rescind the voucher and place the affected family back on the waiting list.

#### **5-III.E. VOUCHER TERM, EXTENSIONS, SUSPENSIONS, EXPIRATION, AND REINSTATEMENT**

##### **Voucher Term [24 CFR 982.303]**

The initial term of a voucher must be *at least* 60 calendar days. The initial term must be stated on the voucher [24 CFR 982.303(a)].

### BHA Policy

The initial voucher term will be 120 calendar days. The family must submit a Request for Tenancy Approval and proposed lease within the time period unless BHA grants an extension.

#### **Extensions of Voucher Term [24 CFR 982.303(b)]**

BHA has the authority to grant extensions of search time, to specify the length of an extension, and to determine the circumstances under which extensions will be granted. There is no limit on the number of extensions that BHA can approve. Discretionary policies related to extension and expiration of search time must be described in BHA's administrative plan [24 CFR 982.54].

BHA must approve additional search time if needed as a reasonable accommodation to make the program accessible to and usable by a person with disabilities. The extension period must be reasonable for the purpose.

The family must be notified in writing of BHA's decision to deny an extension. BHA's decision to deny a request for an extension of the voucher term is not subject to informal review [24 CFR 982.554(c)(4)].

### BHA Policy

BHA will approve extensions in 60-day increments, in the following circumstances, and only if the family has demonstrated, to BHA's satisfaction, that it has a reasonable plan for identifying a suitable unit:

- a. It is necessary as a reasonable accommodation for a person with disabilities.
- b. It is necessary because of the low vacancy rates, competitive rental market and high rents in the area.
- c. It is necessary due to reasons beyond the family's control, as determined by BHA. Following is a list of extenuating circumstances that BHA may consider in making its decision. The presence of these circumstances does not guarantee that an extension will be granted, and additional emergency situations will be considered:
  - i. Serious illness or death in the family
  - ii. Other emergency such as an accident or hospitalization or death.

All requests for extensions to the voucher term must be made in writing and submitted to BHA prior to the expiration date of the voucher (or extended term of the voucher).

BHA will decide whether to approve or deny an extension request within 5 business days of the date the request is received, and will immediately provide the family notice of its decision, by way of an extension date on the voucher.

Note: As a condition of an extension, BHA may:

- require the family to identify a person(s), agency(ies), or entity(ies) that will assist in the housing search, and/or
- refer the family to resources that may provide housing assistance.

#### **Suspensions of Voucher Term [24 CFR 982.303(c)]**

At its discretion, BHA may adopt a policy to suspend the housing choice voucher term if the family has submitted a Request for Tenancy Approval (RTA) during the voucher term. “Suspension” means stopping the clock on a family’s voucher term from the time a family submits the RTA until the time BHA approves or denies the request [24 CFR 982.4]. BHA’s determination not to suspend a voucher term is not subject to informal review [24 CFR 982.554(c)(4)].

### BHA Policy

When a Request for Tenancy Approval is received by BHA, the term of the voucher will be suspended (“tolled”) while BHA processes the request.

Voucher term is suspended until notice from BHA of its decision to approve or deny the tenancy.

When BHA denies a request for tenancy, the family will be notified immediately that the clock on the voucher term has restarted. The notice will include the new expiration date of the voucher.

BHA will suspend issuance of a Voucher for a maximum of 120 calendar days as a reasonable accommodation.

BHA will suspend issuance of a Transfer Voucher for a maximum of 120 days as a reasonable accommodation, or in response to a hardship for a non-disabled household at BHA’s sole discretion.

### **Expiration of Voucher Term**

Once a family’s housing choice voucher term (including any extensions) expires, the family is no longer eligible to search for housing under the program and admission/participation is denied. **The maximum voucher term is one year, including all extensions. As a Reasonable Accommodation, or due to VAWA circumstances, an extension on the one year term may be requested. Additionally other “good cause” reasons beyond the family’s control, such as the Covid-19 pandemic, will be considered.**

### **Reinstatement of Voucher**

As a reasonable accommodation of an elderly or disabled person, BHA will consider reinstatement of a voucher submitted within two years of the expiration of the voucher/termination of assistance.



## Chapter 8

### HOUSING QUALITY STANDARDS AND RENT REASONABLENESS DETERMINATIONS

[24 CFR 982 Subpart I and 24 CFR 982.507]

#### INTRODUCTION

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV) assistance meet HUD's Housing Quality Standards (HQS) and permits BHA to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and BHA-established requirements. HQS inspections are required before the Housing Assistance Payments (HAP) Contract is signed and at least annually during the term of the contract.

HUD also requires BHA to determine that units rented by families assisted under the HCV program have rents that are reasonable when compared to comparable unassisted units in the market area.

This chapter explains HUD and BHA requirements related to housing quality and rent reasonableness as follows:

Part I. Physical Standards. This part discusses the physical standards required of units occupied by HCV-assisted families and identifies decisions about the acceptability of the unit that may be made by the family based upon the family's preference. It also identifies life-threatening conditions that must be addressed on an expedited basis.

Part II. The Inspection Process. This part describes the types of inspections the BHA will make and the steps that will be taken when units do not meet HQS.

Part III. Rent Reasonableness Determinations. This part discusses the policies the BHA will use to make rent reasonableness determinations.

Special HQS requirements for homeownership, manufactured homes, and other special housing types are discussed in Chapter 15 to the extent that they apply in this jurisdiction.

## **PART I: PHYSICAL STANDARDS**

### **8-I.A. GENERAL HUD REQUIREMENTS**

#### **HUD Performance and Acceptability Standards**

HUD's performance and acceptability standards for HCV-assisted housing are provided in 24 CFR 982.401. These standards cover the following areas:

- Sanitary facilities
- Food preparation and refuse disposal
- Space and Security
- Thermal Environment
- Illumination and electricity
- Structure and materials
- Interior Air Quality
- Water Supply
- Lead-based paint
- Access
- Site and neighborhood
- Sanitary condition
- Smoke Detectors

A summary of HUD performance criteria is provided in Attachment 8-1. Additional guidance on these requirements is found in the following HUD resources:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)
- HUD Notice 2003-31, Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988.

#### **Tenant Preference Items**

HUD requires the BHA to enforce minimum HQS but also requires that certain judgments about acceptability be left to the family. For example, the BHA must ensure that the unit contains the required sanitary facilities, but the family decides whether the cosmetic condition of the facilities is acceptable. Attachment 8-2 summarizes those items that are considered tenant preferences.

## **Modifications to Provide Accessibility**

Under the Fair Housing Act of 1988 an owner must not refuse the request of a family that contains a person with a disability to make necessary and reasonable modifications to the unit. Such modifications are at the family's expense. The owner may require restoration of the unit to its original condition if the modification would interfere with the owner or next occupant's full enjoyment of the premises. The owner may not increase a customarily required security deposit. However, the landlord may negotiate a restoration agreement that requires the family to restore the unit and, if necessary to ensure the likelihood of restoration, may require the tenant to pay a reasonable amount into an interest bearing escrow account over a reasonable period of time. The interest in any such account accrues to the benefit of the tenant. The owner may also require reasonable assurances that the quality of the work will be acceptable and that any required building permits will be obtained.[24 CFR 100.203; Notice 2003-31].

Modifications to units to provide access for a person with a disability must meet all applicable HQS requirements and conform to the design, construction, or alteration of facilities contained in the UFAS and the ADA Accessibility Guidelines (ADAAG) [28 CFR 35.151(c) and Notice 2003-31] See Chapter 2 of this plan for additional information on reasonable accommodations for persons with disabilities.

### BHA Policy

Any owner that intends to negotiate a restoration agreement or require an escrow account must submit the agreement(s) to the BHA for review. BHA will review the restoration agreement for the following two elements only:

1. To ensure that the owner has presented a separate agreement, and
2. That no illegal side payments are included in the agreement.

## **8-I.B. ADDITIONAL LOCAL REQUIREMENTS**

BHA may impose additional quality standards as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choice. HUD approval is required if more stringent standards are imposed. HUD approval is not required if BHA additions are clarifications of HUD's acceptability criteria or performance standards [24 CFR 982.401(a)(4)].

### BHA Policy

The following standards are added to HUD's HQS:

1. If the unit/property is secured by a gate, electronic control entry system or other device that restricts access, said system must be maintained in proper working order.
2. The water heater must be properly strapped in accordance with California Health and Safety Code Section 19210-19217 to prevent it from failing in an earthquake

3. Water heaters must be braced (securely attached, bolted) to the studs in a wall. The pipes for water and gas connected to the water heater must be flexible. Methods for bracing water heaters include: (a) purchasing and installing a State Architect certified strap or bracing kit from your local hardware store; (b) having a licensed plumber strap your water heater according to code; (c) using metal tubing or heavy metal strapping and lag screws and washers to secure the water heater to the wall studs. For a video on how to strap water heaters, visit the website of the Association of Bay Area Governments at: <http://quake.abag.ca.gov/residents/contents/>. Note: there are different recommendations based on whether the water heater is against a flat wall or in a corner.
4. Each unit shall have a permanently affixed heater/heating system (not portable) capable of heating the entire unit.
5. In addition to the Federal requirement of one smoke detector per floor, one smoke detector must be installed inside each bedroom (a missing or inoperable smoke in a bedroom is not cause for a 24-hour fail provided that there exists at least one smoke detector in the unit).
6. The property shall include a private mail box/slot for each unit.
7. Beginning July 1, 2011, every unit must have a carbon monoxide detector located on each level of the unit. Exception: none is required if both heating and cooking are powered by electricity rather than gas. **Beginning December 27, 2022, carbon monoxide detectors shall be installed in dwelling units outside of each separate sleeping area in the immediate vicinity of the bedrooms. Where a fuel-burning appliance is located within a bedroom or its attached bathroom, carbon monoxide detection shall be installed within the bedroom.**
8. If the kitchen stove has no overhead vent, there must be a window with a screen in the kitchen area to allow for (a) proper venting while cooking and (b) inability for pests (such as flies) to enter the unit while ventilating the unit while cooking.
9. Bathrooms with no air vent must have a screen covering the window to allow moist air out and disallow pests to enter.
10. Definition of a bedroom. All rooms considered bedrooms must, at a minimum, must:
  - a. Be a "private" room, including four floor to ceiling walls, of at least 70 square feet in size
  - b. Be a room, by commonly accepted housing standards, intended to function as a bedroom
  - c. Have a door with no holes and open-able without use of a key
  - d. Have a ceiling height of at least 7 feet
  - e. Contain at least one window, lock-able if on first floor or access from street
  - f. Have a closet to store clothing and other belongings
  - g. Have two working electrical outlets or one working outlet, plus one working, permanently installed light fixture.
11. All doors leading to the exterior (except sliding glass doors) must be solid core.
12. All electrical outlets within 3 feet of accessible water in the bathroom or kitchen must be GFI outlets



13. Landlords are urged to have utility company (PG&E) conduct a safety inspection of gas appliances/gas connections prior to move in inspections.

Additionally, BHA may request evidence of permitted work done to reconfigure any room currently called a “bedroom” that was not previously a bedroom, if landlord requests that a room is recognized as a bedroom that does not comply with current definition.

BHA will use this definition when considering the Payment Standard and the utility allowance. Other rooms (e.g. a den used for sleeping) can be considered when determining if a unit is overcrowded.

### **Thermal Environment [HCV GB p.10-7]**

BHA must define a “healthy living environment” for the local climate. This may be done by establishing a temperature that the heating system must be capable of maintaining, that is appropriate for the local climate.

#### BHA Policy

The heating system must be capable of operating when the interior temperature is below 65 degrees Fahrenheit, or a higher set temperature as needed for elderly or disabled program participants.

Additionally, all heaters must be operable by properly functioning thermostat, as opposed to need for opening a heating unit to ignite heater with a match or pressing an “on” switch/button within the unit, as these options may pose a safety hazard to the family.

### **Clarifications of HUD Requirements**

#### BHA Policy

As permitted by HUD, BHA has adopted the following specific requirements that elaborate on HUD standards.

#### ***Walls***

In areas where plaster or drywall is sagging, severely cracked, or otherwise damaged, it must be repaired or replaced.

#### ***Windows***

Window sashes must be in good condition, solid and intact, and properly fitted to the window frame. Damaged or deteriorated sashes must be replaced.

Windows must be weather-stripped as needed to ensure a weather-tight seal.

Window screens must be in good condition (applies only if screens are present).

#### ***Doors***

All exterior doors must be weather-tight to avoid any air or water infiltration, be lockable, have no holes, have all trim intact, and have a threshold.

All interior doors must have no holes, have all trim intact, and be open-able without the use of a key.

### ***Floors***

All wood floors must be sanded to a smooth surface and sealed. Any loose or warped boards must be re-secured and made level. If they cannot be leveled, they must be replaced.

All floors must be in a finished state. Raw wood or unsealed concrete is not permitted.

All floors should have some type of base shoe, trim, or sealing for a "finished look." Vinyl base shoe is permitted.

### ***Sinks***

All sinks and commode water lines must have shut off valves, unless faucets are wall mounted.

All worn or cracked toilet seats and tank lids must be replaced and toilet tank lid must fit properly.

All sinks must have functioning stoppers.

### ***Security***

If window security bars or security screens are present on emergency exit windows, they must be equipped with a quick release system. The owner is responsible for ensuring that the family is instructed on the use of the quick release system.

### ***Sanitary***

Sanitary Condition Performance Requirement: the dwelling unit and its equipment must be in sanitary condition. Acceptability Criteria: the dwelling unit and its equipment must be free of pest and rodent infestation. BHA will ensure that the unit is free of pests, rodents and heavy accumulations of trash, garbage, or other debris that may harbor rodents or pests. Infestation by mice, roaches, or other pests particular to the climate will also be considered. The unit must have adequate barriers to prevent infestation.

## **8-I.C. LIFE THREATENING CONDITIONS [24 CFR 982.404(a)]**

HUD requires BHA to define life threatening conditions and to notify the owner or the family (whichever is responsible) of the corrections required. The responsible party must correct life threatening conditions within 24 hours of BHA notification.

### **BHA Policy**

The following are considered life threatening conditions:

- Any condition that jeopardizes the security of the unit

- Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling
- Natural or LP gas or fuel oil leaks
- Any electrical problem or condition that could result in shock or fire (including a missing cover plate or light fixture with no light bulb, if located within 6 feet of the floor)
- Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit.
- Utilities not in service, including no running hot water
- Conditions that present the imminent possibility of injury
- Obstacles that prevent safe entrance or exit from the unit
- Absence of a functioning toilet in the unit
- Unit lacks at least one operable smoke detectors
- Unit with gas heater and/or stove lacks at least one operable carbon monoxide detector.

If an owner fails to correct life threatening conditions as required by BHA, the housing assistance payment will be abated and the HAP contract will be terminated. See 8-II-G.

If a family fails to correct a family caused life threatening condition as required by BHA, BHA may terminate the family's assistance. See 8-II.H.

The owner will be required to repair an inoperable smoke detector unless BHA determines that the family has intentionally disconnected it (by removing batteries or other means). In this case, the family will be required to repair the smoke detector within 24 hours.

### **8-I.D. OWNER AND FAMILY RESPONSIBILITIES [24 CFR 982.404]**

#### **Family Responsibilities**

The family is responsible for correcting the following HQS deficiencies:

- Tenant-paid utilities not in service
- Failure to provide or maintain family-supplied appliances
- Damage to the unit or premises caused by a household member or guest beyond normal wear and tear. "Normal wear and tear" is defined as items which could not be charged against the tenant's security deposit under state law or court practice. Performance and/or payment for such repairs may only be undertaken by the family with prior approval of the owner, or as prescribed by state law.

#### **Owner Responsibilities**

The owner is responsible for all HQS violations not listed as a family responsibility above, even if the violation is caused by the family's living habits (e.g., rodent or pest infestation). However,

if the family's actions constitute a serious or repeated lease violation the owner may take legal action to evict the family.

### **8-I.E. SPECIAL REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL [24 CFR 35.1225]**

If BHA is notified by a public health department or other medical health care provider, or verifies information from a source other than a public health department or medical health care provider, that a child of less than 6 years of age, living in an HCV-assisted unit has been identified as having an environmental intervention blood lead level, BHA must complete a risk assessment of the dwelling unit. The risk assessment must be completed in accordance with program requirements, and the result of the risk assessment must be immediately provided to the owner of the dwelling unit. In cases where the public health department has already completed an evaluation of the unit, this information must be provided to the owner.

Within 30 days after receiving the risk assessment report from BHA, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and 35.1330]. If the owner does not complete the "hazard reduction" as required, the dwelling unit is in violation of HQS and BHA will take action in accordance with Section 8-II.G.

BHA reporting requirements, and data collection and record keeping responsibilities related to children with an environmental intervention blood lead level are discussed in Chapter 16.

### **8-I.F. VIOLATION OF HQS SPACE STANDARDS [24 CFR 982.403]**

If BHA determines that a unit does not meet the HQS space standards because of an increase in family size or a change in family composition, BHA must issue the family a new voucher, and the family and BHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, BHA must terminate the HAP contract in accordance with its terms.

## **PART II: THE INSPECTION PROCESS**

### **8-II.A. OVERVIEW [24 CFR 982.405]**

#### **Types of Inspections**

BHA conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow.

- *Initial Inspections.* BHA conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program. The unit must pass the HQS inspection before the effective date of the HAP Contract.
- *Annual/Biennial Inspections.* HUD requires the PHA to inspect each unit under lease at least annually, or biennially, depending on PHA policy to confirm that the unit still meets HQS. The inspection may be conducted in conjunction with the family's annual reexamination but also may be conducted separately.
- *Special Inspections.* A special inspection may be requested by the owner, the family, or a third party as a result of problems identified with a unit between annual inspections.



- *Quality Control Inspections.* HUD requires that a sample of units be reinspected by a supervisor or other qualified individual to ensure that HQS are being enforced correctly and uniformly by all inspectors.

### **Inspection of BHA-owned Units [24 CFR 982.352(b)]**

BHA must obtain the services of an independent entity to perform all HQS inspections in cases where an HCV family is receiving assistance in a BHA-owned unit. A BHA-owned unit is defined as a unit that is owned by BHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by BHA). The independent agency must communicate the results of each inspection to the family and BHA. The independent agency must be approved by HUD, and may be the unit of general local government for BHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government) or another public housing authority.

### **Inspection Costs**

BHA may not charge the family or owner for unit inspections [24 CFR 982.405(e)]. In the case of inspections of BHA-owned units, BHA may compensate the independent agency from ongoing administrative fee for inspections performed. BHA and the independent agency may not charge the family any fee or charge for the inspection [24 CFR.982.352(b)].

### **Notice and Scheduling**

The family must allow BHA to inspect the unit at reasonable times with reasonable notice [24 CFR 982.551(d)].

#### BHA Policy

Both the family and the owner will be given reasonable notice of all inspections. Except in the case of a life threatening emergency, reasonable notice is considered to be not less than 48 hours (most likely in the case of a special or abate re-inspection); all other inspections shall be given 10-14 days notice. Inspections may be scheduled between 8:30 and 4:30 p.m. Inspections will be conducted on business days only.

In the case of a life threatening emergency, BHA will give as much notice as possible, given the nature of the emergency. Emergency reinspections are to occur on the first available work day for the inspector after the first emergency fail.

### **Owner and Family Inspection Attendance**

HUD permits BHA to set policy regarding family and owner presence at the time of inspection [HCV GB p. 10-27].

#### BHA Policy

When a family occupies the unit at the time of inspection an adult (over the age of 18) identified by the Head of Household must be present for the inspection. The presence of the owner or the owner's representative is encouraged but is not required.

At initial inspection of a vacant unit, BHA will inspect the unit in the presence of the owner or owner's representative. The presence of a family representative is permitted, but is not required.

These appointments are subject to BHA's appointment policy.

## **8-II.B. INITIAL HQS INSPECTION [24 CFR 982.401(a)]**

### **Timing of Initial Inspections**

HUD requires the unit to pass HQS (on or) before the effective date of the lease and HAP Contract. HUD requires PHAs with fewer than 1,250 budgeted units to complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA). For PHAs with 1,250 or more budgeted units, to the extent practicable such inspection and determination must be completed within 15 days. The 15-day period is suspended for any period during which the unit is not available for inspection [982.305(b)(2)].

#### BHA Policy

BHA will complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA).

### **Inspection Results and Reinspections**

#### BHA Policy

If any HQS violations are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by the BHA for good cause. BHA will reinspect the unit within 5 business days of the date the owner notifies BHA that the required corrections have been made.

If the time period for correcting the deficiencies (or any BHA-approved extension) has elapsed, or the unit fails HQS at the time of the reinspection, BHA will notify the owner and the family that the unit has been rejected and that the family must search for another unit. BHA may agree to conduct a second reinspection, for good cause, at the request of the family and owner.

Following a failed reinspection, the family may submit a new Request for Tenancy Approval for the unit if the family has not found another unit by the time the owner completes all repairs and the family continues to wish to live in the unit.

A "passed" inspection can be utilized for a new Housing Assistance Payment Contract for a maximum of 60-days, provided the owner certifies in writing that the unit (a) has not been occupied, and (b) there is no change in any of the conditions since the date of the inspection.

### **Utilities**

Generally, at initial lease-up the owner is responsible for demonstrating that all utilities are in working order including those utilities that the family will be responsible for paying.

## BHA Policy

All utilities must be placed in service at the time of initial inspection.

### **Appliances**

#### BHA Policy

If the family is responsible for supplying the stove and/or refrigerator, BHA will allow the stove and refrigerator to be placed in the unit after the unit has met all other HQS requirements. The required appliances must be in place before the HAP contract is executed by BHA. BHA will execute the HAP contract based upon a certification from the family that the appliances have been installed and are working. A confirmatory inspection will be scheduled within 30 days of HAP contract approval.

### **8-II.C. ANNUAL AND BIENNIAL HQS INSPECTIONS [24 CFR 982.405(a)]**

#### **Biennial inspections and the use of alternative inspection methods and inspection timeframes (PIH Notice 2016-05)**

This HUD provision offers PHAs the discretion to conduct unit inspections biennially rather than annually, for both the HCV and PBV programs. It also authorizes the use of alternative inspection methods for periodic inspections, such as inspections performed by HUD or conducted pursuant to the HOME Investment Partnerships (HOME) program or housing financed using Low-Income Housing Tax Credits (LIHTCs). PHAs have the discretion to adopt either or both of these flexibilities.

#### BHA Policy

**For the 2021-22 Fiscal Year (July 1, 2021 through June 30, 2022), BHA will place the biennial inspections program on hold.** This is so that post-pandemic, the agency can do a baseline inspection for every unit under contract, since there are units that have not been inspected for over 2 years, and will allow re-evaluation of the effectiveness of the biennial inspections program. During the Covid-19 pandemic, inspections that were to have occurred in calendar year 2020, and much of calendar year 2021 did not occur, as a safety precaution from the Covid-19 virus. Thus the following information regarding the biennial inspections process is effectively on hold until an evaluation of all units is conducted.

**The following is a description of the biennial inspections process on hold:**

BHA will conduct qualified biennial inspections, meaning annual inspections that pass on their first attempt will skip a year before the next annual HQS inspection; and annual inspections that fail on their first attempt will have an annual HQS inspection the following year.

Landlords and program participants will continue to be able to request a Special Inspection at any time, whether the unit passed or failed the first attempt of the most recent HQS inspection.

BHA reserves the right to accept inspections performed by another entity (city, housing developers in conformity with HOME or LIHTC rules) in lieu of conducting an annual



inspection, but at this time will continue to schedule annual inspections to be conducted by BHA's contract inspector.

### **Scheduling the Inspection**

Each unit under HAP contract must have an annual be inspected no more than 24 months after the most recent inspection. Until further notice BHA continues to inspect units annually.

#### BHA Policy

There is no requirement for the head of household to be present for the inspection. BHA only requires that a person 18 years or older be present to allow access to the unit for inspection purposes.

If no person 18 or older can be present on the scheduled date, the family should request that BHA reschedule the inspection. BHA and family will agree on a new inspection date that generally should take place within § 10-14 business days of the originally-scheduled date. BHA may schedule an inspection more than § 10-14 business days after the original date for good cause.

If the family misses the first scheduled appointment without requesting a new inspection date, BHA will automatically schedule a second inspection. If the family misses two scheduled inspections without BHA approval, BHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

### **8-II.D. SPECIAL INSPECTIONS [HCV GB, p. 10-30]**

BHA will conduct a special inspection if the owner, family, or another source reports potential HQS violations in the unit, so long as the household has given sufficient notice/time to allow for the owner to remedy the potential issue. In general two attempts to contact the owner, with no follow up by the owner to remedy will constitute the scheduling of a Special Inspection.

#### BHA Policy

During a special inspection, BHA generally will inspect only those deficiencies that were reported; confirm working smoke and carbon monoxide detectors; and any other life threatening conditions. However, the inspector will record any additional HQS deficiencies that are observed and will require the responsible party to make the necessary repairs.

If the annual inspection has been scheduled or is due within 90 days of the date the special inspection is scheduled BHA may elect to conduct a full annual inspection.

### **8-II.E. QUALITY CONTROL INSPECTIONS [24 CFR 982.405(b); HCV GB, p. 10-32]**

HUD requires a BHA supervisor or other qualified person to conduct quality control inspections of a sample of units to ensure that each inspector is conducting accurate and complete inspections and that there is consistency in the application of the HQS.

The unit sample must include only units that have been inspected within the preceding 3 months. The selected sample will include (1) each type of inspection (initial, annual, and special), (2) inspections completed by each inspector, and (3) units from a cross-section of neighborhoods.



**NOTE: due to HUD approved Waiver from SEMAP, through 8/31/2022, no Quality Control HQS inspections will be conducted.**

## **8-II.F. INSPECTION RESULTS AND REINSPECTIONS FOR UNITS UNDER HAP CONTRACT**

### **Notification of Corrective Actions**

The owner and the family will be notified in writing of the results of all inspections. When an inspection identifies HQS failures, BHA will determine whether or not the failure is a life threatening condition (“emergency” fail item).

#### BHA Policy

When life threatening conditions are identified, BHA will immediately notify both parties by telephone, facsimile, or email. The corrective actions must be taken within 24 hours of the BHA’s notice.

When failures that are not life threatening are identified, BHA will send the owner and the family a written notification of the inspection results within 5 business days of the inspection. The written notice will specify the time frame within which the failure must be corrected. Generally not more than 28 days will be allowed for the correction.

The notice of inspection results will: (1) inform the owner that if life threatening conditions are not corrected within 24 hours, and non-life threatening conditions are not corrected within the specified time frame (or any BHA-approved extension), the owner’s HAP will be abated in accordance with BHA policy (see 8-II.G.); (2) In the case of family caused deficiencies, inform the family that if corrections are not made within the specified time frame (or any BHA-approved extension, if applicable) the family’s assistance may be terminated in accordance with BHA policy (see Chapter 12); (3) encourage the parties to cooperate in completing all the required repairs.

### **Extensions**

For conditions that are life-threatening, BHA cannot grant an extension to the 24 hour corrective action period. For conditions that are not life-threatening, BHA may grant an exception to the required time frames for correcting the violation, if BHA determines that an extension is appropriate [24 CFR 982.404].

#### BHA Policy

Extensions will be granted in cases where BHA has determined that the owner has made a good faith effort to correct the deficiencies and is unable to for reasons beyond the owner’s control. Reasons may include, but are not limited to:

- A repair cannot be completed because required parts or services are not available.
- A repair cannot be completed because of weather conditions.
- A reasonable accommodation is needed because the family includes a person with disabilities.
- Notwithstanding proper notice, the family denies owner and/or owner agent access to the unit.

The request for an extension must be made at least 5 business days prior to the re-inspection date. The length of the extension will be determined on a case by case basis in 30 day increments, or up to 60 days as approved by management. Granted extensions will not exceed 60 days, except in the case of delays caused by weather conditions or other extreme circumstances such as major repairs requiring permits. In the case of weather conditions, extensions may be continued until the weather has improved sufficiently to make repairs possible. The necessary repairs must be made within 15 calendar days, once the weather conditions have subsided.

If an extension has been granted and the fail item(s) have not been remedied upon re-inspection, the unit will automatically go into abatement.

## **Reinspections**

### BHA Policy

BHA will conduct a re-inspection immediately following the end of the corrective period, or any BHA approved extension.

Where 24-hour fail items are cited on the last work day of a week (or prior to a holiday), BHA may confirm correction of 24-hour fail items by oral or email confirmation from the owner and/or tenant, and verify the correction the next business day.

The family and owner will be given reasonable notice of the re-inspection appointment. If the deficiencies have not been corrected by the time of the re-inspection, BHA will send a notice of abatement to the owner, or in the case of family caused violations, a notice of termination to the family, in accordance with BHA policies. If BHA is unable to gain entry to the unit in order to conduct the scheduled re-inspection, BHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

## **Self-Certification of Fail Items**

As per HUD Notice 2012-15 *Streamlining Administrative Practices in the Housing Choice Voucher Program*, PHAs are allowed to accept an owner's certification, a receipt from a vendor, or a photo of the repair or tenant **written documentation** confirmation that required repairs are complete.

### BHA Policy

BHA will accept self-certification for repaired fail items in the form of receipts from contractors performing repair work, photos, video.

1. BHA may accept self-certification from an owner provided there is no history of non-compliance by the owner and
  - a. The repair can be documented to BHA's satisfaction via a photo or receipt; or
  - b. The repair is documented via certification of the Building Official that work done under permit has been completed; or



- c. The repair is documented via a written statement/receipt from the qualified contractor or repair person or licensed professional (i.e. exterminator) that performed the repair; or
  - d. There is evidence from a utility company that service has been restored, or an appliance (i.e. stove or heater) is functioning properly.
2. BHA will not accept self-certification of repairs:
- a. That were cited in a unit with Project based assistance; or  
**That are emergency fail items;**
  - b. **That were cited in a unit that is in active abatement; or**
  - c. That are related to life-safety systems (smoke detectors and carbon monoxide detectors)

BHA reserves the right to require a re-inspection on any and all units with fail items, regardless of whether landlords submit self-certification documentation, and to deny the option of self-certification (and require a re-inspection) where any question remains regarding the integrity of the documentation provided, where there is not full documentation (i.e. fail items where no receipts or other evidence reflect repair), or where landlord/property has a repeated history of regular/repeat fails in the past.

### **8-II.G. ENFORCING OWNER COMPLIANCE**

If the owner fails to maintain the dwelling unit in accordance with HQS, BHA must take prompt and vigorous action to enforce the owner obligations.

#### **HAP Abatement**

If an owner fails to correct HQS deficiencies by the time specified by BHA, HUD requires BHA to abate housing assistance payments no later than the first of the month following the specified correction period (including any approved extension) [24 CFR 985.3(f)]. No retroactive payments will be made to the owner for the period of time the rent was abated. Owner rents are not abated as a result of HQS failures that are the family's responsibility.

#### BHA Policy

For life-threatening “emergency” fail items, BHA will abate HAP effective the day of a second 24-hour emergency fail.

For non-life-threatening fails, BHA will abate HAP effective the first of the month following the expiration of BHA specified correction period (including any extension).

BHA will inspect abated units within 5 business days of the owner's notification that the work has been completed. Payment will resume effective the day before the unit passes

inspection as it is assumed the work was completed at least on the day before the scheduled inspection.

During any abatement period the family continues to be responsible for its share of the rent. **However, this provision is not intended to deprive the family of any rights or protections they may have under state landlord-tenant law related to rent abatement and/or withholding of tenant rent to address habitability conditions, including but not limited to those set forth in Civil Code Section 1942.4.** The owner must not seek payment from the family for abated amounts and may not use the abatement as cause for eviction.

### **HAP Contract Termination**

BHA must decide how long any abatement period will continue before the HAP contract will be terminated. BHA should not terminate the contract until the family finds another unit, provided the family does so in a reasonable time [HCV GB p. 10-29] and must give the owner reasonable notice of the termination. BHA will issue a voucher to permit the family to move to another unit as described in Chapter 10.

#### BHA Policy

The maximum length of time that a HAP may be abated is 180 days. However, if the owner completes corrections and notifies BHA before the termination date of the HAP contract, BHA may rescind the termination notice if (1) the family still resides in the unit and wishes to remain in the unit and (2) the unit passes inspection.

Reasonable notice of HAP contract termination by BHA is 30 days.

### **8-II.H. ENFORCING FAMILY COMPLIANCE WITH HQS [24 CFR 982.404(b)]**

Families are responsible for correcting any HQS violations listed in paragraph 8.I.D. If the family fails to correct a violation within the period allowed by BHA (and any extensions), BHA will terminate the family's assistance, according to the policies described in Chapter 12.

If the owner carries out a repair for which the family is responsible under the lease, the owner may bill the family for the cost of the repair.

Where the unit fails because of "non-sanitary conditions," (heavy accumulations of trash, garbage, or other debris that may harbor rodents, pests, or infestation) the owner and tenant will work together with BHA in an effort to resolve the "non-sanitary conditions." BHA will only inspect twice within a 60 day period, prior to initiating Termination of Housing Choice Voucher and HAP Abatement.

## **PART III: RENT REASONABLENESS [24 CFR 982.507]**

### **8-III.A. OVERVIEW**

No HAP contract can be approved until BHA has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.



HUD regulations define a reasonable rent as one that does not exceed the rent charged for comparable, unassisted units in the same market area. HUD also requires that owners not charge more for assisted units than for comparable units on the premises.

In addition to the rent reasonableness limit under this subpart, the amount of rent to owner also may be subject to rent control limits under State or local law (CFR. 982.509).

This part explains the method used to determine whether a unit's rent is reasonable and in accord with Berkeley Rent Control, Measure P.

### **8-III.B. WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED**

#### **Owner-initiated Rent Determinations**

BHA must make a rent reasonableness determination at initial occupancy and whenever the owner requests a rent adjustment.

The owner and family first negotiate the rent for a unit. BHA (or independent agency in the case of BHA-owned units) will assist the family with the negotiations upon request. At initial occupancy BHA must determine whether the proposed rent is reasonable before a HAP Contract is signed. The owner must not change the rent during the initial lease term. Subsequent requests for rent adjustments must be consistent with the lease between the owner and the family. Rent increases will not be approved unless any failed items identified by the most recent HQS inspection have been corrected.

#### **BHA Policy**

After the initial occupancy period, the owner may request one rent adjustment during any 12 month period. For rent increase requests after initial lease-up, BHA may request owners to provide information about the rents charged for other units on the premises, if the premises include more than 4 units. In evaluating the proposed rents in comparison to other units on the premises BHA will consider unit size and length of tenancy in the other units.

BHA will respond within 15 business days of receiving the request from the owner.

1. If the rent requested does not exceed the applicable payment standard, BHA will approve or deny the request based on rent reasonableness.
2. If the rent requested exceeds the applicable payment standard:
  - a. BHA will give the owner an opportunity to modify (lower) the request to the applicable payment standard;
  - b. If the owner is unwilling to reduce the request, BHA will refer the case to the Rent Board for a rent ceiling determination.

If the unit is in failed HQS status, the rent adjustment will not be approved. All rent adjustments will be effective the first of the month following 60 days after BHA's receipt of the owner's request or on the date specified by the owner, whichever is later.

#### **BHA and HUD-Initiated Rent Reasonableness Determinations**

HUD requires BHA to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 5 percent decrease in the Fair Market Rent that goes into effect

at least 60 days before the contract anniversary date. HUD also may direct BHA to make a determination at any other time. BHA may decide that a new determination of rent reasonableness is needed at any time.

#### BHA Policy

In addition to the instances described above, the BHA will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) BHA determines that the initial rent reasonableness determination was in error; (2) BHA determines that the information provided by the owner about the unit or other units on the same premises was incorrect; (3) the owner supplied amenities or services are significantly reduced.

### **8-III.C. HOW COMPARABILITY IS ESTABLISHED**

#### **Factors to Consider**

HUD requires BHA to take into consideration the factors listed below when determining rent comparability. BHA may use these factors to make upward or downward adjustments to the rents of comparison units when the units are not identical to the HCV-assisted unit.

- Location and age
- Unit size including the number of rooms and square footage of rooms
- The type of unit including construction type (e.g., single family, duplex, garden, low-rise, high-rise)
- The quality of the units including the quality of the original construction, maintenance and improvements made.
- Amenities, services, and utilities included in the rent

#### **Units that Must Not be Used as Comparables**

Comparable units must represent unrestricted market rents. Therefore, units that receive some form of federal, state, or local assistance that imposes rent restrictions cannot be considered comparable units. These include units assisted by HUD through any of the following programs: Section 8 project-based assistance, Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR) projects, HOME or Community Development Block Grant (CDBG) program-assisted units in which the rents are subsidized; units subsidized through federal, state, or local tax credits; units subsidized by the Department of Agriculture rural housing programs, and units that are rent-controlled by local ordinance.

#### **Rents Charged for Other Units on the Premises**

The Request for Tenancy Approval (HUD-52517) requires owners to provide information, on the form itself, about the rent charged for other unassisted comparable units on the premises if the premises include more than 4 units.

By accepting BHA payment each month the owner certifies that the rent is not more than the rent charged for comparable unassisted units on the premises. If asked to do so, the owner must give BHA information regarding rents charged for other units on the premises.

## **8-III.D. BHA RENT REASONABLENESS METHODOLOGY**

### **How Market Data is Collected**

BHA Policy BHA will require that every owner submit a “Unit Characteristics Form” and a minimum of three unassisted unit rent comparables for every Request for Tenancy Approval submitted, and every request for a rent increase.

BHA, while utilizing the GoSection8 system for rent comparability, will require that the comps be updated at lease semi-annually, more frequently if necessary.

BHA will also obtain semi-annual information from the Rent Stabilization Program showing the rents for new tenancies in the prior 6 month period for non-assisted rental units in the City of Berkeley.

### **How Rents are Determined**

#### BHA Policy

BHA uses a unit-to-unit comparison, by which the rent for a unit proposed for HCV assistance is directly compared to the rents for one or more unassisted units selected as comparables within the same market area. Mapping technology used in the GoSection8 system will be used to identify unsubsidized units in closest proximity to the subject unit, as well as amenities, housing services, maintenance and utilities to be provided by the owner in accordance with the lease.

- Because units may be similar, but not exactly like the unit proposed for HCV assistance, BHA may make adjustments to account for these differences.
- The adjustment must reflect the local market. Not all differences in units require adjustments (e.g., the presence or absence of a garbage disposal may not affect the rent in some market areas).
- Adjustments may vary by unit type (e.g., a second bathroom may be more valuable in a three-bedroom unit than in a two-bedroom).
- The adjustment must reflect the rental value of the difference - not its construction costs (e.g., it might cost \$20,000 to put on a new roof, but the new roof might not make any difference in what a tenant would be willing to pay because rents units are presumed to have functioning roofs).
- When a comparable project offers rent concessions (e.g., first month rent-free, or reduced rent) reported monthly rents will be adjusted accordingly. For example, if a comparable project reports rents of \$500/month but new tenants receive the first

month's rent free, the actual rent for the unit would be calculated as follows: \$500 x 11 months = 5500/12 months = actual monthly rent of \$488.

BHA will notify the owner of the rent BHA can approve based upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. BHA will confirm the accuracy of the information provided and consider this additional information when making rent determinations.

BHA will further advise the owner when a requested rent, although determined reasonable, may trigger compliance with provisions of the City of Berkeley Rent Control Ordinance (i.e. the gross rent exceeds the applicable Payment Standard)..

The owner must submit any additional information within 5 business days of BHA's request for information or the owner's request to submit information.



## **EXHIBIT 8-1: OVERVIEW OF HUD HOUSING QUALITY STANDARDS**

Note: This document provides an overview of HQS. For more detailed information see the following documents:

- 24 CFR 982.401, Housing Quality Standards (HQS)
- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

### **Sanitary Facilities**

The dwelling unit must include sanitary facilities within the unit. The sanitary facilities must be usable in privacy and must be in proper operating condition and adequate for personal cleanliness and disposal of human waste.

### **Food Preparation and Refuse Disposal**

The dwelling unit must have space and equipment suitable for the family to store, prepare, and serve food in a sanitary manner.

### **Space and Security**

The dwelling unit must provide adequate space and security for the family. This includes having at least one bedroom or living/sleeping room for each two persons.

### **Thermal Environment**

The unit must have a safe system for heating the dwelling unit. Air conditioning is not required but if provided must be in proper operating condition. The dwelling unit must not contain unvented room heaters that burn gas, oil, or kerosene. Portable electric room heaters or kitchen stoves with built-in heating units are not acceptable as a primary source of heat for units located in climatic areas where permanent heat systems are required.

### **Illumination and Electricity**

Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The dwelling unit must have sufficient electrical sources so occupants can use essential electrical appliances. Minimum standards are set for different types of rooms. Once the minimum standards are met, the number, type and location of electrical sources are a matter of tenant preference.

### **Structure and Materials**

The dwelling unit must be structurally sound. Handrails are required when four or more steps (risers) are present, and protective railings are required when porches, balconies, and stoops are thirty inches or more off the ground. The elevator servicing the unit must be working [if there is one]. Manufactured homes must have proper tie-down devices capable of surviving wind loads common to the area.

## **Interior Air Quality**

The dwelling unit must be free of air pollutant levels that threaten the occupants' health. There must be adequate air circulation in the dwelling unit. Bathroom areas must have one openable window or other adequate ventilation. Any sleeping room must have at least one window. If a window was designed to be opened, it must be in proper working order.

## **Water Supply**

The dwelling unit must be served by an approved public or private water supply that is sanitary and free from contamination. Plumbing fixtures and pipes must be free of leaks and threats to health and safety.

## **Lead-Based Paint**

Lead-based paint requirements apply to dwelling units built prior to 1978 that are occupied or can be occupied by families with children under six years of age, excluding zero bedroom dwellings. Owners must:

- Disclose known lead-based paint hazards to prospective tenants before the lease is signed,
- provide all prospective families with "Protect Your Family from Lead in Your Home",
- Stabilize deteriorated painted surfaces and conduct hazard reduction activities when identified by the PHA
- Notify tenants each time such an activity is performed
- Conduct all work in accordance with HUD safe practices
- As part of ongoing maintenance ask each family to report deteriorated paint.

For units occupied by environmental intervention blood lead level (lead poisoned) children under six years of age, a risk assessment must be conducted (paid for by the PHA). If lead hazards are identified during the risk assessment, the owner must complete hazard reduction activities.

See HCV GB p. 10-15 for a detailed description of these requirements. For additional information on lead-based paint requirements see 24 CFR 35, Subparts A, B, M, and R.

## **Access**

Use and maintenance of the unit must be possible without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire.

## **Site and Neighborhood**

The site and neighborhood must be reasonably free from disturbing noises and reverberations, excessive trash or rodents and pests, or other dangers to the health, safety, and general welfare of the occupants.

## **Sanitary Condition**

The dwelling unit and its equipment must be in sanitary condition and free of pests and rodent infestation. The unit must have adequate barriers to prevent infestation.

**Smoke Detectors**

Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any person with a hearing impairment, smoke detectors must have an appropriate alarm system as specified in NFPA 74 (or successor standards).

**Hazards and Health/Safety**

The unit, interior and exterior common areas accessible to the family, the site, and the surrounding neighborhood must be free of hazards to the family's health and safety.

## **EXHIBIT 8-2: SUMMARY OF TENANT PREFERENCE AREAS RELATED TO HOUSING QUALITY**

Note: This document provides an overview of unit and site characteristics and conditions for which the family determines acceptability. For more detailed information see the following documents:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

Provided the minimum housing quality standards have been met, HUD permits the family to determine whether the unit is acceptable with regard to the following characteristics.

- *Sanitary Facilities.* The family may determine the adequacy of the cosmetic condition and quality of the sanitary facilities, including the size of the lavatory, tub, or shower; the location of the sanitary facilities within the unit; and the adequacy of the water heater.
- *Food Preparation and Refuse Disposal.* The family selects size and type of equipment it finds acceptable. When the family is responsible for supplying cooking appliances, the family may choose to use a microwave oven in place of a conventional oven, stove, or range. When the owner is responsible for providing cooking appliances, the owner may offer a microwave oven in place of an oven, stove, or range only if other subsidized and unsubsidized units on the premises are furnished with microwave ovens only. The adequacy of the amount and type of storage space, the cosmetic conditions of all equipment, and the size and location of the kitchen are all determined by the family.
- *Space and Security.* The family may determine the adequacy of room sizes and room locations. The family is also responsible for deciding the acceptability of the type of door and window locks.
- *Energy conservation items.* The family may determine whether the amount of insulation, presence of absence of storm doors and windows and other energy conservation items are acceptable.
- *Illumination and Electricity.* The family may determine whether the location and the number of outlets and fixtures (over and above those required to meet HQS standards) are acceptable or if the amount of electrical service is adequate for the use of appliances, computers, or stereo equipment.
- *Structure and Materials.* Families may determine whether minor defects, such as lack of paint, or worn flooring or carpeting will affect the livability of the unit.
- *Indoor Air.* Families may determine whether window and door screens, filters, fans, or other devices for proper ventilation are adequate to meet the family's needs. However, if screens are present they must be in good condition.
- *Sanitary Conditions.* The family determines whether the sanitary conditions in the unit, including minor infestations, are acceptable.



- *Neighborhood conditions.* Families may determine whether neighborhood conditions such as the presence of drug activity, commercial enterprises, and convenience to shopping will affect the livability of the unit.

Families have no discretion with respect to lead-based paint standards and smoke and **carbon monoxide** detectors.

DRAFT

## Chapter 10

### MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY

#### INTRODUCTION

Freedom of choice is a hallmark of the housing choice voucher (HCV) program. In general, therefore, HUD regulations impose few restrictions on where families may live or move with HCV assistance. **It is acknowledged there is a severe shortage of available housing both within and outside of BHA's programs which impacts BHA's administration of such programs.** This chapter sets forth HUD regulations and BHA policies governing moves within or outside BHA's jurisdiction in two parts:

Part I: Moving with Continued Assistance. This part covers the general rules that apply to all moves by a family assisted under BHA's HCV program, whether the family moves to another unit within BHA's jurisdiction or to a unit outside BHA's jurisdiction under portability.

Part II: Portability. This part covers the special rules that apply to moves by a family under portability, whether the family moves out of or into BHA's jurisdiction. This part also covers the special responsibilities that BHA has under portability regulations and procedures.

#### PART I: MOVING WITH CONTINUED ASSISTANCE

##### 10-I.A. ALLOWABLE MOVES

HUD lists five regulatory conditions and the statutory condition under VAWA in which an assisted family is allowed to move to a new unit with continued assistance. Permission to move is subject to the restrictions set forth in section 10-I.B.

- The family has a right to terminate the lease on notice to the owner (for the owner's breach or otherwise) and has given a notice of termination to the owner in accordance with the lease [24 CFR 982.314(b)(3)]. If the family terminates the lease on notice to the owner, the family must give BHA a copy of the notice at the same time [24 CFR 982.314(d)(1)].
- The Violence Against Women Reauthorization Act of 2005 provides that "a family may receive a voucher from a public housing agency and move to another jurisdiction under the tenant-based assistance program if the family has complied with all other obligations of the section 8 program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been a victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit" [24 CFR 982.353(b)].
- The lease for the family's unit has been terminated by mutual agreement of the owner and the family [24 CFR 982.314(b)(1)(ii)].

##### BHA Policy

- If the family and the owner mutually agree to terminate the lease for the family's unit, the family must give BHA a copy of the termination agreement.
- BHA has terminated the assisted lease for the family's unit for the owner's breach [24 CFR 982.314(b)(1)(i)].
- BHA determines that the family's current unit does not meet the HQS space standards because of an increase in family size or a change in family composition. In such cases, BHA must issue the family a new voucher, and the family and BHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, BHA must terminate the HAP contract for the family's old unit in accordance with the HAP contract terms and must notify both the family and the owner of the termination. The HAP contract terminates at the end of the calendar month that follows the calendar month in which BHA gives notice to the owner. [24 CFR 982.403(a) and (c)]

### **10-I.B. RESTRICTIONS ON MOVES**

A family's right to move is generally contingent upon the family's compliance with program requirements [24 CFR 982.1(b)(2)]. HUD specifies two conditions under which a BHA may deny a family permission to move and two ways in which a BHA may restrict moves by a family. A PHA may not terminate assistance if the family, with or without prior notification to the PHA, already moved out of a unit in violation of the lease, if such move occurred to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the dwelling unit. [24 CFR 982.314 (b)(4)]. Policies that prohibit moves during the initial lease term or that prohibit more than one move during any one-year period do not apply when the family or a member of the family has been the victim of domestic violence, dating violence, or stalking, as provided in 24 CFR part 5, subpart L, and the move is needed to protect the health or safety of the family or family member.

#### **Denial of Moves**

HUD regulations permit BHA to deny a family permission to move under the following conditions:

##### ***Insufficient Funding***

BHA may deny a family permission to move if BHA does not have sufficient funding for continued assistance [24 CFR 982.314(e)(1)]. However, Notice PIH 2008-43 significantly restricts the ability of BHAs to deny permission to move under portability due to insufficient funding. The requirements found in this notice are mandatory. **For moves outside BHA's jurisdiction under portability, no policy decisions are required.**

##### BHA Policy

BHA will deny a family permission to move on grounds that BHA does not have sufficient funding for continued assistance if (a) the move is initiated by the family, not the owner or BHA; (b) BHA can demonstrate that the move will, in fact, result in higher subsidy costs; and (c) BHA can demonstrate, in accordance with the policies in Part VIII of Chapter 16, that it does not have sufficient funding in its annual budget to accommodate the higher subsidy costs.



Before denying a family's request to move due to insufficient funding under portability, BHA will contact the receiving PHA to see if the receiving PHA will absorb the family; if so, the family will be allowed to move (PIH 200-43)

If BHA denies a family's request to move under portability, it may not subsequently admit any additional families to its voucher program until BHA has determined that sufficient funding exists to approve the move and has notified the family that the family may now exercise its portability move (PIH 2008-43)

### ***Grounds for Denial or Termination of Assistance***

BHA has grounds for denying or terminating the family's assistance [24 CFR 982.314(e)(2)]. VAWA creates an exception to these restrictions for families who are otherwise in compliance with program obligations, but have moved to protect the health or safety of an individual who is or has been a victim of domestic violence, dating violence or stalking, and who reasonably believed he or she was imminently threatened by harm from further violence if they remained in the unit [24 CFR 982.353(b)].

#### BHA Policy

If BHA has grounds for denying or terminating a family's assistance, BHA will act on those grounds in accordance with the regulations and policies set forth in Chapters 3 and 12, respectively. Refer to sections 3-III.E, 3-III.G and 12-II.E for VAWA provisions.

### **Restrictions on Elective Moves [24 CFR 982.314(c)]**

HUD regulations permit BHA to prohibit any elective move by a participant family during the family's initial lease term. They also permit BHA to prohibit more than one elective move by a participant family during any 12-month period.

#### BHA Policy

BHA will deny a family permission to make an elective move during the family's initial lease term. This policy applies to moves within BHA's jurisdiction or outside it under portability.

**However, under extenuating circumstances, and with landlord agreement to terminate the lease early; or notification of VAWA status; BHA may permit a move prior to the end of the 12 month lease term.** Exceptions ~~to these policies~~ may include ~~for~~ the following reasons: ~~BHA will consider~~ to protect the health or safety of a family member (e.g., lead-based paint hazards, domestic violence, witness protection programs); **or with landlord conduct making continued occupancy dangerous;** or to address an emergency situation over which a family has no control.

In addition, BHA will allow exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities (see Chapter 2).

**If a landlord refuses to sign a termination of lease, BHA will suggest that the assisted household seek legal support from a local legal advocacy agency such as East Bay Community Law Center or Bay Area Legal Aid, to identify whether the refusal is in good faith, discriminatory, retaliatory, or otherwise legal.**

## **10-I.C. MOVING PROCESS**



## **Notification**

If a family wishes to move to a new unit, the family must notify BHA and the owner before moving out of the old unit or terminating the lease on notice to the owner [24 CFR 982.314(d)(2)]. If the family wishes to move to a unit outside BHA's jurisdiction under portability, the notice to BHA must specify the area where the family wishes to move [24 CFR 982.314(d)(2), Notice PIH 2008-43]. The notices must be in writing [24 CFR 982.5].

## **Approval**

### BHA Policy

Upon receipt of a family's notification that it wishes to move, BHA will determine whether the move is approvable in accordance with the regulations and policies set forth in sections 10-I.A and 10-I.B. BHA will not allow a family to port-out of the jurisdiction if the family has an outstanding debt to BHA. BHA will notify the family in writing of its determination within 10 business days following receipt of the family's notification.

If BHA has received a copy of a court judgement from the landlord, documenting that the family owes the landlord funds under the lease, BHA will encourage the family to enter into a repayment agreement with the landlord prior to approving the move [982.552]. If the family has VAWA status, or an approved Reasonable Accommodation-supported need for the move while still owing funds to the landlord, BHA will allow the move regardless of the funds owed. BHA will encourage any households in this situation to seek free legal assistance from a local housing advocacy organization such as Bay Area Legal Aid or East Bay Community Law Center, including examining and considering circumstances of any judgment against the tenant, including whether or not it was obtained by default, whether the family had legal representation, if it was after contested proceedings, or whether the family cannot enter repayment plan prior to moving due to financial hardship.

## **Reexamination of Family Income and Composition**

### BHA Policy

For families approved to move to a new unit within BHA's jurisdiction, BHA will perform a new annual reexamination in accordance with the policies set forth in Chapter 11 of this plan.

For families moving into or families approved to move out of the PHA's jurisdiction under portability, BHA will follow the policies set forth in Part II of this chapter.

## **Voucher Issuance and Briefing**

### BHA Policy

For families approved to move to a new unit within BHA's jurisdiction, BHA will require the family to attend a briefing prior to issuance of a voucher. BHA will follow the policies set forth in Chapter 5 on voucher term, extension, and expiration.

If a family does not locate a new unit within the term of the voucher and any extensions, the family may remain in its current unit with continued voucher assistance if the owner agrees and BHA approves.

For families moving into or families approved to move out of BHA's jurisdiction under portability, BHA will follow the policies set forth in Part II of this chapter.

### **Housing Assistance Payments [24 CFR 982.311(d)]**

When a family moves out of an assisted unit, BHA may not make any housing assistance payment to the owner for any month **after** the month the family moves out. The owner may keep the housing assistance payment for the month when the family moves out of the unit.

If a participant family moves from an assisted unit with continued tenant-based assistance, the term of the assisted lease for the new assisted unit may begin during the month the family moves out of the first assisted unit. Overlap of the last housing assistance payment (for the month when the family moves out of the old unit) and the first assistance payment for the new unit, is not considered to constitute a duplicative housing subsidy.

#### BHA Policy

If the family vacates the unit with notice, the owner is entitled to rental subsidy through the end of the notice but no later than the end of the month when the family vacated. If the family moves without notice, BHA will pay the rental subsidy through the end of the month. **Circumstances for VAWA victims will be taken into consideration where the family had to move without providing proper notice, and where BHA may be able to provide rental subsidy.**

## **PART II: PORTABILITY**

### **10-II.A. OVERVIEW**

Within the limitations of the regulations and this plan, a participant family or an applicant family that has been issued a voucher has the right to use tenant-based voucher assistance to lease a unit anywhere in the United States providing that the unit is located within the jurisdiction of a PHA administering a tenant-based voucher program [24 CFR 982.353(b)]. The process by which a family obtains a voucher from one PHA and uses it to lease a unit in the jurisdiction of another PHA is known as portability. The first PHA is called the **initial PHA**. The second is called the **receiving PHA**.

The receiving PHA has the option of administering the family's voucher for the initial PHA or absorbing the family into its own program. Under the first option, the receiving PHA bills the initial PHA for the family's housing assistance payments and the fees for administering the family's voucher. Under the second option, the receiving PHA pays for the family's assistance out of its own program funds, and the initial PHA has no further relationship with the family.

The same PHA commonly acts as the initial PHA for some families and as the receiving PHA for others. Each role involves different responsibilities. The PHA will follow the rules and policies in section 10-II.B when it is acting as the initial PHA for a family. It will follow the rules and policies in section 10-II.C when it is acting as the receiving PHA for a family.

### **10-II.B. INITIAL PHA ROLE**

#### **Allowable Moves under Portability**



A family may move with voucher assistance only to an area where there is at least one PHA administering a voucher program [24 CFR 982.353(b)]. If there is more than one PHA in the area, the initial PHA may choose the receiving PHA [24 CFR 982.355(b)].

Applicant families that have been issued vouchers as well as participant families may qualify to lease a unit outside the PHA's jurisdiction under portability. The initial PHA, in accordance with HUD regulations and PHA policy, determines whether a family qualifies.

### ***Applicant Families***

Under HUD regulations, most applicant families qualify to lease a unit outside PHA's jurisdiction under portability. However, HUD gives PHA discretion to deny a portability move by an applicant family for the same two reasons that it may deny any move by a participant family: insufficient funding and grounds for denial or termination of assistance.

#### BHA Policy

In determining whether or not to deny an applicant family permission to move under portability because BHA lacks sufficient funding or has grounds for denying assistance to the family, BHA will follow the policies established in section 10-I.B of this chapter.

In addition, BHA may establish a policy denying the right to portability to nonresident applicants during the first 12 months after they are admitted to the program [24 CFR 982.353(c)].

#### BHA Policy

If neither the head of household nor the spouse/cohead of an applicant family had a domicile (legal residence) in BHA's jurisdiction at the time the family's application for assistance was submitted, the family must live in BHA's jurisdiction with voucher assistance for at least 12 months before requesting portability.

BHA will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2).

### ***Participant Families***

The initial PHA must not provide portable assistance for a participant if a family has moved out of its assisted unit in violation of the lease [24 CFR 982.353(b)]. VAWA creates an exception to this prohibition for families who are otherwise in compliance with program obligations but have moved to protect the health or safety of an individual who is or has been a victim of domestic violence, dating violence or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if they remained in the unit [24 CFR 982.353(b)].

**Additional exceptions including landlord conduct creating dangerous living conditions shall also be considered.**

#### BHA Policy

BHA will determine whether a participant family may move out of BHA's jurisdiction with continued assistance in accordance with the regulations and policies set forth here and in sections 10-I.A and 10-I.B of this chapter. BHA will notify the family of its

determination in accordance with the approval policy set forth in section 10-I.C of this chapter.

### **Determining Income Eligibility**

#### ***Applicant Families***

An applicant family may lease a unit in a particular area under portability only if the family is income eligible for admission to the voucher program in that area [24 CFR 982.353(d)(3)]. The family must specify the area to which the family wishes to move [Notice 2008-43].

The initial PHA is responsible for determining whether the family is income eligible in the area to which the family wishes to move [24 CFR 982.355(c)(1)]. If the applicant family is not income eligible in that area, the PHA must inform the family that it may not move there and receive voucher assistance [Notice PIH 2008-43].

#### ***Participant Families***

The income eligibility of a participant family is not redetermined if the family moves to a new jurisdiction under portability [24 CFR 982.353(d)(2), 24 CFR 982.355(c)(1)].

### **Reexamination of Family Income and Composition**

No new reexamination of family income and composition is required for an applicant family.

#### **BHA Policy**

For a participant family approved to move out of its jurisdiction under portability, BHA generally will conduct a reexamination of family income and composition only if the family's annual reexamination must be completed on or before the initial billing deadline specified on form HUD-52665, Family Portability Information, or the family reports a change in income, household composition or allowable expenses.

BHA will make any exceptions to this policy necessary to remain in compliance with HUD regulations.

### **Briefing**

The regulations and policies on briefings set forth in Chapter 5 of this plan require BHA to provide information on portability to all applicant families that qualify to lease a unit outside BHA's jurisdiction under the portability procedures. Therefore, no special briefing is required for these families.

#### **BHA Policy**

No formal briefing will be required for a participant family wishing to move outside BHA's jurisdiction under portability. However, BHA will provide the family with a general explanation of portability (see Chapter 5). BHA will provide the name, address, and phone of the contact for the PHA in the jurisdiction to which they wish to move. BHA will advise the family that they will remain subject to BHA's policies and



procedures, through the end of the assisted tenancy in Berkeley, and subject to the rules, regulations and policies of the receiving PHA with regard to the new assisted tenancy.

### **Voucher Issuance and Term**

An applicant family has no right to portability until after the family has been issued a voucher [24 CFR 982.353(b)]. In issuing vouchers to applicant families, BHA will follow the regulations and procedures set forth in Chapter 5. A new voucher is not required for portability purposes.

#### BHA Policy

For families approved to move under portability, BHA will issue a new voucher within 10 business days of BHA's written approval to move.

The term of the voucher will be 120 days.

### **Voucher Extensions and Expiration**

#### BHA Policy

BHA will consider extensions to a voucher issued to an applicant or participant family porting out of BHA's jurisdiction under the following circumstances: (a) the initial term of the voucher will expire before the portable family will be issued a voucher by the receiving PHA, (b) the family decides to return to the initial PHA's jurisdiction and search for a unit there, or (c) the family decides to search for a unit in a third PHA's jurisdiction. In such cases, the policies on voucher extensions set forth in Chapter 5, section 5-II.E, of this plan will apply, including the requirement that the family apply for an extension in writing prior to the expiration of the initial voucher term.

To receive or continue receiving assistance under the initial PHA's voucher program, a family that moves to another PHA's jurisdiction under portability must be under HAP contract in the receiving PHA's jurisdiction within 60 days following the expiration date of the initial PHA's voucher term (including any extensions). (See below under "Initial Billing Deadline" for one exception to this policy.)

### **Initial Contact with the Receiving PHA**

After approving a family's request to move under portability, the initial PHA must promptly notify the receiving PHA to expect the family [24 CFR 982.355(c)(2)]. This means that the initial PHA must contact the receiving PHA directly on the family's behalf [Notice PIH 2008-43]. The initial PHA must also advise the family how to contact and request assistance from the receiving PHA [24 CFR 982.355(c)(2)].

#### BHA Policy

Because the portability process is time-sensitive, BHA will notify the receiving PHA by phone, fax, or e-mail that a family is porting to their jurisdiction. BHA will give the family written notification to contact and request assistance from the receiving PHA. BHA will also ask the receiving PHA to provide any information the family may need upon arrival, including the name, fax, e-mail and telephone number of the staff person responsible for business with incoming portable families and procedures related to appointments for voucher issuance. BHA will pass this information along to the family. BHA will also ask for the name, address, telephone number, fax and e-mail of the person responsible for processing the billing information.

## **Sending Documentation to the Receiving PHA**

The initial PHA is required to send the receiving PHA the following documents:

- Form HUD-52665, Family Portability Information, with Part I filled out [Notice PIH 2008-43]
- A copy of the family's voucher [Notice PIH 2008-43]
- A copy of the family's most recent form HUD-50058, Family Report, or, if necessary in the case of an applicant family, family and income information in a format similar to that of form HUD-50058 [24 CFR 982.355(c)(4), Notice PIH 2008-43]
- Copies of the income verifications backing up the form HUD-50058 [24 CFR 982.355(c)(4), Notice PIH 2008-43]

### BHA Policy

In addition to these documents, BHA will, utilizing appropriate means of protecting the data from breach, provide the following information, if available, to the receiving PHA:

Social security numbers (SSNs)

Documentation of SSNs for all family members age 6 and over

Documentation of legal identity

Documentation of citizenship or eligible immigration status

Documentation of participation in the earned income disallowance (EID) benefit

Documentation of participation in a family self-sufficiency (FSS) program

A copy of the family's current EIV data in a sealed envelope, marked "confidential"

Any approved Reasonable Accommodation

BHA will notify the family in writing regarding any information provided to the receiving PHA [HCV GB, p. 13-3].

## **Initial Billing Deadline [Notice PIH 2008-43]**

When the initial PHA sends form HUD-52665 to the receiving PHA, it specifies in Part I the deadline by which it must receive the initial billing notice from the receiving PHA. This deadline is 60 days following the expiration date of the voucher issued to the family by the initial PHA. If the initial PHA does not receive a billing notice by the deadline and does not intend to honor a late billing submission, it must contact the receiving PHA to determine the status of the family. If the receiving PHA reports that the family is not yet under HAP contract, the initial PHA may refuse to accept a late billing submission. If the receiving PHA reports that the family is under HAP contract and the receiving PHA cannot absorb the family, the initial PHA must accept a late billing submission; however, it may report to HUD the receiving PHA's failure to comply with the deadline.

### BHA Policy

If BHA has not received an initial billing notice from the receiving PHA by the deadline specified on form HUD-52665, it will contact the receiving PHA by phone, fax, or e-mail on the next business day. If the PHA fails to respond within 10 business days of BHA's

contact or attempted contact, or reports that the family is not yet under HAP contract, BHA will inform the receiving PHA that it may not honor a late billing submission and may return any subsequent billings that it receives on behalf of the family. BHA will send the receiving PHA a written confirmation of its decision by mail.

### **Monthly Billing Payments [24 CFR 982.355(e), Notice PIH 2008-43]**

If the receiving PHA is administering the family's voucher, the initial PHA is responsible for making billing payments in a timely manner. The first billing amount is due within 30 calendar days after the initial PHA receives Part II of form HUD-52665 from the receiving PHA. Subsequent payments must be **received** by the receiving PHA no later than the fifth business day of each month. The payments must be provided in a form and manner that the receiving PHA is able and willing to accept.

The initial PHA may not terminate or delay making payments under existing portability billing arrangements as a result of over-leasing or funding shortfalls. The PHA must manage its tenant-based program in a manner that ensures that it has the financial ability to provide assistance for families that move out of its jurisdiction under portability and are not absorbed by receiving PHAs as well as for families that remain within its jurisdiction.

#### BHA Policy

BHA will process the initial payment to the receiving PHA within 30-calendar days of receipt of HUD-52665. Subsequent payments will be made monthly, on or before the 5<sup>th</sup> working day of the month.

### **Annual Updates of Form HUD-50058**

If the initial PHA is being billed on behalf of a portable family, it should receive an updated form HUD-50058 each year from the receiving PHA. If the initial PHA fails to receive an updated 50058 by the family's annual reexamination date, the initial PHA should contact the receiving PHA to verify the status of the family.

### **Denial or Termination of Assistance [24 CFR 982.355(c)(9)]**

If the initial PHA has grounds for denying or terminating assistance for a portable family that has not been absorbed by the receiving PHA, the initial PHA may act on those grounds at any time. (For PHA policies on denial and termination, see Chapters 3 and 12, respectively.)

## **10-ILC. RECEIVING PHA ROLE**

If a family has a right to lease a unit in the receiving PHA's jurisdiction under portability, the receiving PHA must provide assistance for the family [24 CFR 982.355(10)].

The receiving PHA's procedures and preferences for selection among eligible applicants do not apply, and the receiving PHA's waiting list is not used [24 CFR 982.355(10)]. However, the family's unit, or voucher, size is determined in accordance with the subsidy standards of the receiving PHA [24 CFR 982.355(7)], and the amount of the family's housing assistance payment is determined in the same manner as for other families in the receiving PHA's voucher program [24 CFR 982.355(e)(2)].

### **Initial Contact with Family**

When a family moves into the PHA's jurisdiction under portability, the family is responsible for promptly contacting the PHA and complying with the PHA's procedures for incoming portable families [24 CFR 982.355(c)(3)].

If the voucher issued to the family by the initial PHA has expired, the receiving PHA does not process the family's paperwork but instead refers the family back to the initial PHA [Notice PIH 2008-43].

When a portable family requests assistance from the receiving PHA, the receiving PHA must promptly inform the initial PHA whether the receiving PHA will bill the initial PHA for assistance on behalf of the portable family or will absorb the family into its own program [24 CFR 982.355(c)(5)]. If the PHA initially bills the initial PHA for the family's assistance, it may later decide to absorb the family into its own program [Notice PIH 2008-43]. (See later under "Absorbing a Portable Family" for more on this topic.)

#### BHA Policy

Within 10 business days after a portable family requests assistance, BHA will notify the initial PHA whether it intends to bill the receiving PHA on behalf of the portable family or absorb the family into its own program.

If for any reason the receiving PHA refuses to process or provide assistance to a family under the portability procedures, the family must be given the opportunity for an informal review or hearing [Notice PIH 2008-43]. (For more on this topic, see later under "Denial or Termination of Assistance.")

### **Briefing**

HUD allows the receiving PHA to require a briefing for an incoming portable family as long as the requirement does not unduly delay the family's search [Notice PIH 2008-43].

#### BHA Policy

BHA will ~~not~~ require the family to attend an individual or group briefing. BHA will provide the family with a briefing packet (as described in Chapter 5) and will orally inform the family about BHA's payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process.

### **Income Eligibility and Reexamination**

HUD allows the receiving PHA to conduct its own income reexamination of a portable family [24 CFR 982.355(c)(4)]. However, the receiving PHA may not delay voucher issuance or unit approval until the reexamination process is complete unless the reexamination is necessary to determine that an applicant family is income eligible for admission to the program in the area where the family wishes to lease a unit [Notice PIH 2008-43, 24 CFR 982.201(b)(4)]. The receiving PHA does not re-determine income eligibility for a portable family that was already receiving assistance in the initial PHA's voucher program [24 CFR 982.355(c)(1)].

#### BHA Policy

BHA will require every family moving into the jurisdiction to complete a "Personal Declaration". BHA will compare the information reported on the Personal Declaration to



the information on the 50058 from the initial PHA. If there are no discrepancies, BHA will base assistance on information provided by the initial PHA.

If there are discrepancies in the household composition or income, BHA will:

- a) **Ask the family to explain the discrepancy;**
- b) Return the packet to the initial PHA for revision;
- c) Update the information (i.e. apply new SS/SSI benefit amount); or
- d) Conduct a new reexamination (i.e. the family was employed out of State before moving to BHA's jurisdiction) BHA will allow the family to begin its housing search, while BHA conducts a reexamination.

In conducting its own reexamination, BHA will rely upon any verifications provided by the initial PHA to the extent that they (a) accurately reflect the family's current circumstances and (b) were obtained within the last 120 days. Any new information may be verified by documents provided by the family and adjusted, if necessary, when third party verification is received.

Depending on the stability of the income at the time the portability request is processed, BHA may ask the family to complete a new Personal Declaration, and report current income 90-days after the start of tenancy. This may trigger a revision in the family rent portion.

## **Voucher Issuance**

When a family moves into its jurisdiction under portability, the receiving PHA is required to issue the family a voucher [24 CFR 982.355(b)(6)]. The family must submit a request for tenancy approval to the receiving PHA during the term of the receiving PHA's voucher [24 CFR 982.355(c)(6)].

### ***Timing of Voucher Issuance***

HUD expects the receiving PHA to issue the voucher within two weeks after receiving the family's paperwork from the initial PHA if the information is in order, the family has contacted the receiving PHA, and the family complies with the receiving PHA's procedures [Notice PIH 2008-43].

#### BHA Policy

When a family ports into its jurisdiction, BHA will issue the family a voucher based on the paperwork provided by the initial PHA unless the family's paperwork from the initial PHA is incomplete, the family's voucher from the initial PHA has expired or the family does not comply with BHA's procedures. BHA will update the family's information when verification has been completed.

### ***Voucher Term***

The term of the receiving PHA's voucher may not expire before the term of the initial PHA's voucher [24 CFR 982.355(c)(6)].

#### BHA Policy

BHA's voucher will not expire earlier than 30 calendar days from the expiration date of the initial PHA's voucher term. (Ref: Letter to PHA ED's dated 9/15/2015)

### ***Voucher Extensions [24 CFR 982.355(c)(6), Notice 2008-43]***

The receiving PHA may provide additional search time to the family beyond the expiration date of the initial PHA's voucher; however, if it does so, it must inform the initial PHA of the extension. It must also bear in mind the billing deadline provided by the initial PHA. Unless willing and able to absorb the family, the receiving PHA should ensure that any voucher expiration date would leave sufficient time to process a request for tenancy approval, execute a HAP contract, and deliver the initial billing to the initial PHA.

#### **BHA Policy**

BHA generally will not extend the term of the voucher that it issues to an incoming portable family unless BHA plans to absorb the family into its own program, in which case it will follow the policies on voucher extension set forth in section 5-II.E.

BHA will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see Chapter 2).

**BHA will also consider the extreme shortage of available housing as a factor it considers in its decision of whether or not to grant additional search time.**

If BHA is issuing the family a voucher whose term extends beyond the date of the initial PHA's voucher, BHA will inform the family that the extension of search time provided by BHA's voucher is only valid for the family's search in BHA's.

### **Notifying the Initial PHA**

The receiving PHA must promptly notify the initial PHA if the family has leased an eligible unit under the program or if the family fails to submit a request for tenancy approval for an eligible unit within the term of the receiving PHA's voucher [24 CFR 982.355(c)(8)]. The receiving PHA is required to use Part II of form HUD-52665, Family Portability Information, for this purpose [24 CFR 982.355(e)(5), Notice PIH 2008-43]. (For more on this topic and the deadline for notification, see below under "Administering a Portable Family's Voucher.")

If an incoming portable family ultimately decides not to lease in the jurisdiction of the receiving PHA but instead wishes to return to the initial PHA's jurisdiction or to search in another jurisdiction, the receiving PHA must refer the family back to the initial PHA. In such a case the voucher of record for the family is once again the voucher originally issued by the initial PHA. Any extension of search time provided by the receiving PHA's voucher is only valid for the family's search in the receiving PHA's jurisdiction [Notice PIH 2008-43].

### **Administering a Portable Family's Voucher**

#### ***Initial Billing Deadline***

If a portable family's search for a unit is successful and the receiving PHA intends to administer the family's voucher, the receiving PHA must submit its initial billing notice (Part II of form HUD-52665) (a) no later than 10 business days following the date the receiving PHA **executes** a HAP contract on behalf of the family **and** (b) in time that the notice will be **received** no later

than 90 days following the expiration date of the family's voucher issued by the initial PHA [Notice PIH 2008-43]. A copy of the family's form HUD-50058, Family Report, completed by the receiving PHA must be attached to the initial billing notice. The receiving PHA may send these documents by mail, fax, or e-mail.

#### BHA Policy

BHA will send its initial billing notice by fax or e-mail, if necessary, to meet the billing deadline but will also send the notice by regular mail.

If the receiving PHA fails to send the initial billing within 10 business days following the date the HAP contract is executed, it is required to absorb the family into its own program unless (a) the initial PHA is willing to accept the late submission or (b) HUD requires the initial PHA to honor the late submission (e.g., because the receiving PHA is overleased) [Notice PIH 2008-43].

#### ***Ongoing Notification Responsibilities [Notice PIH 2008-43, HUD-52665]***

**Annual Reexamination.** The receiving PHA must send the initial PHA a copy of a portable family's updated form HUD-50058 after each annual reexamination for the duration of time the receiving PHA is billing the initial PHA on behalf of the family, regardless of whether there is a change in the billing amount.

#### BHA Policy

BHA will send a copy of the updated HUD-50058 by regular mail at the same time BHA and owner are notified of the reexamination results.

**Change in Billing Amount.** The receiving PHA is required to notify the initial PHA, using form HUD-52665, of any change in the billing amount for the family as a result of:

- A change in the HAP amount (because of a reexamination, a change in the applicable payment standard, a move to another unit, etc.)
- An abatement or subsequent resumption of the HAP payments
- Termination of the HAP contract
- Payment of a damage/vacancy loss claim for the family
- Termination of the family from the program

The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. Under no circumstances should the notification be later than 10 business days following the effective date of the change in the billing amount. If the receiving PHA fails to send Form HUD-52665 within 10 days of effective date of billing changes, the initial PHA is not responsible for any increase prior to notification.

#### ***Late Payments [Notice PIH 2008-43]***

If the initial PHA fails to make a monthly payment for a portable family by the fifth business day of the month, the receiving PHA must promptly notify the initial PHA in writing of the deficiency. The notice must identify the family, the amount of the billing payment, the date the billing payment was due, and the date the billing payment was received (if it arrived late). The receiving PHA must send a copy of the notification to the Office of Public Housing (OPH) in the HUD area office with jurisdiction over the receiving PHA. If the initial PHA fails to correct the problem by the second month following the notification, the receiving PHA may request by



memorandum to the director of the OPH with jurisdiction over the receiving PHA that HUD transfer the unit in question. A copy of the initial notification and any subsequent correspondence between the PHAs on the matter must be attached. The receiving PHA must send a copy of the memorandum to the initial PHA. If the OPH decides to grant the transfer, the billing arrangement on behalf of the family ceases with the transfer, but the initial PHA is still responsible for any outstanding payments due to the receiving PHA.

### ***Overpayments [Notice PIH 2008-43]***

In all cases where the receiving PHA has received billing payments for billing arrangements no longer in effect, the receiving PHA is responsible for returning the full amount of the overpayment (including the portion provided for administrative fees) to the initial PHA.

In the event that HUD determines billing payments have continued for at least three months because the receiving PHA failed to notify the initial PHA that the billing arrangement was terminated, the receiving PHA must take the following steps:

- Return the full amount of the overpayment, including the portion provided for administrative fees, to the initial PHA.
- Once full payment has been returned, notify the Office of Public Housing in the HUD area office with jurisdiction over the receiving PHA of the date and the amount of reimbursement to the initial PHA.

At HUD's discretion, the receiving PHA will be subject to the sanctions spelled out in Notice PIH 2008-43.

### ***Denial or Termination of Assistance***

At any time, the receiving PHA may make a determination to deny or terminate assistance to a portable family for family action or inaction [24 CFR 982.355(c)(9), 24 CFR 982.355(c)(10)].

In the case of a termination, the PHA should provide adequate notice of the effective date to the initial PHA to avoid having to return a payment. In no event should the receiving PHA fail to notify the initial PHA later than 10 business days following the effective date of the termination of the billing arrangement [Notice PIH 2008-43].

#### BHA Policy

If BHA elects to deny or terminate assistance for a portable family, BHA will notify the initial PHA within 10 business days after the informal review or hearing if the denial or termination is upheld. BHA will base its denial or termination decision on the policies set forth in Chapter 3 or Chapter 12, respectively. The informal review or hearing will be held in accordance with the policies in Chapter 16. BHA will furnish the initial PHA with a copy of the review or hearing decision.

### **Absorbing a Portable Family**

The receiving PHA may absorb an incoming portable family into its own program when the PHA executes a HAP contract on behalf of the family or at any time thereafter providing that (a) the PHA has funding available under its annual contributions contract (ACC) and (b) absorbing the family will not result in overleasing [24 CFR 982.355(d)(1), Notice PIH 2008-43].



If the receiving PHA absorbs a family from the point of admission, the admission will be counted against the income targeting obligation of the receiving PHA [24 CFR 982.201(b)(2)(vii)].

If the receiving PHA absorbs a family after providing assistance for the family under a billing arrangement with the initial PHA, HUD encourages the receiving PHA to provide adequate advance notice to the initial PHA to avoid having to return an overpayment. The receiving PHA must specify the effective date of the absorption of the family [Notice PIH 2008-43].

#### BHA Policy

If BHA decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, BHA will notify the initial PHA by the initial billing deadline specified on form HUD-52665. The effective date of the HAP contract will be the effective date of the absorption.

If BHA decides to absorb a family after that, it will provide the initial PHA with 30 days' advance notice.

Following the absorption of an incoming portable family, the family is assisted with funds available under the consolidated ACC for the receiving PHA's voucher program [24 CFR 982.355(d)], and the receiving PHA becomes the initial PHA in any subsequent moves by the family under portability.

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

**NOTE:** HUD has approved a Waiver from the requirement to submit a SEMAP certification through August of 2022. (See Appendix for list of Waivers)

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

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

Part VIII: Determination of Insufficient Funding. This part describes BHA'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 I: ADMINISTRATIVE FEE RESERVE [24 CFR 982.155]**

BHA must maintain an administrative fee reserve for the program to pay program administrative expenses in excess of administrative fees paid by HUD for BHA's fiscal year. If funds in the administrative fee reserve are not needed to cover BHA administrative expenses, BHA may use these funds for other housing purposes permitted by Federal, State and local law.

If BHA has not adequately administered any Section 8 program, HUD may prohibit use of funds in the administrative fee reserve, and may direct BHA to use funds in the reserve to improve administration of the program or to reimburse ineligible expenses. HUD also may prohibit use of the funds for certain purposes.

HUD requires the BHA Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the administrative fee reserve without specific approval.

### BHA Policy

Expenditures from the administrative fee reserve will be made in accordance with all applicable Federal requirements. Expenditures will not exceed \$50,000 per occurrence without the prior approval of BHA's Board of Commissioners.

## **PART II: SETTING PROGRAM STANDARDS AND SCHEDULES**

### **16-II.A. OVERVIEW**

Although many of the program's requirements are established centrally by HUD, the HCV program's regulations recognize that some flexibility is required to allow BHA to adapt the program to local conditions. This part discusses how BHA 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).

### BHA Policy

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

BHA 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]**

The payment standard sets the maximum subsidy payment a family can receive from BHA each month [24 CFR 982.505(a)]. Payment standards are based on fair market rents (FMRs) published annually by HUD. FMRs are set at a percentile within the rent distribution of standard quality

rental housing units in each FMR area. For most jurisdictions FMRs are set at the 40th percentile of rents in the market area.

BHA must establish a payment standard schedule that establishes payment standard amounts for BHA's jurisdiction, and for each unit size. For each unit size, BHA 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, BHA is required to establish a payment standard within a "basic range" established by HUD – between 90 and 110 percent of the published FMR for each unit size.

### **Updating Payment Standards**

When HUD updates its FMRs, BHA must update its payment standards if the standards are no longer within the basic range [24 CFR 982.503(b)]. HUD may require BHA to make further adjustments if it determines that rent burdens for assisted families in BHA's jurisdiction are unacceptably high [24 CFR 982.503(g)].

#### BHA Policy

BHA will review the appropriateness of the payment standards on an annual basis when the new FMR is published. In addition to ensuring the payment standards are always within the "basic range" BHA will consider one or more of the following factors when determining whether an adjustment should be made to the payment standard schedule:

**Funding Availability:** BHA will review the budget to determine the impact projected subsidy adjustments will have on funding available for the program and the number of families served. BHA will compare the number of families who could be served under revised payment standard amounts with the number assisted under current payment standard amounts.

**Rent Burden of Participating Families:** Rent burden will be determined by identifying the percentage of families, for each unit size, that are paying more than 30 percent of their monthly adjusted income as the family share, or where, if approved, the contract rent would result in the family paying more than 30 percent of their monthly adjusted income. 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, BHA will consider increasing the payment standard. In evaluating rent burdens, BHA will not include families renting a larger unit than their family unit size.

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

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

**Unit Availability:** BHA will review the availability of units for each unit size, particularly in areas with low concentrations of poor and minority families.



**Lease-up Time and Success Rate:** BHA will consider the percentage of families that are unable to locate suitable housing before the voucher expires and whether families are leaving the jurisdiction to find affordable housing.

**Rent data from Rent Stabilization Program:** BHA will review rent data from the Rent Stabilization Program addressing new rental rates during the preceding six month period.

Changes to payment standard amounts will be implemented in two phases: effective immediately for new contracts, and effective December 1<sup>st</sup> for existing assisted tenancies.

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

BHA must request HUD approval to establish payment standards that are higher than the basic range. At HUD's sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the FMR area. HUD may approve an exception payment standard amount (in accordance with program requirements) for all units, or for all units of a given size, leased by program families in the exception area. Any PHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount. The total population of all HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.

### **Unit-by-Unit Exceptions [24 CFR 982.503(c)(2)(ii)]**

Unit-by-unit exceptions to BHA's payment standards generally are not permitted. However, an exception may be made as a reasonable accommodation for a family that includes a person with disabilities. (See Chapter 2 for a discussion of reasonable accommodations.) This type of exception does not affect BHA's payment standard schedule.

When needed as a reasonable accommodation, BHA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 120 percent of the applicable FMR for the unit size (HUD PIH Notice 2013-03, *Temporary Compliance Assistance (January 22, 2013)*). BHA may request HUD approval for an exception to the payment standard for a particular family if the required amount is above 120 percent of the FMR.

### **BHA Policy**

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

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

The unit's design and/or amenities address the needs of the disabled household member (i.e. wheelchair accessibility);

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

The rent for the unit is reasonable.

In accordance with HUD PIH Notice 2013-03, *Temporary Compliance Assistance (January 22, 2013)*, BHA may adopt an Exception Payment Standard equal to 120% of the published Fair Market Rents, as a Reasonable Accommodation, without HUD approval.

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

If a substantial percentage of families have difficulty finding a suitable unit, BHA may request a "success rate payment standard" that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows BHA to set its payment standards at 90-110 percent of a higher FMR (the 50<sup>th</sup>, rather than the 40<sup>th</sup> percentile FMR). To support the request, BHA must demonstrate that during the most recent 6-month period for which information is available:

- Fewer than 75 percent of families who were issued vouchers became participants;
- BHA had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR; and
- BHA had a policy of allowing voucher holders who made sustained efforts to locate units at least 90 days to search for a unit.

Although HUD approves the success rate payment standard for all unit sizes in the FMR area, BHA may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of BHA's jurisdiction within the FMR area.

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

BHA must request HUD approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve establishment of a payment standard lower than the basic range. HUD will not approve a lower payment standard if the family share for more than 40 percent of program participants exceeds 30 percent of adjusted monthly income.

### **16-ILC. UTILITY ALLOWANCES [24 CFR 982.517]**

A BHA-established utility allowance schedule is used in determining family share and BHA subsidy. BHA must maintain a utility allowance schedule for (1) all tenant-paid utilities, (2) the cost of tenant-supplied refrigerators and ranges, and (3) other tenant-paid housing services such as trash collection.

The utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, BHA must use normal patterns of consumption for the community as a whole, and current utility rates.

The utility allowance must include the utilities and services that are necessary in the locality to provide housing that complies with housing quality standards. Costs for telephone, cable/satellite television, and internet services are not included in the utility allowance schedule.

In the utility allowance schedule, BHA must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection; other electric; cost of tenant-supplied refrigerator; cost of tenant-supplied range; and other specified housing services.

The cost of each utility and housing service must be stated separately by unit size and type. Chapter 18 of the *HCV Guidebook* provides detailed guidance to BHA about establishing utility allowance schedules.

### **Reasonable Accommodation**

HCV program regulations require BHA to approve a utility allowance amount higher than shown on BHA's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, BHA will approve an allowance for air-conditioning, even if BHA has determined that an allowance for air-conditioning generally is not needed (See Chapter 2 for policies regarding the request and approval of reasonable accommodations).

### **Utility Allowance Revisions**

BHA 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.

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

## **PART III: INFORMAL REVIEWS AND HEARINGS**

### **16-III.A. OVERVIEW**

When BHA makes a decision that has a negative impact on a family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal review; for participants, or for applicants denied admission because of citizenship issues, the appeal takes the form of an informal hearing.

PHAs are required to include in their administrative plans, informal review procedures for applicants, and informal hearing procedures for participants [24 CFR 982.54(d)(12) and (13)].

### **16-III.B. INFORMAL REVIEWS**

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a “minimum hearing requirement” [24 CFR 982.554], and need not be as elaborate as the informal hearing requirements. (Federal Register Volume 60, No. 127, p 36490).

#### **Decisions Subject to Informal Review**

BHA 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 BHA 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
- Denial of assistance based on an unfavorable history that may be the result of domestic violence, dating violence or stalking. (See Section 3-III.G.)

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

- Discretionary administrative determinations by BHA
- General policy issues or class grievances
- A determination of the family unit size under BHA subsidy standards
- A BHA determination not to grant approval of the tenancy
- A BHA determination that the unit is not in compliance with the HQS
- A BHA determination that the unit is not in accordance with the HQS due to family size or composition



### BHA Policy

BHA will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying or withdrawing a voucher; refusing to enter into a HAP contract or approve a lease; refusing to process or provide assistance under portability procedures. BHA will not offer an informal review to a family that was not selected from a lottery pool for placement on BHA waiting list.

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

BHA must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for the BHA decision, and must also state that the applicant may request an informal review of the decision. The notice must describe how to obtain the informal review.

### **Scheduling an Informal Review**

#### BHA Policy

A request for an informal review must be made in writing and delivered to BHA either in person or by first class mail, or by email to [bha@cityofberkeley.info](mailto:bha@cityofberkeley.info) by the close of the business day, no later than 10 business days from the date of BHA's denial of assistance.

Except as provided in Section 3-III.G, BHA must schedule and send written notice of the informal review within 10 business days of the family's request.

Any correspondence mailed via US Postal Service to the assisted address is presumed received unless it is returned.

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

#### BHA Policy

The informal review must be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

The applicant must be provided an opportunity to review BHAs documentation prior to the review meeting, and to present written or oral objections to the decision of BHA under review.

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

For reviews of "factual matters" (i.e. denial of placement on a senior housing list by a person under 62 years of age, or admission of a lifetime registrant sex offender) BHA may conduct the review by review of documents, and not provide a "meeting" to discuss the appeal.

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

BHA must notify the applicant of BHA's final decision, including a brief statement of the reasons for the final decision. A VAWA Notice of Occupancy Rights will be provided in conjunction with notices of proposed denials of assistance.

#### BHA Policy

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

Whether or not the grounds for denial were stated factually in the Notice.

The validity of grounds for denial of assistance.

The validity of the evidence.

BHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. Two copies of the notice will be mailed within 10 business days of the informal review, to the applicant and his or her representative, if any, via regular and certified mail.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume.

If the family fails to appear for their informal review, the denial of admission will stand and the family will be so notified.

Any correspondence mailed via US Postal Service to the assisted address is presumed received unless it is returned.

### **16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555, Pub.L. 109-162]**

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

BHA is not permitted to terminate a family's assistance until the time allowed for the family to request an informal hearing has elapsed, and any requested hearing has been completed. Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease
- Terminating housing assistance payments under an outstanding HAP contract
- Refusing to process or provide assistance under portability procedures

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

Circumstances for which BHA must give a participant family an opportunity for an informal hearing are as follows:

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from BHA utility allowance schedule
- A determination of the family unit size under BHA'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 BHA's subsidy standards, or BHA determination to deny the family's request for exception from the standards
- A determination to terminate assistance for a participant family because of the family's actions or failure to act
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under BHA policy and HUD rules
- A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)]
- A determination to deny admission based on an unfavorable history that may be the result of domestic violence, dating violence, or stalking.

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

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

#### BHA Policy

BHA will only offer participants the opportunity for an informal hearing when required to by the regulations.

### **Informal Hearing Procedures**

**Victims of domestic violence, dating violence, sexual assault or stalking:** In hearings wherein the participant requesting the hearing is the alleged perpetrator of a domestic violence, dating violence, sexual assault, or stalking case, and the reason for the hearing is a result of the violence perpetrated against the victim, the alleged victim will be provided with an opportunity to provide oral or written witness testimony at the hearing. Pursuant to VAWA and the HUD regulations implementing, BHA will communicate with and offer to the alleged victim an opportunity to provide witness testimony at the hearing. The decision to be a witness or not is solely up to the witness. BHA will accommodate the safety needs of the witness if they elect to testify. If the



alleged victim is unable to provide written or oral testimony in person or through an online platform due to safety concerns, BHA will accept a written statement by the alleged victim if one is provided. If the alleged victim is a witness, both parties will not be in the same room. The alleged perpetrator of their counsel will have an opportunity to question the witness via a secure online platform like Zoom. In hearings wherein the alleged victim provides a written statement, there will be no opportunity for cross-examination. Witness shall enter and leave the hearing only for the portion of the hearing for which they are testifying. Witness will be provided a copy of the decision. If federal and/or state law prohibits BHA from providing a copy of the decision, the witness will be provided a written summary of the hearing decision within five (5) business days of the hearing officer issuing the decision. If a written summary is provided, it must include information identifying whether the issue before the hearing officer was upheld or overturned, a summary of the evidence provided at the hearing, and the reason why the decision was upheld or overturned.

***Notice to the Family [24 CFR 982.555(c)]***

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

**BHA Policy**

In cases where BHA makes a decision for which an informal hearing must be offered, the notice to the family will include all of the following:

The proposed action or decision of BHA.

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

A copy of all documents BHA will rely upon during the hearing

The date the proposed action will take place.

A statement of the family's right to an explanation of the basis for BHA's decision.

A statement that if the family does not agree with the decision the family may request an informal hearing of the decision.

A deadline for the family to request the informal hearing.



To whom the hearing request should be addressed.

Contact information for East Bay Community Law Center and Bay Area Legal Aid

Information regarding BHAs Reasonable Accommodation policy

VAWA Notice of Occupancy Rights

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

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

#### **BHA Policy**

A request for an informal hearing must be made in writing and delivered to BHA either in person or by first class mail, or email to [bha@ci.berkeley.ca.us](mailto:bha@ci.berkeley.ca.us) by the close of the business day, no later than 10 business days from the date of BHA's decision or notice to terminate assistance.

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

Any correspondence mailed via US Postal Service to the assisted address is presumed received unless it is returned.

The family will be asked to advise the preferred day of the week, and morning or afternoon. BHA will attempt to accommodate the family in scheduling the hearing. Additionally, the family may reschedule once for convenience, provided at least 24 hour notice is provided. Thereafter, a hearing will only be rescheduled for "good cause". 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, BHA may request documentation of the "good cause" prior to rescheduling the hearing. Failure to secure legal representation in a timely manner is not good cause.

If the family does not appear at the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact BHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. BHA 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 delays BHA's ability to conduct the hearing beyond 30-days, and the delay impacts the amount of subsidy paid by BHA, BHA will (a) conduct the hearing by review of documents or (b) suspend all benefits for a maximum of 60-days to allow for a hearing.

### ***Other Reviews***

BHA will not suspend or delay the informal hearing process more than 30-days to await adjudication by another entity (i.e. civil or criminal case).

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

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

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

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

#### BHA Policy

BHA will include with the proposed termination notice, a copy of all documents BHA will rely upon in the hearing. Additional copies may be obtained for \$.10 per page. If additional documents are received prior to the hearing, BHA will provide client a copy as soon as possible, whenever possible, at least 48 hours prior to the hearing.

BHA must be given an opportunity to examine at BHA offices before the hearing any family documents that are directly relevant to the hearing. Whenever a participant requests an informal hearing, BHA include in the letter scheduling the hearing, a request to copy of all documents that the participant intends to present or utilize at the hearing. The participant must make the documents available no later than 12:00 pm on the business day prior to the scheduled hearing date.

#### ***Participant's Right to Bring Counsel [24 CFR 982.555(e)(3)]***

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

#### ***Informal Hearing Officer [24 CFR 982.555(e)(4)]***

Informal hearings will be conducted by a person or persons approved by BHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

#### BHA Policy

BHA has designated the following to serve as hearing officers:

- Hearing Examiner, Rent Stabilization Program
- Housing Operations Manager/Deputy Director or equivalent from another Public Housing Authority
- Current or prior employee of a Public Housing Authority with Informal Hearing experience
- BHA Housing Occupancy Manager
- BHA Management Analyst
- BHA Executive Director

### ***Attendance at the Informal Hearing***

#### BHA Policy

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

A BHA representative(s) and any witnesses for BHA

The participant and any witnesses for the participant

The participant's counsel or other representative

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

Head of household, if incarcerated, has 30 days (versus 14 days) to request an Informal Hearing; such hearing may occur via telephone, via a designated advocate, or submission of a written statement/response to evidence.

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

#### BHA Policy

All hearings will be recorded at BHA's expense and maintained on record for 90-days. The family may request a copy by providing a blank CD or flash drive; there will not be any charge for the duplication; BHA will not provide a transcript of the audio taped hearing unless requested for legal proceeding. A transcript required for legal proceeding will be provided at BHA expense.

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

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

#### BHA 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)]***

BHA and the family must be given the opportunity to present evidence and question any witnesses. In general, all evidence is admissible at an informal hearing. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

#### BHA Policy

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

**Oral evidence:** the testimony of witnesses

**Documentary evidence:** a writing which is relevant to the case, for example, a letter written to BHA. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.

**Demonstrative evidence:** Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

**Real evidence:** A tangible item relating directly to the case.

*Hearsay Evidence* is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

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

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

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

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

#### BHA Policy

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

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

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

**BHA Evidence to Support BHA 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 BHA's conclusion.

**Validity of Grounds for Termination of Assistance (when applicable):** The hearing officer will determine if the termination of assistance is for one of the grounds specified in the HUD regulations and BHA policies. If the grounds for termination are not specified in the regulations or in compliance with BHA policies, then the decision of BHA will be overturned.



To overturn the decision of BHA, the Hearing Officer must find that BHA failed to meet one or more of the standards identified above.

The hearing officer will issue a written decision directly to the family and BHA no later than 10 business days after the hearing. BHA will mail a second copy to the family, certified mail. 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 BHA representative(s); and

Name of family representative(s), if any.

**Background:** A brief, impartial statement of the reason for the hearing.

**Summary of the Evidence:** The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

**Findings of Fact:** The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

**Conclusions:** The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold BHA's decision.

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

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

BHA Policy

The hearing officer may ask the family for additional information and/or might adjourn the hearing (for a maximum of 30-days) in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of BHA will take effect and another hearing will not be granted.

A rehearing or a further hearing may be requested for the purpose of rectifying any obvious mistake of law made during the hearing or any obvious injustice not known at the time of the hearing.

It shall be within the sole discretion of BHA to grant or deny the request for further hearing or rehearing. A further hearing may be limited to written submissions by the parties, in the manner specified by the hearing officer.

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

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

BHA Policy

If BHA determines that it will not be bound by the decision of the Hearing Officer, BHA will mail a "Notice of Final Decision" including a copy of the hearing officer's report and VAWA Notice of Occupancy Rights, to the participant and their representative.

Final informal review and informal hearing decision notices will advise the applicant that the timeline for requesting judicial review of the final decision is governed by Cal. Code of Civ. Proc. § 1094.6.

Two copies of this Notice will be sent by first-class mail, postage pre-paid including one via certified mail. The participant will be mailed the original "Notice of Final Decision". A copy of the "Notice of Final Decision" along with the certified mail receipt notice will be maintained in BHA's file.

Any correspondence mailed via US Postal Service to the assisted address is presumed received unless it is returned.

**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 the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or BHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures

**Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]**

As discussed in Chapters 3 and 11, the notice of denial or termination of assistance for noncitizens must advise the family:

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

#### BHA Policy

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

The family must provide BHA 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 BHA, of its decision. When the USCIS notifies BHA of the decision, BHA must notify the family of its right to request an informal hearing.

#### BHA Policy

BHA 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.

Any correspondence mailed via US Postal Service to the assisted address is presumed received unless it is returned.

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

BHA 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 BHA 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.

#### **BHA Policy**

The family will be allowed to copy any documents related to the hearing at a cost of \$.10 per page. The family must request discovery of BHA documents no later than 12:00 p.m. on the business day prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by BHA, and to confront and cross-examine all witnesses on whose testimony or information BHA 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 BHA, as may be agreed upon by the two parties.

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



The family is entitled to have the hearing recorded by audiotape. BHA is not required to provide a transcript of the hearing.

#### BHA Policy

All hearings will be recorded at BHA's expense and maintained on record for 90-days. The family may request a copy by providing a blank CD or flash drive; there will not be any charge for the duplication; BHA will not provide a transcript of the audio taped hearing unless requested for legal proceeding. A transcript required for legal proceeding will be provided at BHA expense.

#### ***Hearing Decision***

BHA must provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The decision must state the basis for the decision.

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

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that BHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of BHA 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)]**

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

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form
- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision

## **PART IV: OWNER OR FAMILY DEBTS TO THE PHA**

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

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

#### BHA Policy

When an action or inaction of an owner or participant results in failure to honor a contractual obligation (e.g. loan) or the overpayment of housing assistance, BHA holds the owner or participant liable to return any overpayments to BHA.

BHA 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 BHA, BHA will utilize other available collection alternatives including, but not limited to, the following:

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

### **16-IV.B. REPAYMENT POLICY**

#### **Owner Debts to BHA**

##### BHA Policy

BHA will provide 30 days for the establishment of a "repayment agreement," with the understanding that 50% of the outstanding debt must be paid prior to execution of the agreement. No repayment agreement will extend beyond 36 months; in cases where the family can afford to pay off a debt in less than 36 months, a repayment agreement will reflect a shorter repayment term.

If the owner fails to repay the debt within the required time frame and is entitled to future HAP payments, BHA will reduce the future HAP payments by the amount owed until the debt is paid in full.

If the owner refuses to repay the debt, BHA will ban the owner from future participation in the program and pursue other modes of collection.

#### **Family Debts to the BHA**

##### BHA Policy

Any amount due to BHA by an HCV participant must be repaid by the family.

BHA will provide 30 days for the establishment of a Repayment Agreement.

BHA will follow these goals, in establishing Repayment Agreements, providing some flexibilities for participants that cite undue hardships and extenuating circumstances:

1. 25%-50% of the outstanding debt be paid prior to execution of the agreement, and will be affordable, as determined through discussion between client and BHA.

2. Repayment agreement will be between 12 – 60 months and will be affordable, as determined through discussion between client and BHA.
3. Monthly amount will be affordable, as determined through discussion between client and BHA.

Prior to entering a repayment agreement, the family must show current bank statements for all accounts and assets.

If the family refuses to repay the debt, BHA will propose termination of the Section 8 assistance, and upon notification to the family, will report the debt in HUD's "Debts Owed to PHAs & Terminations" database tracking system, and pursue other modes of collection.

In cases where a participant is disabled and owes funds to BHA, a Reasonable Accommodation will be considered to enter into a repayment agreement with different terms than described above.

BHA will not allow the family to transfer assistance outside the jurisdiction (port) until the debt is paid in full.

## **PART V: MANAGEMENT ASSESSMENT (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 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.

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

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

Upon receipt of BHA’s SEMAP certification, HUD will rate BHA’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. BHA 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 BHA's certification on the indicator due to BHA'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 be rated under SEMAP indicators 1-7.

<b>SEMAP Indicators</b>
<p><b>Indicator 1: Selection from the waiting list</b>  <b>Maximum Score: 15</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether 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>
<p><b>Indicator 2: Rent reasonableness</b>  <b>Maximum Score: 20</b></p> <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> </ul>



- Points are based on the percent of units for which the PHA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to the PHA's quality control sample.

**Indicator 3: Determination of adjusted income**

**Maximum Score: 20**

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

**Indicator 4: Utility allowance schedule**

**Maximum Score: 5**

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

**Indicator 5: HQS quality control inspections**

**Maximum Score: 5**

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

**Indicator 6: HQS enforcement**

**Maximum Score: 10**

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

**Indicator 7: Expanding housing opportunities**

**Maximum Points: 5**

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

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

**Maximum Points: 5 points**

- This indicator shows whether the PHA has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in the PHA's jurisdiction, that are within the basic range of 90 to 110 percent of the published FMR.
- 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 HQS inspections****Maximum Points: 5**

- This indicator shows whether newly leased units pass HQS inspection on or before the effective date of the assisted lease and HAP contract.
- Points are based on the percent of newly leased units that passed HQS inspection prior to the effective date of the lease and HAP contract, according to data from PIC.

**Indicator 12: Annual HQS inspections****Maximum Points: 10**

- This indicator shows whether 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 the number of units or funding reserved under ACC for at least one year.
- Points are based on the percent of units leased during the last completed PHA fiscal year, or the percent of allocated budget authority that has been expended by the PHA, according to data from the PHA's last year-end operating statement that is recorded in HUD's accounting system.

**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.

**Deconcentration Bonus Indicator****Maximum Points: 5**

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



## **PART VI: RECORD KEEPING**

### **16-VI.A. OVERVIEW**

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

### **16-VI.B. RECORD RETENTION [24 CFR 982.158]**

During the term of each assisted lease, and for at least three years thereafter, BHA must keep:

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

In addition, BHA 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 BHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- Other records specified by HUD.

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

### **16-VI.C. RECORDS MANAGEMENT**

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

#### BHA Policy

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

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

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

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

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

### **Upfront Income Verification (UIV) Records**

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

#### BHA Policy

BHA has adopted and implemented an EIV Security Policy.

### **Criminal Records**

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

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

BHA must establish and implement a system of records management that ensures that any sex offender registration information received by BHA 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 BHA action without institution of a challenge or final disposition of any such litigation. This requirement does not apply to information that is public information, or is obtained by BHA other than under 24 CFR 5.905.

#### BHA Policy

BHA will maintain copies of Police Reports, logs for service, and other documents in a confidential file in the Executive Office. The participant file will include a note referencing the existence of the document in the Executive Office.

### **Medical/Disability Records**

PHAs are not permitted to inquire about the nature or extent of a person's disability. BHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If BHA receives a verification document that provides such information, BHA should redact diagnostic/medical information in the document.

#### BHA Policy

BHA will review documents submitted for medical expense, determine any appropriate allowance, enter a brief description in the "medical expense" line to document the deduction, and place the documentation in a sealed envelope in the file.

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

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

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

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

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

#### BHA Policy

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

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

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

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

At least quarterly, BHA 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.

#### BHA Policy

BHA will coordinate reporting of any suspected situations involving positive tests of children with elevated blood lead levels with the City of Berkeley Public Health Department.

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

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

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

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

##### BHA Policy

BHA 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 BHA'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 and factoring in any known economic changes that may impact average HAP (e.g. scheduled reductions in SSI benefits). To that figure, BHA will add anticipated HAP expenditures for the remainder of the calendar year. BHA may include the projected costs for vouchers:

- a. that have been issues to families from the waiting list but not yet leased; and
- b. Voucher commitments to project based developments to lease-up during the fiscal year.

### **PART IX: NOTIFICATION REGARDING APPLICABLE PROVISIONS OF THE VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2013 (VAWA)**

The Violence against Women Reauthorization Act of 2005 (VAWA) and the Violence Against Women Reauthorization Act of 2013 (VAWA) require PHAs to inform assisted tenants of their rights under this law, including their right to confidentiality and the limits thereof. Since VAWA provides protections for applicants as well as tenants, PHAs may elect to provide the same information to applicants. VAWA also requires PHAs to inform owners and managers of their obligations under this law [24 CFR 5.2007(3)].



This part describes the steps that the PHA will take to ensure that all actual and potential beneficiaries of its housing choice voucher program are notified about their rights and that owners and managers are notified of their obligations under VAWA.

#### BHA Policy

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

A summary of the rights and protections provided by VAWA to BHA program applicants and participants who are or have been victims of domestic violence, dating violence, sexual assault, or stalking (see sample notices in Exhibits 16-1 and 16-2)

The definitions of *domestic violence*, *dating violence*, *sexual assault* and *stalking* provided in VAWA (included in Exhibits 16-1 and 16-2)

An explanation of the documentation that the PHA may require from an individual who claims the protections provided by VAWA (included in Exhibits 16-1 and 16-2)

A copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

A statement of BHA's obligation to keep confidential any information that it receives from a victim unless (a) BHA has the victim's written permission to release the information, (b) it needs to use the information in an eviction proceeding, or (c) it is compelled by law to release the information (included in Exhibits 16-1 and 16-2)

The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY) (included in Exhibits 16-1 and 16-2)

Contact information for local victim advocacy groups or service providers

### **16-IX.A. NOTIFICATION TO PARTICIPANTS [24 CFR 5.2007(3)(i)]**

VAWA requires PHAs to notify HCV program participants of their rights under this law, including their right to confidentiality and the limits thereof.

#### BHA Policy

BHA will provide all participants with notification of their protections and rights under VAWA at the time of admission and at annual reexamination every year.

The notice will explain the protections afforded under the law, inform the participant of BHA confidentiality requirements, and provide contact information for local victim advocacy groups or service providers.

BHA will also include in all assistance termination notices a statement explaining assistance termination protection provided by VAWA (see Section 12-II.E).

### **16-IX.B. NOTIFICATION TO APPLICANTS**

#### BHA Policy

BHA will provide all applicants with notification of their protections and rights under VAWA at the time they request an application for housing assistance.

The notice will explain the protections afforded under the law, inform each applicant of BHA confidentiality requirements, and provide contact information for local victim advocacy groups or service providers.

BHA will also include in all notices of denial a statement explaining the protection against denial provided by VAWA (see section 3-III.G).

#### **16-IX.C. NOTIFICATION TO OWNERS AND MANAGERS [24 CFR 5.2007(3)(ii)]**

VAWA requires PHAs to notify owners and managers of their rights and responsibilities under this law.

##### BHA Policy

Inform property owners and managers of their screening and termination responsibilities related to VAWA. BHA may utilize any or all of the following means to notify owners of their VAWA responsibilities:

As appropriate in day to day interactions with owners and managers.

Inserts in HAP payments, 1099s, owner workshops, classes, orientations, and/or newsletters.

Signs in BHA lobby and/or mass mailings which include model VAWA certification forms

## **EXHIBIT 16-1: SAMPLE NOTICE TO HOUSING CHOICE VOUCHER APPLICANTS AND TENANTS REGARDING THE VIOLENCE AGAINST WOMEN ACT (VAWA)**

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

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

### **Protections for Victims**

If you are eligible for a Section 8 voucher, the housing authority cannot deny you rental assistance solely because you are a victim of domestic violence, dating violence, sexual assault, or stalking.

If you are the victim of domestic violence, dating violence, sexual assault, or stalking, you cannot be terminated from the Section 8 program or evicted based on acts or threats of violence committed against you. Also, criminal acts directly related to the domestic violence, dating violence, sexual assault, or stalking that are caused by a member of your household or a guest can't be the reason for evicting you or terminating your rental assistance if you were the victim of the abuse.

### **Reasons You Can Be Evicted**

You can be evicted and your rental assistance can be terminated if the housing authority or your landlord can show there is an *actual* and *imminent* (immediate) threat to other tenants or employees at the property if you remain in your housing. Also, you can be evicted and your rental assistance can be terminated for serious or repeated lease violations that are not related to the domestic violence, dating violence, sexual assault, or stalking committed against you. The housing authority and your landlord cannot hold you to a more demanding set of rules than it applies to tenants who are not victims.

### **Removing the Abuser from the Household**

Your landlord may split the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the assisted unit. Also, the housing authority can terminate the abuser's Section 8 rental assistance while allowing you to continue to receive assistance. If the landlord or housing authority chooses to remove the abuser, it may not take away the remaining tenants' rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, your landlord must follow federal, state, and local eviction procedures.

### **Moving to Protect Your Safety**

The housing authority may permit you to move and still keep your rental assistance, even if your current lease has not yet expired. The housing authority may require that you be current on your rent or other obligations in the housing choice voucher program. The housing authority may ask you to provide proof that you are moving because of incidences of abuse.

### **Proving That You Are a Victim of Domestic Violence, Dating Violence, or Stalking**

The housing authority and your landlord can ask you to prove or “certify” that you are a victim of domestic violence, dating violence, sexual assault, or stalking. The housing authority or your landlord must give you at least 14 business days (i.e., Saturdays, Sundays, and holidays do not

count) to provide this proof. The housing authority and your landlord are free to extend the deadline. There are three ways you can prove that you are a victim:

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

If you fail to provide one of these documents within the required time, the landlord may evict you, and the housing authority may terminate your rental assistance.

### **Confidentiality**

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

- You give written permission to the housing authority or your landlord to release the information.
- Your landlord needs to use the information in an eviction proceeding, such as to evict your abuser.
- A law requires the housing authority or your landlord to release the information.

If release of the information would put your safety at risk, you should inform the housing authority and your landlord.

### **VAWA and Other Laws**

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

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

### **For Additional Information**

If you have any questions regarding VAWA, please contact \_\_\_\_\_ at \_\_\_\_\_.

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 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.



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

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

A federal law that went into effect in 2006 protects individuals who are victims of domestic violence, dating violence, and stalking. The name of the law is the Violence against Women Act, or “VAWA.” This notice explains your obligations under VAWA.

### **Protections for Victims**

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

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

### **Permissible Evictions**

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

### **Removing the Abuser from the Household**

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

### **Certification of Domestic Violence, Dating Violence, or Stalking**

If a tenant asserts VAWA’s protections, you can ask the tenant to certify that he or she is a victim of domestic violence, dating violence, or stalking. You are not required to demand official documentation and may rely upon the victim’s statement alone. If you choose to request

certification, you must do so in writing and give the tenant at least 14 business days to provide documentation. You are free to extend this deadline. A tenant can certify that he or she is a victim by providing any one of the following three documents:

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

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

### **Confidentiality**

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

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

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

### **VAWA and Other Laws**

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

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

### **Additional Information**

- If you have any questions regarding VAWA, please contact Alameda County Family Justice Center, 470 27<sup>th</sup> St, Oakland, CA 94612, at (510) 267-8800..
- HUD Notice PIH 2006-42 contains detailed information regarding VAWA's certification requirements. The notice is available at <http://www.hud.gov/offices/adm/hudclips/>.
- An overview of VAWA's housing provisions is available at <http://edocket.access.gpo.gov/2007/pdf/E7-4795.pdf>.

### **Definitions**

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

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

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

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

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

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

## CHAPTER 19

### Temporary Policy Supplement

#### EMERGENCY HOUSING VOUCHERS (EHVs)

##### INTRODUCTION

On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (ARP) (P.L. 117-2). Section 3202 of the ARP appropriated \$5 billion for the creation, administration, and renewal of new incremental emergency housing vouchers (EHVs) and other eligible expenses related to COVID-19.

On May 5, 2021, HUD issued Notice PIH 2021-15, which described HUD's process for allocating approximately 70,000 EHVs to eligible PHAs and set forth the operating requirements for PHAs who administer them. Based on criteria outlined in the notice, HUD notified eligible PHAs of the number of EHVs allocated to their agency, and PHAs were able to accept or decline the invitation to participate in the program.

PHAs may not project-base EHVs; EHVs are exclusively tenant-based assistance.

All applicable nondiscrimination and equal opportunity requirements apply to the EHV program, including requirements that BHA grant reasonable accommodations to persons with disabilities, effectively communicate with persons with disabilities, and ensure meaningful access for persons with limited English proficiency (LEP).

This chapter describes HUD regulations and PHA policies for administering EHVs. The policies outlined in this chapter are organized into seven sections, as follows:

Part I: Funding

Part II: Partnering Agencies

Part III: Waiting List Management

Part IV: Family Eligibility

Part V: Housing Search and Leasing

Part VI: Use of Funds, Reporting, and Financial Records

Except as addressed by this chapter and as required under federal statute and HUD requirements, the general requirements of the HCV program apply to EHVs.

#### PART I: FUNDING

##### TPS-1.A. FUNDING OVERVIEW

The American Rescue Plan Act of 2021 (ARP) provides administrative fees and funding for the costs of administering emergency housing vouchers (EHVs) and other eligible expenses defined in Notice PIH 2021-15. These fees may only be used for EHV administration and other eligible expenses and must not be used for or applied to other PHA programs or vouchers. BHA must maintain separate financial records from its regular HCV funding for all EHV funding.

## **Housing Assistance Payments (HAP) Funding**

ARP funding obligated to BHA as housing assistance payments (HAP) funding may only be used for eligible EHV HAP expenses (i.e., rental assistance payments). EHV HAP funding may not be used for EHV administrative expenses or for the eligible uses under the EHV services fee.

The initial funding term will expire December 31, 2022. HUD will provide renewal funding to BHA for the EHV's on a calendar year (CY) basis commencing with CY 2023. The renewal funding allocation will be based on BHA's actual EHV HAP costs in leasing, similar to the renewal process for the regular HCV program. EHV renewal funding is not part of the annual HCV renewal funding formula; EHV's are renewed separately from the regular HCV program. All renewal funding for the duration of the EHV program has been appropriated as part of the ARP funding.

## **Administrative Fee and Funding**

The following four types of fees and funding are allocated as part of the EHV program:

- **Preliminary fees** support immediate start-up costs that BHA will incur in implementing alternative requirements under EHV, such as outreach and coordination with partnering agencies:
  - \$400 per EHV allocated to BHA, once the consolidated annual contributions contract (CACC) is amended.
  - This fee may be used for any eligible administrative expenses related to EHV's.
  - The fee may also be used to pay for any eligible activities under EHV service fees (TPS-I.B).
- **Placement fees/expedited issuance reporting fees** will support initial lease-up costs and the added cost and effort required to expedite leasing of EHV's:
  - \$100 for each EHV initially leased, if BHA reports the voucher issuance date in Public Housing Information Center–Next Generation (PIC–NG) system within 14 days of voucher issuance or the date the system becomes available for reporting.
  - Placement fees:
    - o \$500 for each EHV family placed under a HAP contract effective within four months of the effective date of the ACC funding increment; or
    - o \$250 for each EHV family placed under a HAP contract effective after four months but less than six months after the effective date of the ACC funding increment.
    - o HUD will determine placement fees in the event of multiple EHV allocations and funding increment effective dates.
  - Placement/expedited issuance fees only apply to the initial leasing of the voucher; they are not paid for family moves or to turnover vouchers.
- **Ongoing administrative fees**, which are calculated in the same way as the standard HCV program:
  - PHAs are allocated administrative fees using the full column A administrative fee amount for each EHV under contract as of the first day of each month.



- Ongoing EHV administrative fees may be subject to proration in future years, based on available EHV funding.
- **Services fees**, which are a one-time fee to support PHAs' efforts to implement and operate an effective EHV services program in its jurisdiction (TPS-I.B):
  - The fee is allocated once BHA's CACC is amended to reflect EHV funding.
  - The amount allocated is \$3,500 for each EHV allocated.

### **TPS-I.B. SERVICE FEES**

Services fee funding must be initially used for defined eligible uses and not for other administrative expenses of operating the EHV program. Service fees fall into four categories:

- Housing search assistance
- Security deposit/utility deposit/rental application/holding fee uses
- Owner-related uses
- Other eligible uses such as moving expenses or tenant-readiness services

BHA must establish the eligible uses and the parameters and requirements for service fees in BHA's administrative plan.

#### BHA Policy

The eligible uses for service fees that BHA may utilize the service fees for include:

**Application fees/non-refundable administrative or processing fees/refundable application deposit assistance.** BHA may choose to assist the family with some or all these expenses.

**Holding fees** are fees an owner requests that are rolled into the security deposit after an application is accepted but before a lease is signed. BHA may cover part or all of the holding fee for units where the fee is required by the owner after a tenant's application has been accepted but before the lease signing. BHA and owner must agree how the holding fee gets rolled into the deposit, and under what conditions the fee will be returned. In general, owners need to accept responsibility for making needed repairs to a unit required by the initial housing quality standards (HQS) inspections and can only keep the holding fee if the client is at fault for not entering into a lease.

**Security deposit assistance.** The amount of the security deposit assistance may not exceed the lesser of two months' rent to owner, the maximum security deposit allowed under applicable state and/or local law, or the actual security deposit required by the owner. BHA may pay the security deposit assistance directly to the owner or may pay the assistance to the family. If paid to the family, BHA will require documentation that the family paid the security deposit.

**Owner recruitment and outreach for EHV's.** BHA may use the service fee funding to conduct owner recruitment and outreach specifically for EHV's. In addition to traditional owner recruitment and outreach, activities may include conducting pre-inspections or otherwise expediting the inspection process, providing enhanced customer service, and offering owner incentive and/or retention payments.

**Owner incentive and/or retention payments.** BHA may make incentive or retention payments to owners that agree to initially lease their unit to an EHV family and/or renew the lease of an EHV family.

Payments will be made as a single payment at the beginning of the assisted lease term (or lease renewal if a retention payment). Owner incentive and retention payments are not housing assistance payments, are not part of the rent to owner, and are not taken into consideration when determining whether the rent for the unit is reasonable.

**Renter's insurance if required by the lease.** BHA may choose to assist the family with some or all this cost.

Any services fee assistance that is returned to BHA after its initial or subsequent use may only be applied to the eligible services fee uses defined in Notice PIH 2021-15 (or subsequent notice) or other EHV administrative costs. Any amounts not expended for these eligible uses when BHA's EHV program ends must be remitted to HUD.

## **PART II: PARTNERING AGENCIES**

### **TPS-II.A. CONTINUUM OF CARE (CoC)**

PHAs that accept an allocation of EHV's are required to enter into a Memorandum of Understanding (MOU) with the Continuum of Care (CoC) to establish a partnership for the administration of EHV's.

#### BHA Policy

BHA has entered into an MOU with Alameda County Continuum of Care (in Alameda County, the CoC is known as "EveryOne Home"); and the Alameda County Health Care Services Agency. See Exhibit TPS-I for a copy of the MOU.

### **TPS-II.B. OTHER PARTNERING ORGANIZATIONS**

BHA may, but is not required to, partner with other organizations trusted by persons experiencing homelessness, such as victim services providers (VSPs) and other community partners. If BHA chooses to partner with such agencies, BHA must either enter into an MOU with the partnering agency or the partnering agency may be added to the MOU between BHA and CoC-EveryOne Home.

#### BHA Policy

BHA will be partnering with domestic violence service providers; as well as Transition aged Youth service providers, as identified by the CoC-EveryOne Home and HCSA, including but not limited to Building Futures.

### **TPS-II.C. REFERRALS**

#### **CoC and Partnering Agency Referrals**

The primary responsibility of the CoC-EveryOne Home under the MOU with BHA is to make direct referrals of qualifying individuals and families to BHA. BHA must generally refer a family that is seeking EHV assistance directly from BHA to the CoC-EveryOne Home or other referring agency for initial intake, assessment, and possible referral for EHV assistance. Partner CoCs are responsible for determining whether the family qualifies under one of the four eligibility categories



for EHV's. The CoC-**EveryOne Home** or other direct referral partner must provide supporting documentation to BHA of the referring agency's verification that the family meets one of the four eligible categories for EHV assistance.

### BHA Policy

The CoC-**EveryOne Home** or partnering agency must establish and implement a system to identify EHV-eligible individuals and families within the agency's caseload and make referrals to BHA. The CoC-**EveryOne Home** or other partnering agency must certify that the EHV applicants they refer to BHA meet at least one of the four EHV eligibility criteria. BHA will maintain a copy of the referral or certification from the CoC-**EveryOne Home** or other partnering agency in the participant's file along with other eligibility paperwork. Homeless service providers may, but are not required to, use the certification form found in Exhibit TPS-II of this chapter. Victim services providers may, but are not required to, use the certification form found in Exhibit TPS-III of this chapter when identifying eligible families who qualify as victims of human trafficking.

As part of the MOU, BHA and CoC-**EveryOne Home** or other partnering agency will identify staff positions to serve as lead EHV liaisons. These positions will be responsible for transmission and acceptance of referrals. The CoC-**EveryOne Home** or partnering agency must commit sufficient staff and resources to ensure eligible individuals and families are identified and determined eligible in a timely manner.

BHA liaison responsible for acceptance of referrals will contact the CoC-**EveryOne Home** or partnering agency liaison via email indicating the number of vouchers available and requesting an appropriate number of referrals. No more than five business days from the date the CoC or partnering agency receives this notification, the CoC-**EveryOne Home** or partnering agency liaison will provide BHA with a list of eligible referrals including the name, address, and contact phone number for each adult individual who is being referred; a completed release form for each adult family member; and a written certification for each referral indicating they are EHV-eligible.

### **Offers of Assistance with CoC Referral**

BHA may make an EHV available without a referral from the CoC-**EveryOne Home** or other partnering organization in order to facilitate an emergency transfer under VAWA in accordance with BHA's Emergency Transfer Plan (ETP) in Chapter 16.

BHA must also take direct referrals from outside the CoC if:

- The CoC-**EveryOne Home** does not have a sufficient number of eligible families to refer to BHA; or
- The CoC-**EveryOne Home** does not identify families that may be eligible for EHV assistance because they are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking or human trafficking.

If at any time BHA is not receiving enough referrals or is not receiving referrals in a timely manner from the CoC or other partner referral agencies (or BHA and CoC-**EveryOne Home** cannot identify any such alternative referral partner agencies), HUD may permit BHA on a temporary or permanent basis to take EHV applications directly from applicants and admit eligible families to the EHV program in lieu of or in addition to direct referrals in those circumstances.

## PART III: WAITING LIST MANAGEMENT

### TPS-III. A. HCV WAITING LIST

The regulation that requires BHA to admit applicants as waiting list admissions or special admissions in accordance with admission policies in Chapter 4 does not apply to PHAs operating the EHV program. Direct referrals are not added to BHA's HCV waiting list.

BHA must inform families on the HCV waiting list of the availability of EHV's by, at a minimum, either by posting the information to their website or providing public notice in their respective communities in accordance with the requirements listed in Notice PIH 2021-15.

#### BHA Policy

BHA has posted information about the EHV program for families on BHA's HCV waiting list on their website. The notice:

Describes the eligible populations to which EHV's are limited

Clearly states that the availability of these EHV's is managed through a direct referral process

Advises the family to contact the CoC-**EveryOne Home** (or any other PHA referral partner, if applicable) if the family believes they may be eligible for EHV assistance.

BHA will ensure effective communication with persons with disabilities, including those with vision, hearing, and other communication-related disabilities in accordance with Chapter 2. BHA will also take reasonable steps to ensure meaningful access for persons with limited English proficiency (LEP) in accordance with Chapter 2.

### TPS-III.B. EHV WAITING LIST

The HCV regulations requiring BHA to operate a single waiting list for admission to the HCV program do not apply to PHAs operating the EHV program. Instead, when the number of applicants referred by the CoC-**EveryOne Home** or partnering agency exceeds the EHV's available, BHA must maintain a separate waiting list for EHV referrals, both at initial leasing and for any turnover vouchers that may be issued prior to September 30, 2023.

Further, the EHV waiting list is not subject to PHA policies in Chapter 4 regarding opening and closing the HCV waiting list. BHA will work directly with its CoC-**EveryOne Home** and other referral agency partners to manage the number of referrals and the size of the EHV waiting list.

### TPS-III.C. PREFERENCES

#### **HCV Waiting List Preferences**

If local preferences are established by BHA for HCV, they do not apply to EHV's. However, if BHA has a homeless preference or a VAWA preference for the HCV waiting list, BHA must adopt additional policies related to EHV's in accordance with Notice PIH 2021-15.

#### BHA Policy

BHA does not offer either a homeless preference or a VAWA preference for the HCV waiting list.

#### **EHV Waiting List Preferences**



With the exception of a residency preference, BHA may choose, in coordination with the CoC-**EveryOne Home** and other referral partners, to establish separate local preferences for EHV's. BHA may, however, choose to not establish any local preferences for the EHV waiting list.

#### BHA Policy

No local preferences have been established for the EHV waiting list.

## **PART IV: FAMILY ELIGIBILITY**

### **TPS-IV.A. OVERVIEW**

The CoC or referring agency determines whether the individual or family meets any one of the four eligibility criteria described in Notice PIH 2021-15 and then refers the family to BHA. BHA determines that the family meets other eligibility criteria for the HCV program, as modified for the EHV program and outlined below.

### **TPS-IV.B. REFERRING AGENCY DETERMINATION OF ELIGIBILITY**

In order to be eligible for an EHV, an individual or family must meet one of four eligibility criteria:

- Homeless as defined in 24 CFR 578.3;
- At risk of homelessness as defined in 24 CFR 578.3;
- Fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking (as defined in Notice PIH 2021-15), or human trafficking (as defined in the 22 U.S.C. Section 7102); or
- Recently homeless and for whom providing rental assistance will prevent the family's homelessness or having high risk of housing instability as determined by the CoC or its designee in accordance with the definition in Notice PIH 2021-15.

As applicable, the CoC-**EveryOne Home** or referring agency must provide documentation to BHA of the referring agency's verification that the family meets one of the four eligible categories for EHV assistance. BHA must retain this documentation as part of the family's file.

### **TPS-IV.C. PHA SCREENING**

#### **Overview**

HUD waived 24 CFR 982.552 and 982.553 in part for the EHV applicants and established alternative requirement for mandatory and permissive prohibitions of admissions. Except where applicable, PHA policies regarding denials in Chapter 3 of this policy do not apply to screening individuals and families for eligibility for an EHV. Instead, the EHV alternative requirement listed in this section will apply to all EHV applicants.

The mandatory and permissive prohibitions listed in Notice PIH 2021-15 and in this chapter, however, apply only when screening the individual or family for eligibility for an EHV. When adding a family member after the family has been placed under a HAP contract with EHV assistance, the regulations at 24 CFR 982.551(h)(2) apply. Other than the birth, adoption, or court-



awarded custody of a child, BHA must approve additional family members and may apply its regular HCV screening criteria in Chapter 3 in doing so.

### **Mandatory Denials**

Under alternative requirements for the EHV program, mandatory denials for EHV applicants include:

- 24 CFR 982.553(a)(1)(ii)(C), which prohibits admission if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.
- 24 CFR 982.553(a)(2)(i), which prohibits admission to the program if any member of the household is subject to a lifetime registration requirement under a state sex offender registration program.

BHA must deny admission to the program if any member of the family fails to sign and submit consent forms for obtaining information as required by 24 CFR 982.552(b)(3) but should notify the family of the limited EHV grounds for denial of admission first.

#### BHA Policy

While BHA may deny admission to the program if any adult member (or head of household or spouse, regardless of age) fails to sign and submit consent forms, BHA will first notify the family of the limited EHV grounds for denial of admission as part of the notice of denial that will be mailed to the family. BHA will also work with referral partnering agencies to seek to obtain signatures on required consent forms where they may be missing.

### **Permissive Denial**

Notice PIH 2021-15 lists permissive prohibitions for which BHA may, but is not required to, deny admission to EHV families. The notice also lists prohibitions that, while allowable under the HCV program, may not be used to deny assistance for EHV families.

If BHA intends to establish permissive prohibition policies for EHV applicants, BHA must first consult with its CoC-**EveryOne Home** partner to understand the impact that the proposed prohibitions may have on referrals and must take the CoC's recommendations into consideration.

#### BHA Policy

In consultation with the CoC-**EveryOne Home**, BHA will apply permissive prohibition to the screening of EHV applicants. Determinations using permissive prohibitions will be made based on an individualized assessment of relevant mitigating information in accordance with policies in Section 3-III.E.

BHA will establish the following permissive prohibition:

If the family engaged in or threatened abusive or violent behavior toward PHA personnel within the previous 12 months.

BHA will also deny assistance to household members already receiving assistance from another program in accordance with Section 9.h. of Notice PIH 2021-15.

In compliance with PIH 2021-15, BHA **will not** deny an EHV applicant admission regardless of whether:

Any member of the family has been evicted from federally assisted housing in the last five years;

A PHA has ever terminated assistance under the program for any member of the family;

The family currently owes rent or other amounts to BHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act;

The family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease;

The family breached an agreement with BHA to pay amounts owed to a PHA, or amounts paid to an owner by a PHA;

The family would otherwise be prohibited admission under alcohol abuse standards established by BHA in accordance with 24 CFR 982.553(a)(3);

BHA determines that any household member is currently engaged in or has engaged in during a reasonable time before the admission, drug-related criminal activity.

#### **TPS-IV.D. INCOME VERIFICATION AT ADMISSION**

##### **Self-Certification at Admission**

The requirement to obtain third-party verification of income in accordance with Notice PIH 2018-18 does not apply to the EHV program applicants at admission, and alternatively, PHAs may consider self-certification the highest form of income verification at admission. As such, PHA policies related to the verification of income in Section 7-I.B. do not apply to EHV families at admission. Instead, applicants must submit an affidavit attesting to their reported income, assets, expenses, and other factors that would affect an income eligibility determination.

Additionally, applicants may provide third-party documentation that represents the applicant's income within the 60-day period prior to admission or voucher issuance but is not dated within 60 days of BHA's request.

##### BHA Policy

Any documents used for verification must be the original (not photocopies) and dated within the calendar year prior to admission. The documents must not be damaged, altered, or in any way illegible.

Printouts from webpages are considered original documents.

Any family self-certifications must be made in a format acceptable to BHA and must be signed by the family member whose information or status is being verified.

BHA will incorporate additional procedures to remind families of the obligation to provide true and complete information in accordance with Chapter 14. BHA will address any material discrepancies (i.e., unreported income or a substantial difference in reported income) that may arise later. BHA may, but is not required to, offer the family a repayment

agreement in accordance with Chapter 16. If the family fails to repay the excess subsidy, BHA will terminate the family's assistance in accordance with the policies in Chapter 12.

### **Recently Conducted Income Determinations**

PHAs may accept income calculations and verifications from third-party providers or from an examination that BHA conducted on behalf of the family for another subsidized housing program in lieu of conducting an initial examination of income as long as:

- The income was calculated in accordance with rules outlined at 24 CFR Part 5 and within the last six months; and
- The family certifies there has been no change in income or family composition in the interim.

#### BHA Policy

BHA will accept income calculations and verifications from third-party providers provided they meet the criteria outlined above.

The family certification must be made in a format acceptable to BHA and must be signed by all adult family members whose information or status is being verified.

At the time of the family's annual reexamination BHA must conduct the annual reexamination of income as outlined at 24 CFR 982.516 and PHA policies in Chapter 11.

### **EIV Income Validation**

Once HUD makes the EIV data available to PHAs under this waiver and alternative requirement, BHA must:

- Review the EIV Income and Income Validation Tool (IVT) reports to confirm and validate family-reported income within 90 days of the PIC submission date;
- Print and maintain copies of the EIV Income and IVT Reports in the tenant file; and
- Resolve any income discrepancy with the family within 60 days of the EIV Income or IVT Report dates.

Prior to admission, PHAs must continue to use HUD's EIV system to search for all household members using the Existing Tenant Search in accordance with PHA policies in Chapter 3.

If a PHA later determines that an ineligible family received assistance, BHA must take steps to terminate that family from the program in accordance with Chapter 12.

### **TPS-IV.E. SOCIAL SECURITY NUMBER AND CITIZENSHIP STATUS VERIFICATION**

For the EHV program, BHA is not required to obtain and verify SSN documentation and documentation evidencing eligible noncitizen status before admitting the family to the EHV program. Instead, PHAs may adopt policies to admit EHV applicants who are unable to provide the required SSN or citizenship documentation during the initial eligibility determination. As an alternative requirement, such individuals must provide the required documentation within 180 days of admission to be eligible for continued assistance, pending verification, unless BHA provides an extension based on evidence from the family or confirmation from the CoC-**EveryOne Home** or other partnering agency that the family has made a good-faith effort to obtain the documentation.



If a PHA determines that an ineligible family received assistance, BHA must take steps to terminate that family from the program.

BHA Policy

BHA will admit EHV applicants who are unable to provide the required SSN documentation during the initial eligibility determination. These individuals must provide the required documentation in accordance with policies in Chapter 7 within 180 days of admission.

If BHA determines that an ineligible family received assistance, BHA will take steps to terminate that family from the program in accordance with policies in Chapter 12.

**TPS-IV.F. AGE AND DISABILITY VERIFICATION**

PHAs may accept self-certification of date of birth and disability status if a higher level of verification is not immediately available. If self-certification is used, BHA must obtain a higher level of verification within 90 days of admission or verify the information in EIV.

If a PHA determines that an ineligible family received assistance, BHA must take steps to terminate that family from the program.

BHA Policy

BHA will accept self-certification of date of birth and disability status if a higher form of verification is not immediately available. The certification must be made in a format acceptable to BHA and must be signed by the family member whose information or status is being verified. If self-certification is accepted, within 90 days of admission, BHA will verify the information in EIV or through other third-party verification if the information is not available in EIV. BHA will note the family's file that self-certification was used as initial verification and include an EIV printout or other third-party verification confirming the applicant's date of birth and/or disability status.

If BHA determines that an ineligible family received assistance, BHA will take steps to terminate that family from the program in accordance with policies in Chapter 12.

**TPS-IV.G. INCOME TARGETING**

BHA must determine income eligibility for EHV families in accordance with 24 CFR 982.201 and BHA Policy in Chapter 3; however, income targeting requirements do not apply for EHV families. BHA may still choose to include the admission of extremely low-income EHV families in its income targeting numbers for the fiscal year in which these families are admitted.

BHA Policy

BHA will include the admission of extremely low-income EHV families in its income targeting numbers for the fiscal year in which these families are admitted.

**PART V: HOUSING SEARCH AND LEASING**

**TPS-V.A. INITIAL VOUCHER TERM**

Unlike the standard HCV program, which requires an initial voucher term of at least 60 days, EHV vouchers must have an initial search term of at least 120 days. PHA policies on extensions as outlined in Section 5-II.E. will apply.

BHA Policy

All EHV's will have an initial term of 120 calendar days.

The family must submit a Request for Tenancy Approval and proposed lease within the 120-day period unless BHA grants an extension.

**TPS-V.B. HOUSING SEARCH ASSISTANCE**

BHA must ensure housing search assistance is made available to EHV families during their initial housing search. The housing search assistance may be provided directly by BHA or through the CoC-**EveryOne Home** or another partnering agency or entity.

At a minimum, housing search assistance must:

- Help individual families identify potentially available units during their housing search, including physically accessible units with features for family members with disabilities, as well as units in low-poverty neighborhoods;
- Provide transportation assistance and directions to potential units;
- Conduct owner outreach;
- Assist with the completion of rental applications and PHA forms; and
- Help expedite the EHV leasing process for the family

BHA Policy

As identified in the MOU between BHA and CoC-**EveryOne Home**, the following housing search assistance will be provided to each EHV family:

BHA will:

Conduct owner outreach in accordance with policies in Chapter 13

Provide a listing of potential units as part of the EHV briefing packet

Expedite the EHV leasing process for the family to the extent practicable and in accordance with policies in this chapter

The CoC-**EveryOne Home** will:

Help families identify potentially available units during their housing search, including physically accessible units with features for family members with disabilities, as well as units in low-poverty neighborhoods

Provide transportation assistance to potential units

Assist the family with the completion of rental applications and PHA forms

**TPS-V.C. HQS PRE-INSPECTIONS**

To expedite the leasing process, PHAs may pre-inspect available units that EHV families may be interested in leasing in order to maintain a pool of eligible units.



## BHA Policy

To the extent possible, BHA will pre-inspect units in which EHV households are residing and will continue to rent using their EHV, in other words households leasing “in place.”

### **TPS-V.D. INITIAL LEASE TERM**

Unlike in the standard the HCV program, EHV voucher holders may enter into an initial lease that is for less than 12 months, regardless of the BHA Policy in Section 9-I.E., Term of Assisted Tenancy.

### **TPS-V.E. PORTABILITY**

The normal HCV portability procedures and requirements outlined in Chapter 10 generally apply to EHV. Exceptions are addressed below.

#### **Nonresident Applicants**

Under EHV, applicant families may move under portability even if the family did not have legal residency in the jurisdiction of the initial PHA when they applied, regardless of BHA Policy in Section 10-II.B.

#### **Billing and Absorption**

A receiving PHA cannot refuse to assist an incoming EHV family, regardless of whether BHA administers EHV under its own ACC.

- If the EHV family moves under portability to another PHA that administers EHV under its own ACC:
  - The receiving PHA may only absorb the incoming EHV family with an EHV (assuming it has an EHV voucher available to do so).
  - If BHA does not have an EHV available to absorb the family, it must bill the initial PHA. The receiving PHA must allow the family to lease the unit with EHV assistance and may not absorb the family with a regular HCV when the family leases the unit.
  - Regardless of whether the receiving PHA absorbs or bills the initial PHA for the family’s EHV assistance, the EHV administration of the voucher is in accordance with the receiving PHA’s EHV policies and procedures and EHV portability provisions set forth in the MOU.
  - Each housing authority as signor of the MOU agrees not to absorb for the first 3 months of the MOU and agree to meet quarterly to regularly review and agree on absorption policies for EHV families before absorbing any ported vouchers that are from another jurisdiction/County.
- If the EHV family moves under portability to another PHA that is not a party to the MOU and that does not administer EHV under its own ACC, the receiving PHA may absorb the family into its regular HCV program or may bill the initial PHA.

#### **Family Briefing**

In addition to the applicable family briefing requirements at 24 CFR 982.301(a)(2) as to how portability works and how portability may affect the family’s assistance, the initial PHA must

inform the family how portability may impact the special EHV services and assistance that may be available to the family.

The initial PHA is required to help facilitate the family's portability move to the receiving PHA and inform the family of this requirement in writing, taking reasonable steps to ensure meaningful access for persons with limited English proficiency (LEP).

#### BHA Policy

In addition to following BHA Policy on briefings in Chapter 5, as part of the briefing packet for EHV families, BHA will include a written notice that BHA will assist the family with moves under portability.

For limited English proficient (LEP) applicants, BHA will provide interpretation services in accordance with BHA's LEP plan (See Chapter 2).

### **Coordination of Services**

If the portability move is in connection with the EHV family's initial lease-up, the receiving PHA and the initial PHA must consult and coordinate on the EHV services and assistance that will be made available to the family.

#### BHA Policy

For EHV families who are exercising portability, when BHA contacts the receiving PHA in accordance with Section 10-II.B. Preapproval Contact with Receiving PHA, BHA will consult and coordinate with the receiving PHA to ensure there is no duplication of EHV services and assistance, and ensure the receiving PHA is aware of the maximum amount of services fee funding that the initial PHA may provide to the receiving PHA on behalf of the family.

### **Services Fee**

Standard portability billing arrangements apply for HAP and ongoing administrative fees for EHV families.

For service fees funding, the amount of the service fee provided by the initial PHA may not exceed the lesser of the actual cost of the services and assistance provided to the family by the receiving PHA or \$1,750, unless the initial PHA and receiving PHA mutually agree to change the \$1,750 cap. Service fees are paid as follows:

- If the receiving PHA, in consultation and coordination with the initial PHA, will provide eligible services or assistance to the incoming EHV family, the receiving PHA may be compensated for those costs by the initial PHA, regardless of whether the receiving PHA bills the initial PHA or absorbs the family into its own program at initial lease-up.
- If the receiving PHA administers EHV's, the receiving PHA may use its own services fee and may be reimbursed by the initial PHA, or the initial PHA may provide the services funding upfront to the receiving PHA for those fees and assistance.
- If the receiving PHA administers EHV's under its CACC and is part of the MOU, the initial PHA will provide the services funding up front to the receiving PHA for those fees and assistance. Any amounts provided to the receiving PHA that are not used for services or

assistance on behalf of the EHV family must promptly be returned by the receiving PHA to the initial PHA. The amount of the service fee provided by the initial PHA will be \$1750, unless otherwise mutually agreed upon between the two PHAs on a case by case basis.

- If the receiving PHA does not administer EHV's, the initial PHA must provide the services funding upfront to the receiving PHA. Any amounts provided to the receiving PHA that are not used for services or assistance on behalf of the EHV family must promptly be returned by the receiving PHA to the initial PHA.

### **Placement Fee/Issuance Reporting Fee**

If the portability lease-up qualifies for the placement fee/issuance reporting fee, the receiving PHA receives the full amount of the placement component of the placement fee/issuance reporting fee. The receiving PHA is eligible for the placement fee regardless of whether the receiving PHA bills the initial PHA or absorbs the family into its own program at initial lease-up. The initial PHA qualifies for the issuance reporting component of the placement fee/issuance reporting fee, as applicable.

## **TPS-V.F. PAYMENT STANDARDS**

### **Payment Standard Schedule**

For the EHV program, HUD has waived the regulation requiring a single payment standard for each unit size. Instead, BHA may, but is not required to, establish separate higher payment standards for EHV's. Lower EHV payment standards are not permitted. If BHA is increasing the regular HCV payment standard, BHA must also increase the EHV payment standard if it would be otherwise lower than the new regular HCV payment standard. The separate EHV payment standard must comply with all other HCV requirements with the exception of the alternative requirements discussed below.

Further, if BHA chooses to establish higher payments standards for EHV's, HUD has provided other regulatory waivers:

- Defining the "basic range" for payment standards as between 90 and 120 percent of the published Fair Market Rent (FMR) for the unit size (rather than 90 to 110 percent).

#### BHA Policy

BHA will establish a higher payment standard amount for EHV's at 120% of the FMR. **This payment standard for EHV holders will remain in effect for as long as the EHV holder household remains in the EHV Program.**

### **Rent Reasonableness**

All rent reasonableness requirements apply to EHV units, regardless of whether BHA has established an alternative or exception EHV payment standard.

### **Increases in Payment Standards**

The requirement that BHA apply increased payment standards at the family's first regular recertification on or after the effective date of the increase does not apply to EHV. BHA may, but is not required to, establish an alternative policy on when to apply the increased payment standard, provided the increased payment standard is used to calculate the HAP no later than the effective date of the family's first regular reexamination following the change.

## BHA Policy

BHA will not establish an alternative policy for increases in the payment standard. BHA Policy in Section 11-III.B. governing increases in payment standards will apply to EHV.

### **TPS-V.G. TERMINATION OF VOUCHERS**

After September 30, 2023, a PHA may not reissue EHV when assistance for an EHV-assisted family ends. This means that when an EHV participant (a family that is receiving rental assistance under a HAP contract) leaves the program for any reason, BHA may not reissue that EHV to another family unless it does so no later than September 30, 2023.

If an applicant family that was issued the EHV is unsuccessful in finding a unit and the EHV expires after September 30, 2023, the EHV may not be reissued to another family.

All EHV under lease on or after October 1, 2023, may not under any circumstances be reissued to another family when the participant leaves the program for any reason.

An EHV that has never been issued to a family may be initially issued and leased after September 30, 2023, since this prohibition only applies to EHV that are being reissued upon turnover after assistance to a family has ended. However, HUD may direct PHAs administering EHV to cease leasing any unleased EHV if such action is determined necessary by HUD to ensure there will be sufficient funding available to continue to cover the HAP needs of currently assisted EHV families.

### **PART VI: USE OF FUNDS, REPORTING, AND FINANCIAL RECORDS**

EHV funds allocated to BHA for HAP (both funding for the initial allocation and HAP renewal funding) may only be used for eligible EHV HAP purposes. EHV HAP funding obligated to BHA may not be used for EHV administrative expenses or the other EHV eligible expenses under this notice. Likewise, EHV administrative fees and funding obligated to BHA are to be used for those purposes and must not be used for HAP.

The appropriated funds for EHV are separate from the regular HCV program and may not be used for the regular HCV program but may only be expended for EHV eligible purposes. EHV HAP funds may not roll into the regular HCV restricted net position (RNP) and must be tracked and accounted for separately as EHV RNP. EHV administrative fees and funding for other eligible expenses permitted by Notice PIH 2021-15 may only be used in support of the EHV and cannot be used for regular HCVs. EHV funding may not be used for the repayment of debts or any amounts owed to HUD by HUD program participants including, but not limited to, those resulting from Office of Inspector General (OIG), Quality Assurance Division (QAD), or other monitoring review findings.

BHA must comply with EHV reporting requirements in the Voucher Management System (VMS) and Financial Data Schedule (FDS) as outlined in Notice PIH 2021-15.

BHA must maintain complete and accurate accounts and other records for the program and provide HUD and the Comptroller General of the United States full and free access to all accounts and records that are pertinent the administration of the EHV in accordance with the HCV program requirements at 24 CFR 982.158.

### **Exhibit TPS-1: MEMORANDUM OF UNDERSTANDING (MOU)**

For a copy of the MOU, please visit: [www.cityofberkeley.info/BHA](http://www.cityofberkeley.info/BHA).