

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

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

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

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

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

PART I: ADMINISTRATIVE FEE RESERVE [24 CFR 982.155]

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

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

HUD requires JCHA's Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the UNP account without specific approval.

JCHA Policy

Expenditures from the UNP account will be made in accordance with JCHA's approved Procurement Policy.

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 JCHA to adapt the program to local conditions. This part discusses how JCHA 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).

JCHA Policy

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

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

Establishing and updating JCHA's passbook rate, which is used to calculate imputed income from assets, is covered in Chapter 6 (see Section 6-I.G.).

16-II.B. PAYMENT STANDARDS [24 CFR 982.503; HCV GB, Chapter 7]

The payment standard sets the maximum subsidy payment a family can receive from JCHA 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.

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

JCHA Policy

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

Funding Availability: JCHA 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.

Rent Burden of Participating Families: Rent burden will be determined by identifying the percentage of families, for each unit size, that are paying more than 30 percent of their monthly adjusted income as the family share. When 40 percent or more of families, for any given unit size, are paying more than 30 percent of adjusted monthly income as the family share, JCHA will consider increasing the payment standard. In evaluating rent burdens, JCHA will not include families renting a larger unit than their family unit size.

Quality of Units Selected: JCHA 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: JCHA 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: JCHA 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: JCHA will consider the percentage of families that are unable to locate suitable housing before the voucher expires and whether families are leaving the jurisdiction to find affordable housing.

Changes to payment standard amounts will be effective on January 1st of every year; or within three months of the FMR effective date, whichever is earlier. The effective date is applicable both to HUD-required revisions and to discretionary revisions.

Exception Payment Standards [24 CFR 982.503(c)]

JCHA 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.

Voluntary Use of Small Area FMRs [24 CFR 982.503, Notice PIH 2018-01]

PHAs that administer vouchers in a metropolitan area where the adoption of small area FMRs (SAFMRs) is not required may request approval from HUD to voluntarily adopt SAFMRs. SAFMRs may be voluntarily adopted for one or more zip code areas.

PHA Policy

JCHA will not voluntarily adopt the use of SAFMRs.

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

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

When needed as a reasonable accommodation, JCHA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 120 percent of the applicable FMR for the unit size [24 CFR 982.503(b)]. JCHA may request HUD approval for an exception to the payment standard for a particular family if the required amount exceeds 120 percent of the FMR.

JCHA 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, JCHA must determine that:

- There is a shortage of affordable units that would be appropriate for the family;
- Reasonable accommodation for medically equipped unit;
- The family's TTP would otherwise exceed 40 percent of adjusted monthly income; and
- The rent for the unit is reasonable.

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

If a substantial percentage of families have difficulty finding a suitable unit, JCHA may request a "success rate payment standard" that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows JCHA to set its payment standards at 90-110 percent of a

higher FMR (the 50th, rather than the 40th percentile FMR). To support the request, JCHA 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;
- JCHA had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR; and
- JCHA 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, JCHA may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of JCHA's jurisdiction within the FMR area.

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

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

16-II.C. UTILITY ALLOWANCES [24 CFR 982.517]

A PHA-established utility allowance schedule is used in determining family share and PHA subsidy. JCHA 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, JCHA 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, JCHA 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 JCHA about establishing utility allowance schedules.

Air Conditioning

An allowance for air-conditioning must be provided when the majority of housing units in the market have central air-conditioning or are wired for tenant-installed air conditioners.

JCHA Policy

The majority of housing units in JCHA's jurisdiction does not include central air-conditioning and is not wired for tenant-installed air conditioners. Therefore, JCHA has not included an allowance for air-conditioning in its utility allowance schedule.

Reasonable Accommodation

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

JCHA 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.

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

PART III: INFORMAL REVIEWS AND HEARINGS

16-III.A. OVERVIEW

Both applicants and participants have the right to disagree with, and appeal, certain decisions of JCHA's that may adversely affect them. JCHA decisions that may be appealed by applicants and participants are discussed in this section.

The process for applicant appeals JCHA decisions is called the "informal review." For participants (or applicants denied admission because of citizenship issues), the appeal process is called an "informal hearing." JCHA are required to include informal review procedures for applicants and informal hearing procedures for participants in their administrative plans [24 CFR 982.54(d)(12) and (13)].

16-III.B. INFORMAL REVIEWS

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a "minimum hearing requirement" [24 CFR 982.554], and need not be as elaborate as the informal hearing requirements [*Federal Register* 60, no. 127 (3 July 1995): 34690].

Decisions Subject to Informal Review

JCHA 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 JCHA's waiting list
- Denying or withdrawing a voucher
- Refusing to enter into a HAP contract or approve a lease
- Refusing to process or provide assistance under portability procedures

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

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

JCHA Policy

JCHA will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying listing on JCHA's waiting list; denying or withdrawing a voucher; criminal background; application does not meet JCHA's preferences; refusing to enter into a HAP contract or approve a lease; refusing to process or provide assistance under portability procedures.

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

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

JCHA Policy

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

JCHA must schedule and send written notice of the informal review within 10 business days of the family's request.

Informal Review Procedures [24 CFR 982.554(b)]

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

The applicant must be provided an opportunity to present written or oral objections to the decision of JCHA.

Informal Review Decision [24 CFR 982.554(b)]

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

JCHA Policy

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

Whether or not the grounds for denial were stated factually in the notice to the family.

The validity of the grounds for denial of assistance. If the grounds for denial are not specified in the regulations, then the decision to deny assistance will be overturned.

The validity of the evidence. JCHA will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are grounds for denial, and the denial is required by HUD, JCHA will uphold the decision to deny assistance.

If the facts prove the grounds for denial, and the denial is discretionary, JCHA will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

JCHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 10 business days of the informal review, to the applicant and his or her representative, if any, along with proof of mailing.

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

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

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

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

JCHA 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 JCHA must give a participant family an opportunity for an informal hearing are as follows:

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the JCHA utility allowance schedule
- A determination of the family unit size under JCHA's subsidy standards
- A determination to terminate assistance for a participant family because of the family's actions or failure to act
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under JCHA's policy and HUD rules
- Determination that a program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the subsidy standards, or deny the family request for an exception from the standards.
- A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)]

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

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

JCHA Policy

JCHA will only offer participants the opportunity for an informal hearing when required to by the regulations, 24 CFR 982.555.

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

When JCHA makes a decision that is subject to informal hearing procedures, JCHA 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, JCHA 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 JCHA'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.

JCHA Policy

In cases where JCHA 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 JCHA.

A brief statement of the reasons for the decision, including the regulatory reference.

The date the proposed action will take place.

A statement of the family's right to an explanation of the basis for JCHA's decision.

A statement that if the family does not agree with the decision the family may request an informal hearing of the decision.

A deadline for the family to request the informal hearing.

To whom the hearing request should be addressed.

A copy of JCHA's hearing procedures.

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

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

JCHA Policy

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

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

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made in writing prior to the hearing date. At its discretion, JCHA may request documentation of the "good cause" prior to rescheduling the hearing.

If the family does not appear within 15 minutes of the time stated in the letter of notification, JCHA will not reschedule the hearing unless needed as a reasonable accommodation. The family must contact JCHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. JCHA may reschedule the hearing only if the family can show good cause for the failure to appear. If the second opportunity is granted and the family fails to appear, then the termination will become final.

Upon the written request from the participant or JCHA, the hearing may be postponed and re-scheduled to the next available regularly schedule hearing date. A hearing may be postponed only once.

Pre-Hearing Right to Discovery [24 CFR 982.555(e)]

Participants and JCHA are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any JCHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If JCHA does not make the document available for examination on request of the family, JCHA may not rely on the document at the hearing.

JCHA hearing procedures must provide that JCHA must be given the opportunity to examine at JCHA's offices before the hearing, any family documents that are directly relevant to the hearing. JCHA must be allowed to copy any such document at JCHA's expense. If the family does not make the document available for examination on request of JCHA, the family may not rely on the document at the hearing. The participant must make the documents available no later than 48 hours prior to the scheduled hearing date excluding weekends and holidays.

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

JCHA Policy

The family will be allowed to copy any documents related to the hearing at a cost of \$.75 per page. The family must request discovery of JCHA's documents no later than 48 hours prior to the scheduled hearing date excluding weekends and holidays.

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 JCHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

JCHA Policy

JCHA has designated the following to serve as hearing officers:

The hearing will be conducted by a person designated by JCHA (hearing officer) who did not make the initial decision to terminate the participant and is not a subordinate of that person. Hearing officers may include, but not limited to:

- Housing Authorities within the Denver Metro Area
- Internal employees who do not work in the HCV Program

Attendance at the Informal Hearing

JCHA Policy

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

JCHA representative(s) and any witnesses for JCHA

The participant and any witnesses for the participant

The participant's counsel or other representative at the participant's expense

Any other person approved by JCHA as a reasonable accommodation for a person with a disability

Conduct at Hearings

The person who conducts the hearing may regulate the conduct of the hearing in accordance with JCHA hearing procedures [24 CFR 982.555(4)(ii)].

JCHA 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. If all attendees have been removed or left at their own accord, the hearing will be concluded and the hearing officer will base their decision on the evidence presented to that point.

Evidence [24 CFR 982.555(e)(5)]

JCHA 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.

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

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

Procedures for Rehearing or Further Hearing

JCHA Policy

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of JCHA will take effect and another hearing will not be granted.

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

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

JCHA Policy

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

JCHA Notice to the Family: The hearing officer will determine if the reasons for JCHA's decision are factually stated in the Notice.

Discovery: The hearing officer will determine if JCHA and the family were given the opportunity to examine any relevant documents in accordance with JCHA's policy.

JCHA Evidence to Support JCHA's Decision: The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support JCHA'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 JCHA policies. If the grounds for termination are not specified in the regulations or in compliance with JCHA policies, then the decision of JCHA will be overturned.

The hearing officer will issue a written decision to the family and JCHA no later than 10 business days after the hearing. The report will contain the following information:

Hearing information:

- Name of the participant;
- Date, time and place of the hearing;
- Name of the hearing officer;
- Name of JCHA's representative; and
- Name of family representative (if any).

Background: A brief, impartial statement of the reason for the hearing.

Summary of the Evidence: The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

Findings of Fact: The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

Conclusions: The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold JCHA's decision.

Order: The hearing report will include a statement of whether JCHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the JCHA to change the decision in accordance with the hearing officer's determination. In the case of termination of assistance, the hearing officer will instruct JCHA to finalize the participant's program status.

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

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

JCHA Policy

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

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

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

JCHA Policy

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

In such a case, the Hearing Officer will mail a "Notice of Final Decision" to JCHA and the participant on the same day. The "Notice of Final Decision" will be sent by first-class mail. A copy of this notice will be maintained in JCHA's file.

16-III.D. HEARING AND APPEAL PROVISIONS FOR NONCITIZENS [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 JCHA 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 JCHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]

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

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

JCHA Policy

JCHA 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 JCHA 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 JCHA, of its decision. When the USCIS notifies JCHA of the decision, JCHA must notify the family of its right to request an informal hearing.

JCHA Policy

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

Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that JCHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of JCHA's 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

JCHA 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 JCHA 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.

JCHA Policy

The family will be allowed to copy any documents related to the hearing at a cost of \$.75 per page. The family must request discovery of JCHA documents no later than 48 hours prior to the hearing date excluding weekends and holidays.

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

Representation and Interpretive Services

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

The family is entitled to request an interpreter. Upon request, JCHA will provide competent interpretation services, free of charge.

Recording of the Hearing

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

JCHA Policy

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

Hearing Decision

JCHA 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 JCHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of JCHA's 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)]

JCHA must retain for a minimum of 5 years the following documents that may have been submitted to JCHA by the family, or provided to JCHA as part of the USCIS appeal or JCHA 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 JCHA

16-IV.A. OVERVIEW

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

JCHA Policy

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

JCHA 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 JCHA, JCHA 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 JCHA

JCHA Policy

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

If the owner fails to repay the debt within the required time frame and is entitled to future HAP payments, JCHA will reduce the future HAP payments by the amount owed until the debt is paid in full.

If the owner is not entitled to future HAP payments JCHA may, in its sole discretion, offer to enter into a repayment agreement on terms prescribed by JCHA.

If the owner refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, JCHA will ban the owner from future participation in the program and pursue other modes of collection.

Family Debts to the JCHA

JCHA Policy

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

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, JCHA will terminate assistance in accordance with the policies in Chapter 12 and pursue other modes of collection.

Repayment Agreement [24 CFR 792.103]

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

General Repayment Agreement Guidelines for Families

Down Payment Requirement

JCHA Policy

A family may, but will not be required to, make a down payment on the amount owed prior to entering into a repayment agreement with JCHA.

Payment Thresholds

Notice PIH 2017-12 recommends that the total amount that a family must pay each month—the family’s monthly share of rent plus the monthly debt repayment amount—should not exceed 40 percent of the family’s monthly adjusted income. However, a family may already be paying 40 per cent or more of its monthly adjusted income in rent. Moreover, Notice PIH 2017-12 acknowledges that JCHA have the discretion to establish “thresholds and policies” for repayment agreements with families [24 CFR 982.552(c)(1)(vii)].

JCHA Policy

JCHA has established the following thresholds for repayment of debts:

Amounts between \$3,000 and the federal or state threshold for criminal prosecution must be repaid within 36 months.

Amounts between \$2,000 and \$2,999 must be repaid within 30 months.

Amounts between \$1,000 and \$1,999 must be repaid within 24 months.

Amounts under \$1,000 must be repaid within 12 months.

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

The amount owed by the family to JCHA

The reason for the debt, including whether the debt was the result of family action/inaction or circumstances beyond the family’s control

The family’s current and potential income and expenses

The family’s current family share, as calculated under 24 CFR 982.515

The family’s history of meeting its financial responsibilities

Execution of the Agreement

JCHA Policy

Any repayment agreement between JCHA and a family must be signed and dated by JCHA and by all adult household members.

Due Dates

JCHA Policy

All payments are due by the close of business on the day agreed on the Repayment Agreement. If the date does not fall on a business day, the due date is the close of the next business day. If at any time, the participant is not able to meet the due date, a new date may be arranged.

Late or Missed Payments

JCHA Policy

Repayment agreements will be reviewed on a quarterly basis.

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

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

Participants with an outstanding debt or repayment agreement will not be permitted to move with assistance. The only exception if the owner requires the tenant to move or participant is requesting reasonable accommodation. The participant will be denied portability until the debt is paid in full.

No Offer of Repayment Agreement

JCHA Policy

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

Repayment Agreements Involving Improper Payments

Notice PIH 2017-12 requires certain provisions to be included in any repayment agreement involving amounts owed by a family because it underreported or failed to report income:

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

PART V: SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

16-V.A. OVERVIEW

The Section 8 Management Assessment Program (SEMAP) is a tool that allows HUD to measure PHA performance in key areas to ensure program integrity and accountability. SEMAP scores translate into a rating for each PHA as high performing, standard, or troubled. Scores on individual SEMAP indicators, as well as overall SEMAP ratings, can affect JCHA 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]

JCHA 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 JCHA's board resolution and signed by JCHA's executive director. If JCHA is a unit of local government or a state, a resolution approving the certification is not required, and the certification must be executed by the Section 8 program director.

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

Failure of JCHA to submit its SEMAP certification within the required time frame will result in an overall performance rating of "troubled."

JCHA's SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time.

Upon receipt of JCHA's SEMAP certification, HUD will rate JCHA'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. JCHA 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 JCHA's certification on the indicator due to JCHA'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.

SEMAP Indicators
<p>Indicator 1: Selection from the waiting list Maximum Score: 15</p> <ul style="list-style-type: none">• This indicator shows whether JCHA has written policies in its administrative plan for selecting applicants from the waiting list and whether JCHA follows these policies when selecting applicants for admission from the waiting list.• Points are based on the percent of families that are selected from the waiting list in accordance with JCHA’s written policies, according to JCHA’s quality control sample.
<p>Indicator 2: Rent reasonableness Maximum Score: 20</p> <ul style="list-style-type: none">• This indicator shows whether JCHA has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units• Points are based on the percent of units for which JCHA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to JCHA’s quality control sample.
<p>Indicator 3: Determination of adjusted income Maximum Score: 20</p> <ul style="list-style-type: none">• This indicator measures whether JCHA 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 JCHA’s quality control sample.
<p>Indicator 4: Utility allowance schedule Maximum Score: 5</p> <ul style="list-style-type: none">• This indicator shows whether JCHA maintains an up-to-date utility allowance schedule.• Points are based on whether JCHA has reviewed the utility allowance schedule and adjusted it when required, according to JCHA’s certification.

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

- This indicator shows whether JCHA supervisor re-inspects a sample of units under contract during JCHA's fiscal year, which meets the minimum sample size requirements for quality control of HQS inspections.
- Points are based on whether the required quality control re-inspections were completed, according to JCHA'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 JCHA-approved extension.
- Points are based on whether JCHA corrects all HQS deficiencies in accordance with required time frames, according to JCHA's certification.

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

- Only applies to JCHA's with jurisdiction in metropolitan FMR areas.
- This indicator shows whether JCHA 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 JCHA'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 JCHA has adopted and implemented written policies in accordance with SEMAP requirements, according to JCHA's certification.

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

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

Indicator 9: Annual reexaminations**Maximum Points: 10**

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

Indicator 14: Family self-sufficiency (FSS) enrollment and escrow account balances**Maximum Points: 10**

- Only applies to JCHA's mandatory FSS programs.
- This indicator shows whether JCHA 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 JCHA's that have received approval to establish success rate payment standard amounts, and isn't effective until the second full JCHA 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 JCHA 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 JCHA fiscal year following initial use of payment standard amounts based on the FMRs set at the 50th percentile.
- Additional points are available to JCHA 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

JCHA 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, JCHA 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, JCHA must keep:

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

In addition, JCHA 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 JCHA budget and financial statements for the program;
- Records to document the basis for JCHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- Other records specified by HUD.
- Notice PIH 2014-20 requires JCHA to keep records of all complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act or the equal access final rule.

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

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

16-VI.C. RECORDS MANAGEMENT

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

JCHA Policy

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

JCHA 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 JCHA 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*.

JCHA Policy

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

Criminal Records

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

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

JCHA must establish and implement a system of records management that ensures that any sex offender registration information received by JCHA 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 JCHA action without institution of a challenge or final disposition of any such litigation. However, a record of the screening, including the type of screening and the date performed must be retained [Notice PIH 2012-28]. This requirement does not apply to information that is public information, or is obtained by JCHA other than under 24 CFR 5.905.

Medical/Disability Records

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

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

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

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

16-VII.A. OVERVIEW

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

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

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

JCHA Policy

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

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

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

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

At least quarterly, JCHA 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.

JCHA Policy

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

PART VIII: DETERMINATION OF INSUFFICIENT FUNDING

16-VIII.A. OVERVIEW

The HCV regulations allow JCHA to deny families permission to move and to terminate Housing Assistance Payments (HAP) contracts if funding under the consolidated ACC is insufficient to support continued assistance [24 CFR 982.354(e)(1) and 982.454]. If JCHA denies a family a portability move based on insufficient funding, JCHA is required to notify the local HUD office within 10 business days [24 CFR 982.354]. Insufficient funding may also impact JCHA's ability to issue vouchers to families on the waiting list. This part discusses the methodology JCHA will use to determine whether or not JCHA has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

16-VIII.B. METHODOLOGY

JCHA Policy

JCHA 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 JCHA's annual budget authority to the annual total HAP needs on a monthly basis. The total HAP needs for the calendar year will be projected by establishing the actual HAP costs year to date. To that figure, JCHA will add anticipated HAP expenditures for the remainder of the calendar year. Projected HAP expenditures will be calculated by multiplying the projected number of units leased per remaining months by the most current month's average HAP. The projected number of units leased per month will take into account the average monthly turnover of participant families. If the total annual HAP needs equal or exceed the annual budget authority, or if JCHA cannot support the cost of the proposed subsidy commitment (voucher issuance or move) based on the funding analysis, JCHA will be considered to have insufficient funding.

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

16-IX.A. OVERVIEW

The Violence against Women Act of 2013 (VAWA) provides special protections for victims of domestic violence, dating violence, sexual assault and stalking who are applying for or receiving assistance under the housing choice voucher (HCV) program. If your state or local laws provide greater protection for such victims, those laws apply in conjunction with VAWA.

In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and JCHA policies in three areas: notification, documentation, and confidentiality. Specific VAWA requirements and JCHA policies are located primarily in the following sections: 3-I.C, “Family Breakup and Remaining Member of Tenant Family”; 3-III.G, “Prohibition against Denial of Assistance to Victims of Domestic Violence, Dating Violence, and Stalking”; 10-I.A, “Allowable Moves”; 10-I.B, “Restrictions on Moves”; 12-II.E, “Terminations Related to Domestic Violence, Dating Violence, or Stalking”; and 12-II.F, “Termination Notice.”

16-IX.B. DEFINITIONS [24 CFR 5.2003, 42 USC 13925]

As used in VAWA:

- The term *bifurcate* means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members’ lease and occupancy rights are allowed to remain intact.
- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship
 - The type of relationship
 - The frequency of interaction between the persons involved in the relationship
- The term *domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.
- The term *affiliated individual* means, with respect to a person:
 - A spouse, parent, brother or sister, or child of that individual, or an individual to whom that individual stands in the position or place of a parent; or

- Any other individual, tenant, or lawful occupant living in the household of the victim of domestic violence, dating violence, sexual assault, or stalking.
- The term *sexual assault* means:
 - Any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks the capacity to consent
- The term *stalking* means:
 - To engage in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

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

Notification to Public

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

JCHA Policy

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

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

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

A copy of JCHA's emergency transfer plan (Exhibit 16-3)

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

The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY) (included in Exhibits 16-1 and 16-2)

Contact information for local victim advocacy groups or service providers

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

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

JCHA Policy

JCHA will provide all applicants with information about VAWA as part of the written briefing packet. JCHA will also include information about VAWA in all notices of denial of assistance (see section 3-III.G).

JCHA will also include information about VAWA in notices of termination of assistance, as provided in section 12-II.F.

The VAWA information provided to applicants and participants will consist of the notices in Exhibits 16-1 and 16-2.

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

JCHA Policy

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

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

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

Notification to Owners and Managers

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

JCHA Policy

JCHA will provide owners and managers with information about their rights and obligations under VAWA, if requested by the owner and/or managers.

The VAWA information provided to owners will consist of the notice in Exhibit 16-5 and a copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, and Stalking and Alternate Documentation.

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

JCHA presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, sexual assault, stalking, or criminal activity related to any of these forms of abuse may—but is not required to—request that the individual making the claim document the abuse. Any request for documentation must be in writing, and the individual must be allowed at least 14 business days after receipt of the request to submit the documentation. JCHA may extend this time period at its discretion. [24 CFR 5.2007(a)]

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

- (1) A completed and signed HUD-approved certification form (HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), which must include the name of the perpetrator only if the name of the perpetrator is safe to provide and is known to the victim. The form may be filled out and submitted on behalf of the victim.
- (2) A federal, state, tribal, territorial, or local police report or court record, or an administrative record
- (3) Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; a mental health professional; or a medical professional. The person signing the documentation must attest under penalty of perjury to the person’s belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

JCHA may not require third-party documentation (forms 2 and 3) in addition to certification (form 1), except as specified below under “Conflicting Documentation,” nor may it require certification in addition to third-party documentation [VAWA final rule].

JCHA Policy

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

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

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

Conflicting Documentation [24 CFR 5.2007(e)]

In cases where JCHA receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, JCHA may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3) JCHA may also request third-party documentation when submitted documentation contains information that conflicts with existing information already available to JCHA. Individuals have 30 calendar days to return third-party verification to JCHA. If JCHA does not receive third-party documentation, and JCHA will deny or terminate assistance as a result, JCHA must hold separate hearings for the tenants [Notice PIH 2017-08].

JCHA Policy

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

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

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

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

JCHA has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of abuse in accordance with 24 CFR 5.2007(b). HUD recommends documentation in a confidential manner when a verbal statement or other evidence is accepted.

JCHA Policy

If JCHA accepts an individual's statement or other corroborating evidence (as determined by the victim) of domestic violence, dating violence, sexual assault or stalking, JCHA will document acceptance of the statement or evidence in the individual's file.

Failure to Provide Documentation [24 CFR 5.2007(c)]

In order to deny relief for protection under VAWA, JCHA must provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt, or such longer time as JCHA may allow, JCHA may deny relief for protection under VAWA.

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

All information provided to JCHA regarding domestic violence, dating violence, sexual assault or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence. This means that JCHA (1) may not enter the information into any shared database, (2) may not allow employees or others to access the information unless they are explicitly authorized to do so and have a need to know the information for purposes of their work, and (3) may not provide the information to any other entity or individual, except to the extent that the disclosure is (a) requested or consented to by the individual in writing, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

JCHA Policy

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

**EXHIBIT 16-1: SAMPLE NOTICE OF OCCUPANCY RIGHTS UNDER THE
VIOLENCE AGAINST WOMEN ACT,
FORM HUD-5380**

JEFFERSON COUNTY HOUSING AUTHORITY

Notice of Occupancy Rights under the Violence Against Women Act¹

To all Tenants and Applicants

The Violence Against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. VAWA protections are not only available to women, but are available equally to all individuals regardless of sex, gender identity, or sexual orientation.² The U.S. Department of Housing and Urban Development (HUD) is the federal agency that oversees that the housing choice voucher program is in compliance with VAWA. This notice explains your rights under VAWA. A HUD-approved certification form is attached to this notice. You can fill out this form to show that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA.”

Protections for Applicants

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

Protections for Tenants

If you are receiving assistance under the housing choice voucher program, you may not be denied assistance, terminated from participation, or be evicted from your rental housing because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking. Also, if you or an affiliated individual of yours is or has been the victim of domestic violence, dating violence, sexual assault, or stalking by a member of your household or any guest, you may not be denied rental assistance or occupancy rights under the housing choice voucher solely on the basis of criminal activity directly relating to that domestic violence, dating violence, sexual assault, or stalking.

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

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

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

Removing the Abuser or Perpetrator from the Household

JCHA may divide (bifurcate) your lease in order to evict the individual or terminate the assistance of the individual who has engaged in criminal activity (the abuser or perpetrator) directly relating to domestic violence, dating violence, sexual assault, or stalking.

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

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

Moving to Another Unit

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

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

OR

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

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

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

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

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

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

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

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

If JCHA receives conflicting evidence that an incident of domestic violence, dating violence, sexual assault, or stalking has been committed (such as certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the abuser or perpetrator), JCHA has the right to request that you provide third-party documentation within thirty 30 calendar days in order to resolve the

conflict. If you fail or refuse to provide third-party documentation where there is conflicting evidence, JCHA does not have to provide you with the protections contained in this notice.

Confidentiality

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

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

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

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

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

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

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

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

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

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

Other Laws

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking. You may be entitled to additional housing protections for victims of domestic violence, dating violence, sexual assault, or stalking under other Federal laws, as well as under State and local laws.

Non-Compliance with the Requirements of This Notice

You may report a covered housing provider's violations of these rights and seek additional assistance, if needed, by contacting or filing a complaint with **U.S Department of HUD, 1670 Broadway, Denver, CO 80202. Phone (303)-672-5258.**

For Additional Information

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

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

For questions regarding VAWA, please contact **Jefferson County Housing Authority at (303) 422-8600.**

For help regarding an abusive relationship, you may call the National Domestic Violence Hotline at 1-800-799-7233 or, for persons with hearing impairments, 1-800-787-3224 (TTY).

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

For help regarding sexual assault, you may contact 911.

Victims of stalking seeking help may contact 911.

Attachment: Certification form HUD-5382

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

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

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

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

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

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

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

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

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

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to

by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

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

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

2. Name of victim: _____

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

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

5. Residence of victim: _____

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

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

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

9. Location of incident(s): _____

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

This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature _____ Signed on (Date) _____

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

**EXHIBIT 16-3: EMERGENCY TRANSFER PLAN FOR VICTIMS OF
DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING
(HCV VERSION)**

Attachment: Certification form HUD-5382

JEFFERSON COUNTY HOUSING AUTHORITY

**Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual
Assault, or Stalking
Housing Choice Voucher Program**

Emergency Transfers

The **Jefferson County Housing Authority (JCHA)** is concerned about the safety of its tenants, and such concern extends to tenants who are victims of domestic violence, dating violence, sexual assault, or stalking. In accordance with the Violence Against Women Act (VAWA),³ JCHA allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant's current unit to another unit. The ability to request a transfer is available regardless of sex, gender identity, or sexual orientation.⁴ The ability of JCHA to honor such request for tenants currently receiving assistance, however, may depend upon a preliminary determination that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, and on whether JCHA has another dwelling unit that is available and is safe to offer the tenant for temporary or more permanent occupancy. This plan identifies tenants who are eligible for an emergency transfer, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to tenants on safety and security. This plan is based on a model emergency transfer plan published by the U.S. Department of Housing and Urban Development (HUD), the federal agency that oversees that JCHA's are in compliance with VAWA.

³ Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

⁴ Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

Eligibility for Emergency Transfers

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

A tenant requesting an emergency transfer must expressly request the transfer in accordance with the procedures described in this plan.

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

Emergency Transfer Request Documentation

To request an emergency transfer, the tenant shall notify JCHA management office or the Technician if the tenant is a Housing Choice Voucher holder and submit a written request for a transfer to JCHA property management office or technician within. The written request must be submitted to JCHA within 14 days. JCHA will provide reasonable accommodations to this policy for individuals with disabilities. The tenant's written request for an emergency transfer should include either:

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

The Jefferson County Housing Authority may, in writing, request documentation, such documentation may include:

- The Certification Form;
- Letter from an employee, agent, victim service provider, attorney, a medical professional or other mental health professional that satisfies HUD's requirements;

- A record from Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- At JCHA's discretion, a letter or other evidence provided by the tenant. All information provided is confidential.
- Note that survivors do not have to contact authorities, such as police, or initiate legal proceedings against an abuser or perpetrator in order to qualify for VAWA protections. There is also no limit to the number of times that someone can invoke VAWA.

If the applicant or tenant does not provide documentation within 10 business days, the Jefferson County Housing Authority may either extend the deadline or proceed with a denial of admission, assistance, termination of participation, or eviction.

The Jefferson County Housing Authority may bifurcate a lease, or remove a household member from the lease when such member engages in criminal activity directly relating to domestic violence, dating violence, sexual assault or stalking without evicting, removing, terminating assistance to or otherwise penalizing a victim of such criminal activity.

- If a lease bifurcation is used, the Jefferson County Housing Authority shall provide any remaining tenants with ninety days from the date of bifurcation to establish eligibility for the Jefferson County Housing Authority's program, establish eligibility for another housing authority, or find alternative housing.

Confidentiality

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

Emergency Transfer Timing and Availability

JCHA cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. JCHA will, however, act as quickly as possible to move a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit. If a tenant reasonably believes a proposed transfer would not be safe, the tenant may request a transfer to a different unit. If a unit is available, the transferred tenant must agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant has been transferred. JCHA may be unable to transfer a tenant to a particular unit if the tenant has not or cannot establish eligibility for that unit.

If JCHA has no safe and available units for which a tenant who needs an emergency transfer is eligible, JCHA will assist the tenant in identifying other housing providers who may have safe and available units to which the tenant could move. At the tenant's request, JCHA will also assist tenants in contacting the local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking that are attached to this plan.

Emergency Transfers: Housing Choice Voucher (HCV) Program

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

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

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

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

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

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

- Public housing program
- PBV assistance in another development not owned by JCHA

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

Safety and Security of Tenants

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

Tenants who are or have been victims of domestic violence are encouraged to contact the National Domestic Violence Hotline at 1-800-799-7233, or a local domestic violence shelter, for assistance in creating a safety plan. For persons with hearing impairments, that hotline can be accessed by calling 1-800-787-3224 (TTY).

Tenants who have been victims of sexual assault may call the Rape, Abuse, and Incest National Network's National Sexual Assault Hotline at 1-800-656-HOPE, or visit the online hotline at <https://ohl.rainn.org/online/>.

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

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

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

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

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

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

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

The requirements you must meet are:

1. **You are a victim of domestic violence, dating violence, sexual assault, or stalking.** If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation. In response, you may submit Form HUD-5382, or any one of the other types of documentation listed on that Form.
2. **You expressly request the emergency transfer.** Submission of this form confirms that you have expressly requested a transfer. Your housing provider may choose to require that you submit this form, or may accept another written or oral request. Please see your housing provider's emergency transfer plan for more details.
3. **You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit.** This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

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

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

communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts.

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

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

1. Name of victim requesting an emergency transfer: _____

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

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

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

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

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

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

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

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

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

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

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

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

Signature _____ Signed on (Date) _____

Exhibit 16-5: MODEL OWENR NOTIFICATION OF RIGHTS AND OBLIGATIONS

JEFFERSON COUNTY HOUSING AUTHORITY

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

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

Purpose

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

Denial of Tenancy

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

Eviction

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

Limitations of VAWA protections:

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

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

b. Nothing in the VAWA Final Rule limits an owner from evicting a victim of domestic violence,

dating violence, sexual assault, or stalking for a lease violation that is not premised on an act of domestic violence, dating violence, sexual assault, or stalking, as long as the owner does not subject the victim to more demanding standards than other tenants when deciding whether to evict. (See 24 CFR 5.2005(d)(2).)

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

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

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

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

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

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

- a. Form HUD-55383 (Self-Certification Form); or
- b. A document: 1) Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional or a mental health professional (collectively, “professional”) from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse:
 - 2) Signed by the applicant or tenant; and
 - 3) That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for

protection and remedies under 24 CFR part 5, subpart L, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under 24 CFR 5.2003; or

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

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

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

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

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

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

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

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

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

Moves

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

Lease Bifurcation

Owners may choose to bifurcate a lease, or remove a household member from a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to such member who engages in

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

Eviction, removal, termination of occupancy rights, or termination of assistance must be effected in accordance with the procedures prescribed by federal, state, or local law for termination of leases. To avoid unnecessary delay in the bifurcation process, HUD recommends that owners seek court-ordered eviction of the perpetrator pursuant to applicable laws. This process results in the underlying lease becoming null and void once the owner regains possession of the unit. The owner would then execute a new lease with the victim.

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

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

However, the VAWA Final Rule does not prohibit an owner from evicting a tenant for any violation not premised on an act of domestic violence, dating violence, sexual assault, or stalking that is in question against the tenant or an affiliated individual of the tenant. Nor does the VAWA Final Rule prohibit an owner from evicting a tenant if the owner can demonstrate an actual and imminent threat to other tenants or those employed at or providing services to property of the owner would be present if that tenant or lawful occupant is not evicted or terminated from assistance. (See 5.2005(d)(2) and (3).)

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

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

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

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

Confidentiality

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

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

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

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

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

Service Providers

Jefferson County Housing Authority has extensive relationships with local service providers **Jefferson County Housing Authority's** staff are available to provide referrals to shelters, counselors, and advocates. These resources are also provided in **Jefferson County Housing Authority's** Annual and 5-Year Plan, Administrative Plan, VAWA Notice of Occupancy Rights, and Emergency Transfer Plan. A list of local service providers is attached to this Notice.

Definitions

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

Affiliated individual, with respect to an individual, means:

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

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

Dating violence means violence committed by a person:

- (1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (2) Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - (i) The length of the relationship;
 - (ii) The type of relationship; and
 - (iii) The frequency of interaction between the persons involved in the relationship.

Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts

under the domestic or family violence laws of the jurisdiction. The term “spouse or intimate partner of the victim” includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

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

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

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

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

Attached:

Legal services and the domestic violence resources for the Metro area
Form HUD-5382 Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
Jefferson County Housing Authority VAWA Notice of Occupancy Rights

